

# ESMA'S DISCUSSION PAPER ON MiFID II AND MiFIR

## AMAFI's contribution

## 1. General observations

---

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

The Association has been following closely the preparation of the new Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR) and welcomes the opportunity to answer ESMA's consultation on its consultation and discussion papers.

ESMA's consultation and discussion paper on MiFID II is a considerable challenge for AMAFI and its members in terms of number of questions, time frame to respond, and complexity. This is why AMAFI has prioritised and focused on the main issues and has not been able to answer all questions.

This does not mean that those unanswered questions are not important to AMAFI. Moreover, some detailed comments may not be as comprehensive as expected. We will continue to work and provide additional input in the second round of consultations concerning the RTS where ESMA needs to provide legal drafting. AMAFI will also follow the adoption of the delegated acts by the Commission and its transmission to Council and Parliament.

AMAFI understands that ESMA has deadlines to comply with. However, AMAFI requests once more that ESMA provide longer consultation periods, of at least 3 months. Stakeholders should be given sufficient time in order to build up a comprehensive, detailed and meaningful response.

## 2. Investor protection

---

### 2.1. Authorisation of investment firms

**Q1. *Do you agree that the existing work/standards set out in points 2 and 3 provide a valid basis on which to develop implementing measures in respect of the authorisation of investment firms?***

Yes, AMAFI agrees that the existing work and standards set out in points 2 and 3 provide a valid basis on which to develop implementing measures in respect of the authorization of investment firms.

**Q2. What areas of these existing standards do you consider require adjustment, and in what way should they be adjusted?**

Within the short time frame of this consultation, AMAFI has not been able to consider this question with its members and therefore, is unable to respond to it.

**Q3. Do you consider that the list of information set out in point 6 should be provided to Home State NCAs? If not, what other information should ESMA consider?**

Yes, AMAFI agrees with the proposal that the list of information set out in point 6 should be provided to Home State NCAs.

**Q4. Are there any other elements which may help to assess whether the main activities of an applicant investment firm is not in the territory where the application is made?**

No, AMAFI does not believe that any other element needs to be added.

**Q5. How much would one-off costs incurred during the authorisation process increase, compared to current practices, in order to meet the requirements suggested in this section?**

As a professional organisation, AMAFI is unable to respond to this question on behalf of its members.

**Q6. Are there any particular items of information suggested above that would take significant time or cost to produce and if so, do you have alternative suggestions that would reduce the time/cost for firms yet provide the same assurance to NCAs?**

Within the short time frame of this consultation, AMAFI has not been able to consider this question with its members and therefore, is unable to respond to it.

## **2.2. Freedom to provide investment services and activities / Establishment of a branch**

**Q7. Do you agree that development of technical standards required under Articles 34 and 35 of MiFID II should be based on the existing standards and forms contained in the CESR Protocol on MiFID Notifications (CESR/07-317c)? If not, what are the specific areas in the existing CESR standards requiring review and adjustment?**

Yes, AMAFI agrees that the development of technical standards required under Articles 34 and 35 of MiFID II should be based on the existing standards and forms contained in the CESR Protocol on MiFID Notifications ([CESR/07-317c](#)).

### **2.3. Best execution - publication of data related to the quality of execution by trading venues for each financial instrument traded**

**Q8. Do you agree data should be provided by all the execution venues as set out in footnote 24? If not, please state why not.**

No, AMAFI does not agree with the proposal that data related to the quality of execution should be provided by all the execution venues as set out in footnote 24.

It should be recalled that Article 17, paragraph 3 of the Directive states that:

*Member States shall require that for financial instruments subject to the trading obligation in Articles 23 and 28 Regulation (EU) No .../2014 each trading venue and systematic internaliser and for other financial instruments each execution venue makes available to the public, without any charges, data relating to the quality of execution of transactions on that venue on at least an annual basis and that following execution of a transaction on behalf of a client the investment firm shall inform the client where the order was executed. Periodic reports shall include details about price, costs, speed and likelihood of execution for individual financial instruments.*

Footnote 24 states that:

*Execution venue means a regulated market, a Multilateral Trading Facility (MTF) an Organised Trading Facility (OTF), a systematic internaliser, or a market maker or other liquidity provider or an entity that performs a similar function in a third country to the functions performed by any of the foregoing.*

This definition raises several questions: first of all, how can such an important definition be provided only in a footnote? What is the legal basis of such definition? Is the same definition used for other purposes?

In addition, if this definition were accepted, that would mean that any OTC liquidity provider on any financial instrument could be required to provide a periodic report on its "quality of execution". This is not compatible with the need – recognized by ESMA - to have proportionate requirements, as mentioned in §5 of this Section 2.3 in which ESMA recognizes that "*it may be appropriate to specify a minimum level of trading activity*" or "*a significant percentage of the overall trading*" in a given instrument.

AMAFI believes therefore that when the activity of a market maker or a liquidity provider undertaken outside of an execution venue is *ad hoc*, irregular and infrequent, so that it does not qualify as a Systematic Internaliser, no periodic reporting on the execution quality should be required.

Establishing periodic reports will induce costs for the "venue". In the case of OTC liquidity providers, willing to facilitate some of his clients' trades, this cost could become unbearable compared to the benefits he gets from facilitating the execution of some orders. An entry barrier would hence be created, that, further to the ISPs, would be detrimental for the investors (less counterparts for facilitation) and for issuers (negative impact on liquidity).

In addition, such periodic reports would bring no value to the community unless the venue has a certain level of activity on the instrument in question. Reporting data related to the purely *ad hoc* activity of an OTC liquidity provider would bring no added value and would be totally disproportionate given the costs that would be incurred in this connection.

**Q9. If you think that the different types of venues should not publish exactly the same data, please specify how the data should be adapted in each case, and the reasons for each adjustment.**

Yes, as mentioned above in relation to Question 8, AMAFI believes that the different types of venues should not be required to publish the same data.

Indeed, the benefit of having ad hoc and infrequent market makers / liquidity providers publish data related to their “execution quality” would be low compared to the costs incurred / negative impact for the community.

AMAFI’s preferred option therefore would be to exempt OTC market makers / liquidity providers not qualifying as systematic internalisers. If such exemption were not accepted, AMAFI would request that at least for them, the requirement be limited to a periodic reporting limited to the executed volume.

**Q10. Should the data publication obligation apply to every financial instrument traded on the execution venue? Alternatively, should there be a minimum threshold of activity and, if so, how should it be defined (for example, frequency of trades, number of trades, turnover etc.)?**

No, AMAFI believes that the data publication obligation should not apply to every financial instrument traded on the execution venue. At least it should be adapted depending on the type of financial instruments traded.

**Q11. How often should all execution data be published by trading venues? Is the minimum requirement specified in MiFID II sufficient, or should this frequency be increased? Is it reasonable or beneficial to require publication on a monthly basis and is it possible to reliably estimate the marginal cost of increased frequency?**

Yes, AMAFI believes that the minimum requirement specified in MiFID II (on an annual basis) is sufficient. It would be neither reasonable nor beneficial to require publication on a more frequent basis and particularly on a monthly basis. The cost of an increased frequency would certainly be significant.

**Q12. Please provide an estimate of the cost of the necessary IT development for the production and the publication of such reporting.**

As a professional organisation, AMAFI is not in a position to respond to this question on behalf of its members. Most likely however, the cost of this proposal would be significant for the investment firms.

**Q13. Do you agree that trading venues should publish the data relating to the quality of execution with regard to a uniform reference period, with a minimum of specific reporting details and in a compatible format of data based on a homogeneous calculation method? If not, please state why.**

Yes, AMAFI agrees with this proposal which should favour harmonisation.

**Q14. *Is the volume of orders received and executed a good indicator for investment firms to compare execution venues? Would the VBBO in a single stock published at the same time also be a good indicator by facilitating the creation of a periodic European price benchmark? Are there other indicators to be considered?***

Yes, AMAFI believes that the volume of orders received and executed is a good indicator for investment firms to compare execution venues.

Conversely, AMAFI believes that the VVBO, which does not take the volume into account, is not a good indicator.

Other indicators could be considered: the average spread for a given size and/or the average size for a given spread.

**Q15. *The venue execution quality reporting obligation is intended to apply to all MiFID instruments. Is this feasible and what differences in approach will be required for different instrument types?***

No, AMAFI believes that it is not feasible to apply the venue execution quality reporting obligation to all MiFID instruments. Investment firms are not data providers. And they should not be required to become data providers, free of charge. There are professional firms, whose business it is to provide data. For investment firms the cost would be too high and unjustified, notably for certain instruments such as derivatives.

**Q16. *Do you consider that this requirement will generate any additional cost? If yes, could you specify in which areas and provide an estimation of these costs?***

Yes, this requirement will undoubtedly generate additional costs. AMAFI is not in position, however, to provide an estimate of these costs on behalf of its members.

**Q17. *If available liquidity and execution quality are a function of order size, is it appropriate to split trades into ranges so that they are comparable? How should they be defined (for example, as a percentage of the average trading size of the financial instrument on the execution venue; fixed ranges by volume or value; or in another manner)?***

Yes, AMAFI believes that it is appropriate to split trades into ranges so that they are comparable. However, in the very short time frame allowed for the consultation, it has not been able to examine this question in depth with its members.

**Q18. *Do you agree that a benchmark price is needed to evaluate execution quality? Would a depth-weighted benchmark that relates in size to the executed order be appropriate or, if not, could you provide alternative suggestions together with justification?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

- Q19. What kind of cost should be reported (e.g. regulatory levies, taxes, mandatory clearing fees) and how should this data be presented to enable recipients to assess the total consideration of transactions?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

- Q20. What would be the most appropriate way to measure the likelihood of execution in order to get useful data? Would it be a good indicator for likelihood of execution to measure the percentage of orders not executed at the end of the applicable trading period (for example the end of each trading day)? Should the modification of an order be taken into consideration?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

- Q21. What would be the most appropriate way to measure the speed of execution in order to get useful data?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

- Q22. Are there other criteria (qualitative or quantitative) that are particularly relevant (e.g. market structures providing for a guarantee of settlement of the trades vs OTC deals; robustness of the market infrastructure due to the existence of circuit breakers)?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

- Q23. Is data on orders cancelled useful and if so, on what time basis should it be computed (e.g. within a single trading day)?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

- Q24. Are there any adjustments that need to be made to the above execution quality metrics to accommodate different market microstructures?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

- Q25. What additional measures are required to define or capture the above data and relevant additional information (e.g. depth weighted spreads, book depths, or others) How should the data be presented: on an average basis such as daily, weekly or monthly for each financial instrument (or on more than one basis)? Do you think that**

***the metrics captured in the Annex to this chapter are relevant to European markets trading in the full range of MiFID instruments? What alternative could you propose?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q26. *Please provide an estimate of the costs of production and publication of all of the above data and, the IT developments required? How could these costs be minimised?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q27. *Would increasing the frequency of venue execution quality data generate additional costs for you? Would these costs arise as a result of an increase of the frequency of the review, or because this review will require additional training for your staff in order to be able to analyse and take into account these data? Please provide an estimate of these costs.***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q28. *Do you agree that investment firms should take the publication of the data envisaged in this Discussion Paper into consideration, in order to determine whether they represent a “material change”?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

### **2.3. Best execution - publication of data by investment firms**

**Q29. *Do you agree that in order to allow clients to evaluate the quality of a firm’s execution, any proposed standards should oblige the firm to give an appropriate picture of the venues and the different ways they execute an order?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q30. *Do you agree that when systematic internalisers, market makers, OTC negotiation or dealing on own account represent one of the five most important ways for the firm to execute clients’ orders, they should be incorporated in the reporting obligations under Article 27(6) of MiFID II?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

- Q31. Do you think that the data provided should be different in cases when the firm directly executes the orders to when the firm transmits the orders to a third-party for execution? If yes, please indicate what the differences should be, and explain why.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

- Q32. Do you consider that information on both directed and non-directed orders is useful? Should the data be aggregated so that both types of order are shown together or separated? Should there be a similar approach to disclosure of information on market orders versus limit orders? Do you think that another categorisation of client orders could be useful?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

- Q33. Do you think that the reporting data should separate retail clients from other types of clients? Do you think that this data should be publicly disclosed or only provided to the NCA (e.g. when requested to assess whether there is unfair discrimination between retail clients and other categories)? Is there a more useful way to categorise clients for these purposes?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

- Q34. Do you agree that the investment firms should publish the data relating to their execution of orders with regard to a uniform reference period, with a minimum of specific reporting details and in a compatible format of data based on a homogeneous calculation method? If not, please state why.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

- Q35. What would be an acceptable delay for publication to provide the clients with useful data?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

- Q36. What format should the report take? Should there be any difference depending on the nature of the execution venues (MTF, OTF, Regulated Market, systematic internalisers, own account) and, if so, could you specify the precise data required for each type?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

- Q37. Do you agree that it is proportionate to require investment firms to publish on an annual basis a summary based on their internal execution quality monitoring of their top five execution venues in terms of trading volumes, subject to certain minimum standards?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

- Q38. Do you have views on how 'directed orders' covered by client specific instructions should be captured in the information on execution quality? Is it possible to disaggregate reporting for directed orders from those for which there are no specific instructions and, if so, what the most relevant criteria would be for this exercise?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

- Q39. Minimum standards to ensure that the summary of the firm's internal execution quality monitoring of their top five execution venues (in terms of trading volumes) is comprehensive and contains sufficient analysis or context to allow it to be understood by market participants shall include the factors set out at paragraph 29. Do you agree with this analysis or are there any other relevant factors that should be considered as minimum standards for reporting?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

- Q40. Can you recommend an alternative approach to the provision of information on execution quality obtained by investment firms, which is consistent with Article 27(6) of MiFID II and with ESMA's overall objective to ensure proportionate implementation?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

- Q41. Do you agree that ESMA should try to limit the number of definitions of classes of instruments and provide a classification that can be used for the different reports established by MiFID and MiFIR?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q42. *If this approach is not viable how should these classes be defined? What elements should be taken into consideration for that classification? Please explain the rationale of your classification. Is there a need to delay the publication of the reporting for particular class of financial instruments? If the schedule has to be defined, what timeframe would be the most relevant?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q43. *Is any additional data required (for instance, on number of trades or total value of orders routed)?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q44. *What information on conflicts of interest would be appropriate (inducements, capital links, payment for order flow, etc.)?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

### **3. Transparency**

---

#### **3.1. Pre-trade transparency - Equities**

**Q45. *What in your view would be the minimum content of information that would make an indication of interest actionable? Please provide arguments with your answer.***

In AMAFI's view, the minimum information an indication of interest should contain to become actionable are (i) instrument, (ii) size, (iii) side and (iv) price, which constitute "all necessary information to agree on a trade", which is in the MiFIR definition of an actionable indication of interest.

In our view, an actionable indication of interest can be assimilated to an order when it follows the given definition and when it can be executed by a unilateral action of the market participant receiving the message, e.g. without having to require any further agreement / action from the issuing party. Hence it must not be subject to any condition.

This is essential to ensure compliance with the obligation for actionable indication of interests to reflect only "available trading interest".

As a consequence, we consider that in RFQ systems, the price request should not be considered as actionable indication of interests, whereas the answers of the market makers should.

On the contrary, we reckon that "common" indication of interests sent through systems such as Bloomberg by brokers are not actionable indications of interest, since (i) in most cases, the price for a potential transaction is not given and (ii) their transformation into an executed transaction necessitates a

discussion between the broker and the investor on important elements of the potential transaction (such as price, size available, etc.).

**Q46. Do you agree with ESMA's opinion that Table 1 of Annex II of Regulation 1287/2006 is still valid for shares traded on regulated markets and MTFs? Please provide reasons for your answer.**

AMAFI agrees with ESMA's opinion on the validity of Table 1 of Annex II of Regulation 1287/2006 for shares traded on regulated markets and MTFs.

Still, concerning "trading system not covered by the first three", we are of the view that the quantity available for each price should be included in the information to be made public, along with the price ("level") of order or quotes. Not requiring the quantity to be made public would provide an undue advantage to the platforms under this qualification against other trading systems (including systematic internalisers).

**Q47. Do you agree with ESMA's view that Table 1 of Annex II of Regulation 1287/2006 is appropriate for equity-like instruments traded on regulated markets and MTFs? Are there other trading systems ESMA should take into account for these instruments? Please provide reasons for your answer.**

AMAFI is of the opinion that the trading systems described in Table 1 of Annex II of Regulation 1287/2006 are also used for equity-like instruments traded on venues.

On top of these, other trading systems are used for equity-like instruments, notably request for quote systems, which are used for the equity-like universe since they answer specific constraints on the investor's side (particularly, getting a competitive price for a significant size on a given ETF, without sending too strong a signal into the market).

For such RFQ systems, the elements proposed by ESMA in the non-equity section (from page 151 of the Discussion Paper) appear appropriate, regarding both the description of trading systems and the summary of information that is appropriate to be made public.

We hence propose to enrich Table 1, Annex 2 of Regulation 1287/2006, accordingly.

**Q48. Do you agree with ESMA's view that ADT remains a valid measure for determining when an order is large in scale compared to normal market size? If not, what other measure would you suggest as a substitute or complement to the ADT? Please provide reasons for your answer.**

No. AMAFI does not agree with ESMA's view on this point.

The large in scale waiver is, in ESMA's own words, designed "to protect large orders from adverse market impact and to avoid abrupt price movements", that is to say that, for each given stock, the large in scale waiver should be set so as to reflect the capability of the order book to absorb a large order without excessive immediate impact, and to regenerate quickly enough after the said order is executed.

It is obvious that, for practical reasons, the large in scale waiver cannot be set on a stock per stock basis. For the framework to be workable, it would be efficient to adopt a two step approach as follows:

- step 1 with the definition of homogeneous enough classes of stocks as to the ability of the order book to absorb a large order;
- step 2 with a calibration of the large in scale threshold for each class.

Under the current regime, the classes used to determine the LIS threshold are based on the ADT of stocks, and apparently ESMA wants to keep the same approach, while refining the number of classes.

In our opinion, ADT does not give a fair view of the ability of the order book to absorb a large order and to regenerate rapidly after such execution. It can be used as an imperfect proxy for liquidity. A better measure of the ability for an order book to absorb large orders in a given stock can be the available liquidity at the best bid and offer for the said stock.

Given the recent evolution of technology, and the ability of most players to withdraw their orders placed beyond the first limit when they see that the first limit is being absorbed by a large order, we believe that only the first limit should be taken into account.

Hence, we would prefer the large in scale threshold to be built on the depth at the best bid and offer (DBBO) for the stock. Even though the classification of stocks per ADT ranges could be preserved, it would in our opinion require:

- in depth analysis to check that ADT and DBBO are correlated enough so that defining ADT classes provides homogeneous populations from an ASBBO point of view,
- calibration of the LIS threshold for each class of stocks on the basis of the DBBO for the said class of stocks.

**Q49. Do you agree that ADT should be used as an indicator also for the MiFIR equity-like products (depository receipts, ETFs and certificates)? Please provide reasons for your answers.**

AMAFI considers the answer depends on the type of instruments.

For instruments which are not based on a single stock underlying, such as ETFs, we are of the opinion that the large in scale threshold should be calibrated by taking into account the characteristics of the instruments (e.g. the DBBO as mentioned in our answer to Q48) and also these of the underlying instruments.

By contrast, for instruments which fundamentally replicate the performance of a stock, such as depository receipts, AMAFI believes that the large in scale threshold should then replicate the large in scale threshold of the reference stock, in order to avoid regulatory arbitrage and induce trading migration across instruments.

**Q50. Do you think there is merit in creating a new ADT class of 0 to €100,000 with an adequate new large in scale threshold and a new ADT class of €100,000 to €500,000? At what level should the thresholds be set? Please provide reasons for your answer.**

No. AMAFI does not believe that classes of ADT are the best means of setting homogeneous populations of stocks from a large in scale perspective, and as precedently stated in our answer to Q48, we would favour the use of the DBBO.

In case there is evidence that ADT is correlated with the DBBO, hence creating a new ADT class of €100,000 to €500,000 could indeed prove useful.

**Q51. Do you think there is merit in creating new ADT classes of €1 to €5m and €5 to €25m? At what level should the thresholds be set? Please provide reasons for your answer.**

Similar answer as for Q50.

**Q52. Do you think there is merit in creating a new ADT class for 'super-liquid' shares with an ADT in excess of €100m and a new class of €50m to €100m? At what level should the thresholds be set?**

Similar answer as for Q50.

**Q53. What comments do you have in respect of the new large in scale transparency thresholds for shares proposed by ESMA?**

AMAFI considers that the new large in scale transparency thresholds proposed by ESMA does not take into account the evolution of market microstructure, as stated above in our answer to Q48.

The regime proposed is largely similar to Table 2 in Regulation (EC) 1287/2006: it contains more classes, but with globally the same thresholds as the one applied in MIF I.

We are of the view that such an approach is not adequate, taking in consideration the deep changes that have affected European equity markets since 2006, when the aforementioned Table 2 was designed. Since then, particularly due to the introduction of HFT and a run to the bottom for tick sizes, liquidity has become more fractioned, the viscosity of order books has reduced, making them more reactive to large orders, with a more significant impact of large orders on the price formation process.

These deep changes in European equity markets microstructure are particularly well illustrated by the evolution of the Average Value Trade.

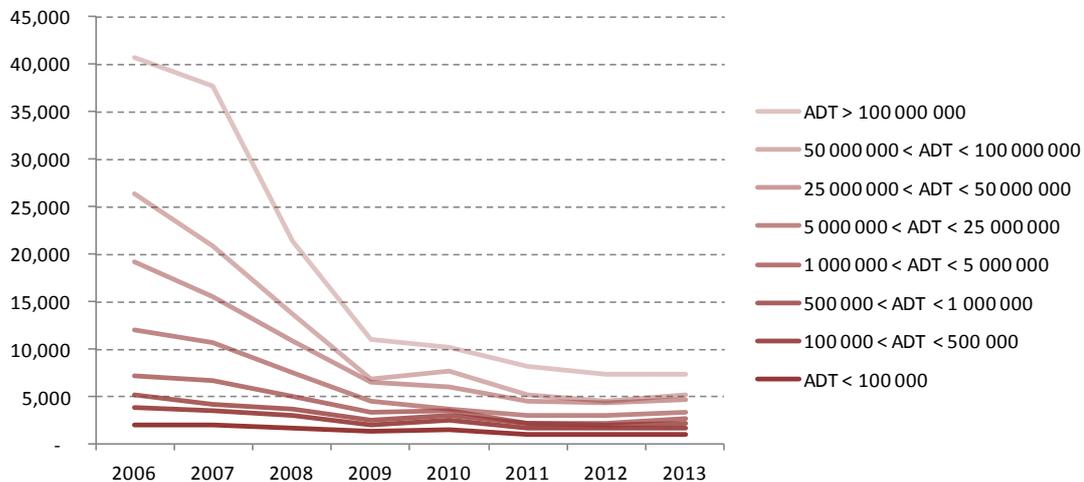
For the purpose of the exhibits below, we have used ESMA database ([http://MiFIDdatabase.esma.europa.eu/Index.aspx?sectionlinks\\_id=14&language=0&pageName=MIFIDLi quidSearch](http://MiFIDdatabase.esma.europa.eu/Index.aspx?sectionlinks_id=14&language=0&pageName=MIFIDLi quidSearch)), with filters:

- focusing on those shares for which an AVT is available and for which the average number of transactions is at least 10,
- excluding data that are visibly erroneous (for instance, figures re the number of "Daily Transactions" provided for Austria for 2013 and updated on the 25/02/2014 look wrong: for ERSTE GROUP BANK AG, the daily number of transactions cannot be 292,565, which rather seems to be the annual number of transactions over 2013), or not relevant (some rows are related to ETFs).

It appears clearly that the ADT of European stocks has decreased significantly since 2006, and is now less differentiated between classes of ADT:

- for stocks with an ADT above EUR 100m, the AVT has nearly been divided by 6 over the period and is now below EUR 7,500;
- for stocks with an ADT between EUR 50m and EUR 100m, the AVT has been divided by 5 over the period and is now slightly above EUR 5,000;
- etc.

Exhibit: the Average Value Trade has significantly decreased since 2006



We are of the opinion that:

- the AVT gives a fair view of the viscosity of an order book (which could be used as an alternative to the DBBO, see our answer to Q48);
- the new LIS table should reflect the reduction of viscosity in the order books, and the increased sensitivity of the price formation process to large orders.

Therefore, we propose an alternative table for LIS thresholds, which would be based on ADT and on AVT:

	ADT < 100 000	100 000 < ADT < 500 000	500 000 < ADT < 1 000 000	1 000 000 < ADT < 5 000 000	5 000 000 < ADT < 25 000 000	25 000 000 < ADT < 50 000 000	50 000 000 < ADT < 100 000 000	100 000 000 < ADT		
AVT < 5 000	30 000	50 000	75 000	75 000	100 000	100 000	150 000	200 000		
5 000 < AVT < 10 000					100 000	150 000	150 000	200 000	250 000	
10 000 < AVT < 15 000					100 000	150 000	200 000	200 000	300 000	300 000
15 000 < AVT < 20 000							300 000	400 000	400 000	400 000
20 000 < AVT < 25 000							400 000	500 000	500 000	500 000
25 000 < AVT									650 000	

The advantage of that solution would be that, if the average size of transaction increases, the LIS threshold would evolve accordingly, to reflect the increased capability of the order book to absorb large orders.

**Q54. Do you agree with the ADT ranges selected? Do you agree with the large in scale thresholds set for each ADT class? Which is your preferred option? Would you calibrate the ADT classes and related large in scale thresholds differently? Please provide reasons for your answers, including describing your own role in the market (e.g. market-maker, issuer etc).**

No. AMAFI does not agree. We are rather concerned by the proposed approach for ETFs:

- first, we are doubtful on the use of classes of ADT to create homogeneous populations of instruments from a large in scale perspective. As answered to Q48, we would favour the DBBO methodology;

- second, we consider that the large in scale threshold for equity-like instruments that are not based on a single stock underlying, such as ETFs, should be calibrated by taking into account the characteristics of the instruments, but also these of the underlying instruments, as stated above in our answer to Q49;
- third, AMAFI is of the view that calibrating the large in scale threshold so as to capture only a certain proportion of turnover for the considered instruments is not consistent with the rationale of the large in scale waiver, which was designed, as stated in the Discussion paper, “to protect large orders from adverse market impact and to avoid abrupt price movements”.

In our opinion, the large in scale thresholds for ETFs should be calibrated following a two-step approach:

- step one: computation of the threshold that would be given by the table set for equities, based on the characteristics of the ETF itself;
- step two: computation, for each equity stock used as an underlying by the ETF, the results given by dividing the large in scale threshold of the stock by its weighting in the performance of the ETF.

The large in scale threshold for the ETF should be the lowest of the figures computed.

**Q55. Which is your preferred scenario? Would you calibrate the ADT classes differently? Please provide reasons for your answers.**

AMAFI considers that the calibration of the large in scale threshold should depend on the nature of the instrument, that is to say whether it can be economically assimilated to the shares issued by the same issuer, or not.

In case the certificate can be used as an alternative to the reference stock for the issuer, then the large in scale calibration should be identical to the one applied to the share, in order to avoid regulatory arbitrage which would induce trading migration across instruments.

Otherwise, in case the certificate is a fully “independent” instrument, as seems to be the case for Spanish ‘*participaciones preferentes*’, hence the large in scale threshold should be calibrated on its own liquidity features.

**Q56. Do you agree that the same ADT classes should be used for both pre-trade and post-trade transparency? Please provide reasons for your answers.**

As stated in our answer to Q55, AMAFI considers that the same principle should apply to calibrate pre-trade and post-trade transparency large in scale thresholds.

**Q57. How would you calibrate the large in scale thresholds for each ADT class for pre- and post-trade transparency? Please provide reasons for your answers.**

Please refer to our answers to Q55 and 56 for certificates.

**Q58. Do you agree with ESMA's view that the large in scale thresholds (i.e. the minimum size of orders qualifying as large in scale and the ADT classes) should be subject to a review no earlier than two years after MiFIR and Level 2 apply in practice?**

AMAFI believes that the large in scale thresholds should be reviewed regularly once MiFIR is implemented. A first review two years after MiFIR and level 2 apply looks sensible.

**Q59. How frequently do you think the calculation per financial instrument should be performed to determine within which large in scale class it falls? Which combination of frequency and period would you recommend?**

AMAFI considers that the calculation per financial instrument should be performed yearly.

In case our solution was adopted, the table we propose in our answer to Q53 would not need to be reviewed, since the evolution of the AVT for each stock would automatically induce the adaptation of the LIS threshold.

**Q60. Do you agree with ESMA's opinion that stubs should become transparent once they are a certain percentage below the large in scale thresholds? If yes, at what percentage would you set the transparency threshold for large in scale stubs? Please provide reasons to support your answer.**

No. AMAFI considers that making stub orders transparent once they are a certain percentage below the large in scale thresholds would introduce an increased level of complexity in the management of orders and create risk for investors and intermediaries with no clear benefit for the community.

Hence AMAFI disagrees with ESMA's opinion on that point.

**Q61. Do you agree with ESMA's view that the most relevant market in terms of liquidity should be the trading venue with the highest turnover in the relevant financial instrument? Do you agree with an annual review of the most relevant market in terms of liquidity? Please give reasons for your answer.**

Yes. AMAFI agrees that the most relevant market in terms of liquidity should be the trading venue with the highest turnover in the relevant instrument, and that an annual review should determine this most relevant market.

**Q62. Do you agree with ESMA's view on the different ways the member or participant of a trading venue can execute a negotiated trade? Please give reasons for your answer.**

Yes. AMAFI agrees with ESMA's view on the different ways the member or participant of a trading venue can execute a negotiated trade.

**Q63. Do you agree that the proposed list of transactions are subject to conditions other than the current market price and do not contribute to the price formation process? Do you think that there are other transactions which are subject to conditions other**

***than the current market price that should be added to the list? Please provide reasons for your answer.***

No. AMAFI considers that the proposed list is valid, but that it can be enriched to encompass particularly (i) exchanges of securities basket with ETFs, (ii) transactions used to hedge creation / redemption of ETFs, (iii) exchange of collateral.

More fundamentally, we are of the view that implementing measures should not go against future evolutions and possible innovations of markets. A possibility could then be to add a final item to the list, which would enable to incorporate other transaction types that would come from such changes. Otherwise, a mechanism of reviews should be tailored so as to add new items when needed.

***Q64. Do you agree that these are the two main groups of order management facilities ESMA should focus on or are there others?***

Yes. AMAFI agrees that these are the two main groups of order management facilities ESMA should focus on.

***Q65. Do you agree with ESMA's general assessment on how to design future implementing measures for the order management facility waiver? Please provide reasons for your answer.***

Yes. AMAFI agrees with ESMA's general assessment on how to design future implementing measure for the order management facility waiver.

***Q66. Are there other factors that need to be taken into consideration for equity-like instruments? Please provide reasons for your answer.***

AMAFI is not aware of any other factors that need to be taken into consideration for equity-like instruments.

***Q67. Do you agree that the minimum size for a stop order should be set at the minimum tradable quantity of shares in the relevant trading venue? Please provide reasons for your answer.***

Yes. AMAFI agrees that the minimum size for a stop order should be set at the minimum tradable quantity of shares in the relevant trading venue.

***Q68. Are there additional factors that need to be taken into consideration for equity-like instruments?***

AMAFI is not aware of any additional factors that need to be taken into consideration for equity-like instruments.

**Q69. Which minimum overall sizes for iceberg orders are currently employed in the markets you use and how are those minimum sizes determined?**

AMAFI noted that in the current European situation, the minimum sizes for iceberg orders are set by each exchange, on the basis of heterogeneous rules. As for today, we do not have the capacity to answer this question.

**Q70. Which minimum sizes and which methods for determining them should be prescribed via implementing measures? To what level of detail should such an implementing measure go and what should be left to the discretion of the individual market to attain an appropriate level of harmonisation?**

AMAFI considers that minimum size of iceberg orders should be a multiple of the minimum display size.

We are of the view that, so as to obtain an appropriate level of harmonisation while maintaining a sufficient level of discretion to each individual market, an implementing measure could set a common minimum multiple, for example 3 times the minimum display size.

**Q71. Which methods for determining the individual peak sizes of iceberg orders are currently employed in European markets?**

Please refer to our answer to Q69.

**Q72. Which methods for determining peaks should be prescribed by implementing measures, for example, should these be purely abstract criteria or a measure expressed in percentages against the overall size of the iceberg order? To what level of details should such an implementing measure go and what should be left to the discretion of the individual market to attain an appropriate level of harmonisation?**

AMAFI considers that the minimum display size should be a decent part of the average value trade for the relevant stock, on the same model as the one currently used at the London Stock Exchange, so as to avoid adding fragmentation into the markets.

**Q73. Are there additional factors that need to be taken into consideration for equity-like instruments?**

AMAFI is not aware of any additional factors that need to be taken into consideration for equity-like instruments.

### 3.2. Post-trade transparency - Equities

**Q74. Do you agree that the content of the information currently required under existing MiFID is still valid for shares and applicable to equity-like instruments? Please provide reasons for your answer.**

Yes. AMAFI agrees that the content of the information currently required under existing MiFID is still valid for shares and applicable to equity-like instruments.

**Q75. Do you think that any new field(s) should be considered? If yes, which other information should be disclosed?**

No. AMAFI does not think that any new field should be considered.

**Q76. Do you think that the current post-trade regime should be retained or that the identity of the systematic internaliser is relevant information which should be published? Please provide reasons for your response, distinguishing between liquid shares and illiquid shares.**

Yes. AMAFI is of the view that the current regime should be retained.

Indeed, we consider that publishing the systematic internalisers' identity in the post-trade transparency flow would expose the risk position of the investment firm, and would make the SI status totally unattractive.

AMAFI wants to recall that the changes introduced by the new MIF arrangement, notably with the trading obligation for equities set by Article 23 of MiFIR, together with the increased obligations for equity-like products, should foster the development of systematic internalisers as an alternative for investors to regulated markets and MTFs, while they are currently only a few active ones.

In this context, it will be very important that potential liquidity providers are not discouraged from becoming systematic internalisers. Therefore, it is paramount to maintain the current post-trade regime concerning their identity.

**Q77. Do you agree with the proposed list of identifiers? Please provide reasons for your answer.**

Yes. AMAFI agrees with the proposed list of identifiers.

Nevertheless, we regret that no significant progress was made towards the constitution of a consolidated tape, since we consider that in order for post-trade transparency to be effective, the way data is aggregated and made available is at least as important as the level of information to be made transparent. In our view, the lack of a European consolidated tape will be detrimental to the effectiveness of post-trade transparency, and we would have preferred a unique and comprehensive consolidated tape to be put in place through a public procurement process.

**Q78. Do you think that specific flags for equity-like instruments should be envisaged? Please justify your answer.**

No. AMAFI considers that there is no need for specific flags for equity-like instruments, since the proposed “technical trade flag” looks generic enough to capture some specific situations generated by the trading in the non-equity universe. These specific cases include trades which represent non-addressable liquidity or trades where the exchange of a financial instrument is determined by factors other than the current market valuation of the instrument (creation / redemption of ETFs, exchanges of securities basket with ETFs, etc.).

**Q79. Do you support the proposal to introduce a flag for trades that benefit from the large in scale deferral? Please provide reasons for your response.**

Yes. AMAFI supports the introduction of a flag for trades that benefit from the large in scale deferral, since we are of the opinion that an effective and well-calibrated post-trade transparency would contribute positively to the price formation process.

Globally speaking, we are in favour of selected enrichments of the post-trade information, provided they really improve the contribution of post-trade transparency to the price formation process (i) and that they do not require disproportionate investments (ii).

**Q80. What is your view on requiring post-trade reports to identify the market mechanism, the trading mode and the publication mode in addition to the flags for the different types of transactions proposed in the table above? Please provide reasons for your answer.**

AMAFI considers that the market mechanism and trading mode would be valuable information, without being duplicates of an existing tag, since a given trading platform can use several mechanisms / trading modes. On the contrary, we do not see value in introducing a tag related to the publication mode.

This follows our general views expressed in our answer to Q79 on the selected enrichment of post-trade reports.

**Q81. For which transactions captured by Article 20(1) would you consider specifying additional flags as foreseen by Article 20(3)(b) as useful?**

AMAFI considers that equities, but also bonds securities financing transactions, should not be covered by MIF II post-trade transparency regime, and the the future SFT regulation should develop a specific regime that will better answer the specific features of SFTs. The following reasoning led to that conclusion:

According to us, answering the question of whether MiFIR post-trade transparency regime should be applied to Securities Financing Transactions requires considering 3 different aspects: (i) appropriateness of MIF II post-trade transparency regime for SFTs, (ii) consistency across equity and bond SFTs and (iii) subsidiarity between MIF II and the future SFT regulation.

With regards the applicability of MiFIR post-trade transparency regime to Securities Financing Transactions: SFTs do not result in an outright exposure to the security in question and thus are very different in nature to outright trades. In many cases the securities involved are posted as effective collateral. Such trades are often not extremely sensitive to market price (so may be misleading) and also

can be subject to features (haircuts or other specific bilateral agreements between counterparties) that are relevant from an SFT point of view, but could hardly be reflected under MiFIR post-trade transparency regime.

With regards to the need for consistency for SFTs on shares and SFTs on bonds, it has to be noted that MiFIR level 1 text does not make any difference in the treatment of SFTs based on the type of underlying. Article 20.3.(B) related equities and Article 21.5.(B) related to non-equities are indeed quite similar: “ESMA shall develop draft regulatory technical standards [...] to specify [...] the application of the obligation [...] to transactions involving the use of those financial instruments for collateral, lending or other purposes where the exchange of financial instruments is determined by factors other than the current market valuation of the financial instrument.”

From this point perspective, we believe that question 81 (related to SFTs on equities) and question 139 (related to SFTs on bonds) should have respected the same parallelism.

With regards the need for a sufficient level of subsidiarity between MiFIR and the future SFT regulation, we believe that Securities Financing Transactions cannot be submitted to 2 different post-trade transparency regimes. In other terms, either SFTs are submitted to MiFIR post-trade transparency regime, in which case the future SFT regulation should rely on MiFIR for post-trade transparency purposes, or SFTs are exempted from MiFIR post-trade transparency regime, to let the future SFT regulation develop a regime specifically designed for SFTs.

**Q82. Do you agree with the definition of “normal trading hours” given above?**

Yes. AMAFI agrees with the definition of “normal trading hours”.

**Q83. Do you agree with the proposed shortening of the maximum permissible delay to 1 minute? Do you see any reason to have a different maximum permissible deferral of publication for any equity-like instrument? Please provide reasons for your answer**

No. AMAFI does not agree with the proposed shortening of the maximum permissible delay to 1 minute. We consider that the calibration of this delay should take into account the operational constraints for some types of transactions. For instance, when a trader agrees a transaction with a client in the course of a phone conversation, he may not be in a situation to immediately input the transaction in his order management system, which will generate the post-trade publication. We are of the view that for such transactions, a 1-minute delay may be too short if the start point is considered to be the time at which the trade is verbally agreed.

Consequently, rather than shortening the existing 3-minute allowance, we consider that what is key to bring the average time down would be to ensure that the requirement to report “as close to real time as possible” is effectively enforced and that IT systems are not designed to use the maximum permissible deferral for publication.

**Q84. Should the deferred publication regime be subject to the condition that the transaction is between an investment firm dealing on own account and a client of the firm? Please provide reasons for your answer.**

Yes. AMAFI is of the opinion that the deferred publication regime should be subject to the condition that the transaction is between an investment firm dealing on own account and a client of the firm, which can be a broker or a dealer.

**Q85. Which of the two options do you prefer in relation to the deferral periods for large in scale transactions (or do you prefer another option that has not been proposed)? Please provide reasons for your answer**

AMAFI is not convinced by the approach proposed by ESMA in relation to the deferral periods for large in scale transactions. Though, in case a choice has to be made between option A and B, we would chose B.

Broadly speaking, we are concerned by (i) the use of ADT computed on an annual basis as a proxy for the available liquidity at a given point in time and (ii) the setting of fixed thresholds for the purpose of calibrating the post-trade transparency deferrals.

As for pre-trade transparency purposes (see our answer to Q48 and followings), we are of the view that further analysis is needed to determine indicators that would better reflect the prevailing conditions for the relevant instrument, especially in terms of liquidity.

That being said, AMAFI is of the opinion that it is important to understand that a reduction of post-trade deferral periods for large in scale transactions will ultimately reduce the appetite for risk of liquidity providers, and hence the ability of investors to find counterparties to enter into / exit from an equity strategy. Eventually, that will impact the ability of corporate issuers to use equity markets as a financing source.

Let's take the instance of a stock with a decent ADT, say EUR 75m, for which an investor is seeking to obtain a block price for EUR 25m at 2:00 PM.

Using Option A would mean that the transaction will have to be made public at the end of the day. In other terms, the counterparty has 40% of the trading session (given the relative weight of the closing auction, it would mean 50% of the daily volume) to unwind part of his position before his exposure is known to the other market participants. For most liquid stocks, impact models indicate that being one third of the volume creates an impact of 10 basis points in average, which equals to a cost of 5 basis points for the size traded over the period. No statistical figures can be found for larger POVs (Participation On Volumes) that are commonly considered as senselessly aggressive.

This means that the counterparty to the investor would bear a cost of 5 bips (with is probably more than his commission) only to unwind half of his position, while sending a strong signal into the market, and will be left with half of his position to unwind in front of informed participants...

This short example shows that, under model A, investors are unlikely to find counterparties for sizes above 20% of the ADT, or will have to pay significant risk premiums.

Finally, and based on the above:

- for the purpose of calibrating post-trade transparency deferrals, we believe that ESMA should try to identify indicators that would be more appropriate than ADT to reflect the prevailing liquidity conditions,
- if the choice is between the existing regime and options A and B, we would favour retaining the existing regime,
- if the choice is only between options A and B, we would favour Option B.

**Q86. Do you see merit in adding more ADT classes and adjusting the large in scale thresholds as proposed? Please provide alternatives if you disagree with ESMA's proposal**

Please refer to our answer to Q85. AMAFI considers that ADT classes are a minor issue here.

**Q87. Do you consider the thresholds proposed as appropriate for SME shares?**

No. AMAFI does not consider the proposed thresholds as appropriate for SME shares, since for this type of shares the impact of trading is a multiple of the impact for most liquid shares and that either option A neither option B take this effect into account.

We are of the view that any such post-trade transparency regime for SMEs will undoubtedly result in increased difficulties for SME issuers to finance their development through equity markets.

**Q88. How frequently should the large in scale table be reviewed? Please provide reasons for your answer**

AMAFI considers that the large in scale table be reviewed annually.

**Q89. Do you have concerns regarding deferred publication occurring at the end of the trading day, during the closing auction period?**

AMAFI expresses concerns on deferred publication occurring at the end of the trading day, and we recommend avoiding any publication during the closing option period. We consider that post-trade publication during the closing auction would have a distorting effect on the price formation process during the auction, which would be all the more detrimental as the closing price is often used for valuation purposes.

**Q90. Do you agree with ESMA's preliminary view of applying the same ADT classes to the pre-trade and post-trade transparency regimes for ETFs? Please provide reasons for your answer.**

AMAFI considers that there would be value in using the same classes to the pre-trade and post-trade transparency.

Nonetheless, we want to reiterate more fundamentally that (i) we feel reticent about using the ADT as a proxy for prevailing liquidity and that (ii) for ETFs, the pre-trade and post-trade transparency regimes should be calibrated using the inherent liquidity of the ETF, but also the liquidity of the underlying and the capability to create / redeem shares of the ETF.

### 3.3. Systematic Internaliser Regime - Equities

**Q91. Do you support maintaining the existing definition of quotes reflecting prevailing market conditions? Please provide reasons for your answer.**

Yes. AMAFI supports the maintaining of the existing definition of quotes reflecting prevailing market conditions, since it ensures that the quoted prices provide meaningful information to systematic internalisers' clients, without creating unjustified constraints for the systematic internalisers.

**Q92. Do you support maintaining the existing table for the calculation of the standard market size? If not, which of the above options do you believe provides the best trade-off**

No. AMAFI does not support maintaining the existing table for the calculation of the standard market size.

We consider that the evolution of the market microstructure, marked by a significant decrease of the AVT of European stocks since 2007 as underlined in Table 14 of the Discussion Paper, should be reflected in the calculation of the standard market size, as it induces constraints for systematic internalisers.

In this context, we would support the creation of new AVT classes, in order to keep a sufficient level of differentiation across stocks.

In practical terms, current [EUR 0 - EUR 10,000] class should be broken up in 3 new classes:

- one for the [ EUR 0 - EUR 3,000] AVT range, with an EUR 1,500 SMS;
- one for the [ EUR 3,000 - EUR 6,000] AVT range, with an EUR 4,500 SMS;
- one for the [ EUR 6,000 - EUR 10,000] AVT range, with an EUR 8,000 SMS.

In case a choice has to be made amongst the three proposed option in point 20 of the Discussion Paper, AMAFI would support option A, which is to maintain the existing classes while lowering the standard market size for the smallest class from EUR 7,500 to EUR 5,000.

**Q93. Do you agree with the proposal to set the standard market size for depositary receipts at the same level as for shares? Please provide reasons for your answer.**

Yes. AMAFI agrees with this proposal, because depositary receipts are fundamentally equivalent to the underlying share (assuming, of course, that 1 ADR represents 1 share. In case the ADR represents x shares, the standard market size for the ADR should be x times the standard market size for the share). A different level would create undue trading migration across instruments.

**Q94. What are your views regarding how financial instruments should be grouped into classes and/or how the standard market size for each class should be established for certificates and exchange traded funds?**

AMAFI considers that for other equity instruments, the following approaches should prevail: either the instrument is economically equivalent to a given share, in which case we believe that the standard market size should be derived from the standard market size of the underlying share, or it is not, in which case

the standard market size for the instrument should be computed based on the same table as the one used for equities, considering the AVT for the instruments.

### 3.4. Trading obligation for shares (Article 23, MiFIR)

**Q95. Do you consider that the determination of what is non-systematic, ad-hoc, irregular and infrequent should be defined within the same parameters applicable for the systematic internaliser definition? In the case of the exemption to the trading obligation for shares, should the frequency concept be more restrictive taking into consideration the other factors, i.e. 'ad-hoc' and 'irregular'?**

AMAFI is of the view that the determination of what is “*non-systematic, ad-hoc, irregular and infrequent*” should be defined within the same parameters applicable for the systematic internaliser definition, regardless of the discrepancies in terminology.

According to us, this stance is supported by Recital 19 of MiFIR (“*an investment firm executing client orders against own proprietary capital should be deemed a systematic internaliser, unless the transactions are carried out outside a trading venue on an occasional, ad hoc and irregular basis*”), together with the fact that the dialogue agreed text did not deem it necessary to give ESMA the mandate to specify the definition of what is “*non-systematic, ad hoc, irregular and infrequent*”.

In this context, it appears to us even more necessary to make it possible to assess the “*non-systematic, ad hoc, irregular and infrequent*” criteria on an activity per activity basis, and not for an investment firm as a whole.

That should be the case for instance for an investment firm dealing with two clearly different and identified sets of clients, like individuals or retailers on the one hand and institutional investors on the other hand. If the firm executes some of the orders against its own proprietary capital, we consider that the “*non-systematic, ad hoc, irregular and infrequent*” criteria should be assessed independently for each of the aforementioned flows. Ultimately, it could for instance be appropriate to qualify the activity in front of the retail flow as an SI, while the traditional ad hoc facilitation of institutional clients’ orders could remain OTC.

We note that MIF II does not give a positive definition of what OTC transactions not falling under the trading obligation are. There is only an implicit definition in relation to the transactions that qualify to be carried out on regulated markets, MTF or systematic internalisers.

This being stated, we consider that it would be logical to consider transaction are those which do not fall under the regime of the systematic internaliser, according to the parameters set in its definition, which are based on the organised nature of the investment firm on the one hand, and on quantitative criteria (frequent and systematic, substantial) on the other hand.

Since these two sets of criteria do not exactly match, it seems that, especially for shares, the organised nature of the system should be considered and that transactions carried out outside an organised system may fall under the ad hoc, irregular and infrequent criteria.

**Q96. Do you agree with the list of examples of trades that do not contribute to the price discovery process? In case of an exhaustive list\_would you add any other type of transaction? Would you exclude any of them? Please, provide reasons for your response.**

Broadly speaking, AMAFI believes that it is difficult and even inappropriate to give an exhaustive list of trades that do not contribute to the price discovery process, since that could limit possible changes in the order types and innovation in markets. In any case, there should remain a possibility to add new trades to the list so as to reflect the situation of rapidly changing markets.

Moreover, we consider that “trades determined by factors others than the current valuation of the share” is a sub-set of “non-addressable liquidity trades”. For this reason, it will be complicated to draw a clear delineation between the two categories

AMAFI agrees with the proposed list, but we are of the opinion, as mentioned in our answer to Q63, that it could be enriched to encompass, notably, (i) exchanges of securities basket with ETFs and (ii) transactions used to hedge creation / redemption of ETFs.

**Q97. Do you consider it appropriate to include benchmark and/or portfolio trades in the list of those transactions determined by factors other than the current valuation of the share? If not, please provide an explanation with your response.**

Yes. AMAFI considers that it is appropriate to include benchmark and portfolio trades in the list of those transactions determined by factors other than the current valuation of share.

### **3.5. Introduction to the non-equity section and scope of non-equity financial instruments**

**Q98. Do you agree with the proposed description of structured finance products? If not, please provide arguments and suggestions for an alternative.**

Yes. AMAFI agrees with the proposed description of structured finance products.

**Q99. For the purposes of transparency, should structured finance products be identified in order to distinguish them from other non-equity transferable securities? If so, how should this be done?**

The specificity of structured finance products should entail a distinct treatment for transparency purposes. As a consequence, they should be identified with reference to the definition set in MiFIR Article 2(1)(28).

**Q100. Do you agree with the proposed explanation for the various types of transferable securities that should be treated as derivatives for pre-trade and post trade transparency? If not, please provide arguments and suggestions for an alternative.**

Beforehand, AMAFI would like to draw the attention on a potential problem in the wording of the definition of Article 2(1)(29) of MiFIR, where derivatives are defined as: “those financial instruments defined in point (44)(c) of Article 4(1) and referred to in Annex I Section 4 to 10 of the Directive [MiFID II]”.

Both conditions (definition of Article 4(1)(1)(44)(c) and elements of the Annex) are clearly cumulative, which may create a problem, since:

- Article 4(1)(1)(44)(c) deals with “transferable securities”: “*any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures;*” and
- Points 4 to 10 of Annex I.C. relate to “*Options, futures, swaps, forwards and any other derivative contracts*” on different underlying securities, to “*Derivative instruments for the transfer of credit risk*” and to “*Financial contracts for differences*”. Thus, those instruments are exclusive from “transferable securities” which are dealt with in point 1 of the same Annex.

As a result, taken literally, the definition of Article 2(1)(29) seems to capture an empty set. In order to make sense, it should have been worded as follows: “*derivatives’ means those financial instruments defined in point (44)(c) of Article 4(1) of Directive .../.../EU\* and those referred to in Annex I, Section C (4) to (10)*”.

This being said, AMAFI agrees with the scope of what should be treated as derivatives. We especially welcome the description of instruments in §28, which should by no means be assimilated to the certificates defined in MiFIR 2(1)(27). For a more detailed discussion on this point, see our response to Q102.

Another element, not directly linked to transparency purposes, raised the attention of AMAFI and should, in its view, be modified: in §37, the trading obligation under Article 28 of MiFIR is said to concern “*securitised derivatives and derivative contracts*”, which is inconsistent with the aforementioned provision. In short, level I text makes it crystal clear that the trading obligation applies to those derivatives that pass certain tests in terms of being (i) being subject to EMIR clearing obligation and (ii) being “sufficiently” liquid (at least up to a certain size) and (iii) being traded at least on one trading venue.

Since securitised derivatives do not pass the EMIR clearing obligation test, they cannot be subject to the trading obligation.

As a consequence, securitised derivatives systematically benefit from the pre-trade transparency exemption exposed in Article 9.1.(c).

**Q101. Do you agree with ESMA’s proposal that for transparency purposes market operators and investment firms operating a trading venue should assume responsibility for determining to which MiFIR category the non-equity financial instruments which they intend to introduce on their trading venue belong and for providing their competent authorities and the market with this information before trading begins?**

Considering that no other feasible alternative could be envisaged, AMAFI agrees with ESMA’s proposal that market operators and investment firms operating a trading venue should assume responsibility for determining to which MiFIR category the non-equity financial instruments which they intend to introduce on their trading venue belong (on the basis of the information given by the prospectus) and for providing their competent authorities and the market with this information before trading begins. But, in any case, it is necessary that this process is properly supervised so that it does not lead to heterogeneous practices among platforms, which could then foster location arbitrage.

In order to prevent such a detrimental evolution, AMAFI proposes that the determination exercised by the trading venue should be certified by the Competent National Authority in the following manner: once it has determined the category of an instrument, the trading venue notifies its determination to its National

Authority which would have two months to ask for a new determination. Without a response within this deadline, the categorisation would be considered as approved.

**Q102. Do you agree with the definitions listed and proposed by ESMA? If not, please provide alternatives.**

AMAFI, apart from some considerations on the definition of derivatives (see Q100), globally agrees with the definitions listed and proposed by ESMA.

Specifically, AMAFI would like to underline that it strongly endorses the clarification of §28 concerning the notion of certificates, for which the level 1 text creates an ambiguity.

In our view, the category designated as certificates in the level 1 text (translated by “certificats préférentiels” in French), and associated with the equity universe, should only concern a reduced number of instruments (notably Spanish *participaciones preferentes* and German *Genussscheine*) and certainly not securities with a subordinated element, such as redeemable subordinated notes or contingent convertibles (CoCo). Indeed, by nature, the latter are closer to the non-equity universe and should in our view be submitted to the same regime.

Their integration in the equity regime for transparency purposes would have detrimental effects by diverting traditional investors in bonds without attracting investors in shares, who will be neither interested nor able to invest in such categories of products. The consequences on the markets of these products of an integration to the equity regime would be serious for the bank industry, for which these instruments play an important role in recapitalisation.

Considering the stakes, a clarification on this particular point in level 2 texts is completely essential. If it were not possible, it is crucial that this should be clarified through a Q&A before the entry into force of the regulation.

### **3.6. Liquid market definition for non-equity financial instruments**

**Q103. Do you agree with the proposed approach? If you do not agree please provide reasons for your answers. Could you provide for an alternative approach?**

Beforehand, AMAFI would like to point out some general comments on the question of the definition of a liquid market for non-equity financial instruments (Q103 to Q118).

The calibration of liquidity must be liaised with the calibration of transparency since transparency rules mainly rely upon the fact that a financial instrument is deemed liquid or not.

As for today, non-equity markets are mainly quote-driven markets where investment firms commit their capital. A wrong calibration of the transparency framework would have strong and inappropriate consequences on the market markers behaviour. They will commit less capital to this activity (in a global regulatory framework where capital commitment is more and more constrained) and/or enlarge the spreads. This would have, above all, detrimental effects on the real economy at the time where the European model for financing the economy needs to rely much more on markets and less on bank credit. To sum up:

- An increased cost of capital for issuers
- An increased cost of hedging credit and economic risks for companies.
- An increased cost of the assets for investors.

It is fair to say that nobody can pretend that it is possible to set up a sound transparency regime from scratch. The difficulty of the exercise is all the more complicated that non-equity financial instruments comprise various categories of instruments with various market structures and that we face a lack of accurate data in various areas.

Given that, AMAFI considers that, as much as it is possible, a flexible approach must be adopted. That is to say a step by step approach combined with a capacity to move rapidly the cursors if it is proved that the market structure is not satisfactory.

This step by step approach was for instance adopted in the US for post trade transparency in fixed-income securities (with the significant exclusion of sovereign debt). The implementation of the reporting system (TRACE) took place 2002. In the initial phase, TRACE started with around 500 securities to capture today about 45 000 securities. The reporting period was first stated at 75 minutes to reach 15 minutes today.

Besides that, and as stated above, there is a close link between the calibration of liquid instruments and the calibration of transparency thresholds. In other words, the analysis of AMAFI is that the larger the number of liquid instruments is (and in this case the field of liquid instrument necessarily comprises instruments that are actually not liquid), the lower the transparency thresholds (Size specific and large in scale) should be set.

It is necessary to find a good balance between two extreme situations which both have advantages and drawbacks: a very small number of liquid instruments combined with large thresholds and conversely a large number of liquid instruments with small thresholds. To determine the good balance is far from obvious but the worst case scenario would be to set up high thresholds for the transparency regime with a wrong definition of liquid instruments.

Furthermore for bond market, AMAFI underlines that for all questions relative to liquid market and transparency (Q103 to Q118), there is no reason to have a differentiated approach for sovereign bonds on the one hand and for corporate ones on the other. Indeed, a bond is liquid or not irrespective of its nature. Therefore, AMAFI is of the opinion that the classification proposed in the DP page 133 should be amended in order to have bonds (sovereign, municipal and corporate), covered bonds and convertible bonds.

By contrast, AMAFI considers that for derivatives and structured finance products, it is necessary to differentiate the type of derivatives when putting in place rules relative to liquid market and transparency (Q103 to Q118). AMAFI agrees with the classification proposed by ESMA in the DP page 133 to 135

One key point which is not highlighted in ESMA's DP is the perimeter of the universe which must be taken into account for the calculations. Maybe it seems obvious but it would be better if explicitly mentioned. On this question, AMAFI considers that:

- the primary market has to be excluded from the calculation, and
- all the secondary market has to be taken into account: instruments traded on venues but also OTC, as OTC trading is the usual way of trading for non-equity instruments.

This statement is of course relevant for all the questions related to the liquidity (Q103 to Q118).

On the specific question of the average frequency of transactions, AMAFI agrees with the proposed approach. As ESMA, we underline the stake of an appropriate time period for calculation to avoid skewed distributions. A period of one year on a year-on-year basis would be too long and could limit the accurateness of the measure.

**Q104. Do you agree with the proposed approach? If you do not agree please provide reasons. Could you provide an alternative approach?**

AMAFI considers that the proposed approach is acceptable. Nonetheless, we wonder whether it is compatible with the level 1 text which only deals with AVT, which is essentially different from the option that ESMA prefers. On such measures which can have a deep impact on the proper functioning of the market, it is crucial to have a sound legal basis.

In case such a possibility to depart from the level 1 text exists, AMAFI opines that, for securities, there could be room for another approach which would take into account the stock of securities issued, which is a key element in assessing the liquidity of an instrument or class of instruments. We would thus propose to measure the “velocity” of the stock, meaning its rotation over a certain period of time. This approach would greatly simplify the determination of liquidity, because it would not necessitate, as in the proposed approach of ESMA, a segmentation of sub-classes according to the size of the stock.

**Q105. Do you agree with the proposed approach? If you do not agree please provide reasons. Could you provide an alternative approach?**

No. AMAFI does not agree with the proposed approach. In the view of the Association, option 2 should be privileged, even if it should be adapted to take into account the current situation, which is bound to evolve with the implementation of the new MIF package.

Globally speaking, the presence of market makers is a clear indication that there is some liquidity, because it means that it is economically rational for liquidity providers to be present on the market on a regular basis and to provide liquidity to other market players.

As for today, most of the trade in non-equity instruments takes place OTC, where liquidity providers are not engaged through contractual arrangements, but can be considered (and indeed they are) as OTC market makers. This situation will change with the introduction of MIF, which should conduct a large number of these liquidity providers to conclude contractual arrangements since a large proportion of OTC trading will migrate towards trading venues. Market makers would then be even more clearly identified.

Moreover, our approach seems all the more justified with regards to the trading obligation on derivatives. For these instruments, only a sufficiently high number of market makers would be needed, in order to ensure the smooth transition from a illiquid to a liquid status, with the related move from OTC to on-market trading.

**Q106. Do you agree with the proposed approach? If you do not agree please provide reasons. Could you provide an alternative approach?**

No. AMAFI does not agree with the proposed approach. We consider that it has strong drawbacks, listed below:

- as of today, non-equity instruments are mainly traded OTC. In such a context, the spreads observed on trading venues are not relevant;
- a spread has no relevance by itself: the available quantity should be taken into account;
- the representativeness of the end of day spread is far from obvious;

- the reliability of a measure taken at a given period which is known by all market participants is doubtful (game risk induced by the unveiling of the spread at a specific time).

According to AMAFI, a better alternative would be to measure, on the basis of random snapshots, the effective spreads for a given quantity (which could be the AVT or the size specific of a given instrument).

Concerning the acceptable level of the spread, AMAFI reckons that the spread could be analysed as the cost of entry in a product for the investor, taking into account the risk / return profile of the asset (see also Q108).

**Q107. Should different thresholds be applied for different (classes of) financial instruments? Please provide proposals and reasons.**

No. AMAFI does not consider that different thresholds should be applied for different (classes of) financial instruments for bonds, as stated above in Q103.

For derivatives, as stated above in Q103, different thresholds should be applied for each class of instrument.

**Q108. Do you have any proposals for appropriate spread thresholds? Please provide figures and reasons.**

The spread on a given instrument can be understood in two ways: (i) on the one hand, it is the cost for an investor to enter into the product, (ii) on the other hand, it is the level required by market makers to accept taking a position, specifically considering the easiness / difficulty to hedge or unwind it.

Based on these considerations, a “liquid” product is not likely to have a spread that would represent a significant part of the yearly return of a low risk asset.

We hence support a spread threshold in the region of 10 to 15 basis points max.

**Q109. How could the data necessary for computing the average spreads be obtained?**

AMAFI considers that as long as a large proportion of bonds and unlisted derivatives are traded OTC, it will be extremely difficult to gather sufficient data. When available, the data necessary for computing the average spreads could be obtained on venues or systems (see Q106)

**Q110. Do you agree with the proposed approach? If you do not agree please provide reasons for your answer. Could you provide an alternative approach?**

Yes. AMAFI agrees with the proposed approach and considers that all criteria should be met. This analysis is clearly congruent with the text of MiFIR, contrary to the envisaged alternative.

**Q111. Overall, could you think of an alternative approach on how to assess whether a market is liquid bearing in mind the various elements of the liquid market definition in MiFIR?**

For an original and fact-based methodology on the determination of the levels for the different criteria of what defines a liquid market, please see our response to Q112.

Concerning the setting of the thresholds, please see our response to Q107.

**Q112. Which is your preferred scenario or which combination of thresholds would you propose for defining a liquid market for bonds or for a sub-category of bonds (sovereign, corporate, covered, convertible, etc.)? Please provide reasons for your answer.**

- Bonds

No. AMAFI tends to disagree with the approach adopted. As Table 15 shows, a major criterion for ESMA seems the proportion of the market its methodology is able to assess. Such an approach, which would most certainly capture some illiquid bonds, could be dangerous for the functioning of bond market. As stated above (*see Q103*), this method could be acceptable only if low transparency thresholds (Size specific and large in scale) are set.

Consequently, AMAFI would like ESMA to consider an alternative approach, which is far more adapted to the reality of markets and to the actual liquidity, in order to determine what a liquid market for bonds as a whole is.

We have established a sample “à dire d’expert” of bonds that we consider as being liquid, benefitting from the experience of our members which trade actively on bond markets, either as market makers or as brokers. This sample comprises 434 ISIN codes that are included in the MTS indexes. We can provide ESMA with this sample if ESMA find it useful.

Based on this sample, we have assessed the various criteria for the April 2014 period. According to the data at our disposal which of course are far from being comprehensive, the first results indicated the following figures:

- Average size of transactions: EUR 10m;
- Frequency: number of days during a one year period: 240; number of transactions during a one year period: 2,400;
- Market participants: 5
- Spread in the range: between 10 and 15 basis points.

According to AMAFI’s analyses, sovereign bonds with a stock issued superior to EUR 10bn meet these criteria and then can be considered as liquid. Moreover we tend to conclude that those bonds are liquid **on a permanent basis**. We encourage ESMA to make further analyses in order to check the above results and whether any other bonds could satisfy these criteria. These tests should be conducted on each instrument.

Besides that and whatever the method, AMAFI is aware that bonds could fall under liquidity criteria and hence be deemed liquid at some point of their life-cycle. It is important to consider that each bond goes through four phases:

- Three of them are characterised by a peak of liquidity which are (i) after the emission, (ii) before or after a market or credit event or (iii) at maturity of the bond.
- The last phase, which is also the longest in the life cycle of the bond, is the rest of the time, where there is no liquidity, which can be punctually generated by markets makers or brokers on specific occasions created by clients or by themselves to respond at their clients’ needs.

For these situations, in any event, ESMA has to be very careful in order to manage them properly. Dramatic effects would result if ESMA assess as liquid bonds which are not, only because the criteria has been observed on a short and liquid period. At least ESMA have to be able to calculate the criteria at different time, and accordingly modifying the liquidity range of the observed bond.

AMAFI underlines than considering liquid a bond which in fact, is not during the main part of its life cycle will lead market makers and brokers to withdraw themselves from the market. This situation would have a direct effect on the cost of capital for issuers, as investors will be less confident on their ability to find a counterpart when they will need one.

Nevertheless AMAFI really doubts that it is concretely manageable both for ESMA and the industry to take into account the life-cycle of a bond. From a market perspective, the drawbacks of a wrong classification are much higher in a situation where an illiquid bond is deemed liquid than in the opposite situation.

In this context, AMAFI asks ESMA to conduct further analyses for these cases with more reliable data to assess whether some categories of instruments meet the general liquidity criteria.

- Derivatives

For derivatives, we first note that there is no specific development and no data provided in the DP. We understand that ESMA has in mind something similar to the US approach, based on the capture of a proportion of the market of derivatives (a certain number of transactions or a volume), the derivatives being split in classes.

Such an approach could be workable. It would enable to have results rather similar to the ones obtained in the US and would bring consistency between both jurisdictions in an area where the markets are actually global.

**Q113. *Should the concept of liquid market be applied to financial instruments (IBIA) or to classes of financial instruments (COFIA)? Would be appropriate to apply IBIA for certain asset classes and COFIA to other asset classes? Please provide reasons for your answers***

For bonds AMAFI's assumption is that it be rather easy to put in place COFIA following the approach exposed in Q112, with on the one hand bonds identified as liquid (sovereigns and bonds which could be added to this category by ESMA's tests) and on the other hand the rest of the bond universe. Would another approach be adopted, the IBIA method seems to be unavoidable.

For derivatives, there is no doubt that COFIA should be put in place.

**Q114. *Do you have any (alternative) proposals how to take the 'range of market conditions and the life-cycle' of (classes of) financial instruments into account - other than the periodic reviews described in the sections periodic review of the liquidity threshold and periodic assessment of the liquidity of the instrument class, above?***

Concerning life-cycle AMAFI considers that it would be almost impossible to take this criterion into consideration (see Q112) for the bond market. AMAFI suggests that, in order to take into account the changing of market conditions an annual review should be undertaken. However, this a minimum: actually a more frequent periodicity can be necessary as ESMA envisages including bonds for which their liquidity is more fragile.

We tend to believe that it also the case for derivatives.

**Q115. Do you have any proposals on how to form homogenous and relevant classes of financial instruments? Which specifics do you consider relevant for that purpose? Please distinguish between bonds, SFPs and (different types of) derivatives and across qualitative criteria (please refer to Annex 3.6.1).**

Except for bonds AMAFI agrees with what is proposed in Annex 3.6.1. Please read our answer to Q103.

**Q116. Do you think that, in the context of the liquidity thresholds to be calculated under MiFID II, the classification in Annex 3.6.1 is relevant? Which product types or sub-product types would you be inclined to create or merge? Please provide reasons for your answers**

No. AMAFI does not agree with this classification, which seems not to be grounded on a methodical approach based on the criteria set in the definition. We explain in our answer to Q113 the method we are proposing to establish homogenous classes based on actual liquidity.

For derivatives we agree with the classification.

**Q117. Do you agree with the proposed approach? If not, please provide rationales and alternatives.**

Yes. AMAFI agrees with the proposed approach, provided some flexibility is left for more action in certain circumstances ([see Q118](#)).

**Q118. Do you agree with the proposed thresholds? If not, please provide rationales and alternatives.**

No. AMAFI considers that the proposed thresholds are acceptable, but that they should remain indicative. In our view, a certain degree of flexibility should be maintained, nevertheless, for a competent authority to suspend the liquidity even if these thresholds are not reached, provided enough justification supports the decision. We consider that an open dialogue between the trading venues and ESMA can be fruitful, and that the final decision must be made by the venues after consultation with ESMA.

### **3.7. Pre-trade transparency requirements for non-equity instruments**

**Q119. Do you agree with the description of request-for-quote system? If not, how would you describe a request-for-quote system? Please give reasons to support your answer.**

Yes. AMAFI agrees with the description of request-for-quote system, even if **it could be enriched by explicitly mentioning that responses are actionable**, while requests are not.

**Q120. Do you agree with the inclusion of request-for-stream systems in the definition of request-for-quote system? Please give reasons to support your answer.**

Yes. AMAFI agrees with this inclusion provided that the request-for-stream systems produce AIOI, which is not always the case.

**Q121. Do you think that – apart from request-for-stream systems – other functionalities should be included in the definition of request-for-quote system? If yes, please provide a description of this functionality and give reasons to support your answer.**

No. At this stage, AMAFI does not see any other functionality that should be included in the definition.

**Q122. Do you agree with the description of voice trading system? If not, how would you describe a voice trading system?**

No. AMAFI does not agree with the description of voice trading system provided here. We consider it too extensive. The level 1 text uses the expression “voice trading system” in conjunction with “trading venues”, which have a multilateral character according to Article 4(1)(a)(21) of MiFID. As a consequence, a voice trading system should clearly possess a multilateral character.

Hence, the description should be: “A **multilateral** trading system where transactions between members are arranged through voice negotiation”. Failing that, level 2 text would have no legal basis.

**Q123. Do you agree with the proposed table setting out different types of trading systems for non-equity instruments?**

Yes. AMAFI agrees with the proposed table, provided it is modified following the descriptions of request-for-quote and voice trading systems which are mentioned above ([see Q119 and Q122](#)).

**Q124. Do you think that the information to be made public for each type of trading system provides adequate transparency for each trading system?**

No. AMAFI is very concerned by the proposed information to be made public for RFQ systems. It seems that it is not adequate regarding the specificities of these systems, and would be extremely detrimental to the market were it to be put in place. We propose another approach, which would have the advantages of (i) taking due consideration of the specificities of the functioning of these systems and (ii) leading to a greater convergence with the US regime.

Beforehand, it is necessary to keep in mind that request-for-quotes systems have been developed in the trading of non-equity (and equity-like) financial instruments for several years. We anticipate that they will play a key role in the future, considering the evolution of the markets from mainly OTC trading to electronic platforms. Given that, it is essential to put in place a pre-trade transparency regime which will not prevent these trading arrangements from concretely working, so as not to impact negatively the financing of the economy.

Our analysis is that the European pre-trade transparency framework, if not implemented cautiously, would threaten the functioning of request-for-quotes systems in case it imposed to display quotes before trading,

It is noticeable that MiFIR leaves some room for a differentiated solution for these systems. Article 8(2) of the Regulation states that “The transparency requirements [...] shall be calibrated for different types of trading systems”, and ESMA’s Discussion Paper provides that the definition of these systems is key in “determining the minimum amount of pre-trade information they must offer”.

Following these indications, the setting of a well-tailored pre-trade transparency regime for these systems seems achievable, provided that the determination of the level of information to be publicly shared at the pre-trade stage takes into account the very specific functioning of request-for-quote, which ESMA ably describes as “a trading system where a quote or quotes are only provided to a member or participant in response to a request submitted by one or more other members or participants [...]”.

In essence, the liquidity available in RFQ systems is non-addressable by third parties, since it is only accessible to the firm making the request. Hence, disseminating the information on the “bids and offers and attaching volumes submitted by each responding entity”, as proposed by ESMA, would not bring valuable informational content for the other market participants, and would not reinforce significantly the quality of the price mechanism, since the information would be spread post-trade in any case.

On the other hand, one has to understand that, contrary to traditional order books, making the market makers answers in RFQ systems transparent would provide to third parties the specific information that a trade is going to happen in the very next future. The display of such information can put the market makers at risk, with the negative consequences it would entail for the whole economy. Indeed, that would provide information to people that have not been asked for a proposal, but that could use that information to play an arbitrage against the market maker which ultimately will win the deal. In other words, it would significantly increase the risk borne by the market maker and could then reduce its willingness to commit itself. Finally, it is the capacity for end investors to find a counterpart at the best price which will be undermined, even if the side of the answers is not made public.

As a conclusion, we believe that pre-trade transparency applied to RFQs would bring very little value in terms of enhancing the price discovery process, while it would feed predatory arbitragers with information that would discourage market makers from playing their role.

In our view, the only practical means of enhancing the contribution of these systems to the price discovery process would be to ensure that the request is made to a sufficient number of market makers, which could be set at a minimum of three. This would warrant sufficient transparency to the client, while preserving the economics of the RFQ model. Moreover, this is coherent with the rules adopted in the US in this field, where the SEF rules consider that the pre-trade transparency test is met when an investor sends his requests to at least three market makers. It will be a step further towards global convergence, hence limiting regulatory arbitrages amongst jurisdictions

Therefore, we encourage ESMA to introduce such a rule in EU legislation for the request-for-quotes systems.

**Q125. *Besides the trading systems mentioned above, are there additional trading models that need to be considered for pre-trade transparency requirements in the non-equity market space?***

No. AMAFI does not consider that any other trading models need to be considered for pre-trade transparency requirements.

**Q126. *If you think that additional trading systems should be considered, what information do you think should be made public for each additional type of trading model?***

Not relevant.

**Q127. Based on your experience, what are the different types of voice trading systems in the market currently? What specific characteristics do these systems have?**

AMAFI considers that, following the analysis of the necessary multilateral character of such voice trading systems developed in Q122 above, the only type of systems which would obey to this description is the open outcry auction system, which still exists on some markets.

**Q128. How do these voice trading systems currently make information public or known to interested parties at the pre-trade stage?**

By definition, these open outcry systems operate through vocal and also manual signals.

**Q129. Do you agree with ESMA's approach in relation to the content, method and timing of pre-trade information being made available to the wider public?**

Yes. AMAFI agrees with ESMA's approach as far as it is confined with the type of markets described in Q128 and Q129.

**Q130. Do you agree with the above mentioned approach with regard to indicative pre-trade bid and offer prices which are close to the price of the trading interests? Please give reasons to support your answer**

AMAFI partially agrees with the above mentioned approach. If we approve of the need for these indicative pre-trade bid and offer prices to be calculated on a clear methodology that is made transparent beforehand, we would suggest publishing the less competitive of the quotes on both sides (without any quantity).

**Q131. If you do not agree with the approach described above please provide an alternative**

Please see Q130.

### **3.8. Post-trade transparency requirements for non-equity instruments**

**Q132. Do you agree with the proposed content of post-trade public information? If not, please provide arguments and suggestions for an alternative.**

Yes. AMAFI shares the view of ESMA that the set of information to be made public should be the same as for shares and agrees with the proposed content of post-trade public information. We note that Article 64 also provides for the time the transaction was reported in the information to be made public.

**Q133. Do you think that the current post-trade regime for shares on the systematic internaliser's identity should be extended to non-equity instruments or that the systematic internaliser's identity is relevant information which should be published without exception?**

Yes. AMAFI is of the view that the current post-trade regime for shares on the systematic internaliser's identity should be extended to non-equity instruments, that is giving the possibility for SI to divulgate the

acronym SI only: this is necessary to ensure a sufficient protection to the Internaliser, while investors' information with a view to select an execution venue is efficiently obtained through statistical reports on a regular basis.

**Q134. *Is there any other information that would be relevant to the market for the above mentioned asset classes?***

AMAFI thinks that current fields are sufficient.

**Q135. *Do you agree with the proposed table of identifiers for transactions executed on non-equity instruments? Please provide reasons for your answer.***

Yes. AMAFI agrees with the proposed content of post-trade public information, and supports greater transparency on the price-making process.

**Q136. *Do you support the use of flags to identify trades which have benefitted from the use of deferrals? Should separate flags be used for each type of deferral (e.g. large in scale deferral, size specific to the instrument deferral)? Please provide reasons for your answer.***

No. AMAFI questions the use of flags to identify trades which have benefitted from the use of deferrals, since reporting through APAs should have already compiled the trading time and the time when the transaction was reported.

**Q137. *Do you think a flag related to coupon payments (ex/cum) should be introduced? If yes, please describe the cases where such flags would be warranted and which information should be captured.***

No. AMAFI does not think that the introduction of a flag related to coupon payments should be introduced.

**Q138. *Do you think that give-up/give-in trades (identified with a flag) should be included in post-trade reports or not made public? Please provide reasons for your answers.***

No. AMAFI does not believe that the introduction of give-up/give-in trades, identified with a flag, in post-trade reports, would bring useful information.

**Q139. *Do you agree that securities financing transactions should be exempted from the post-trade transparency regime?***

Yes. AMAFI thinks that a clear stance should be taken on the treatment of securities financing transactions. They should be exempt from the post-trade transparency regime as well as the transaction reporting regime of MIF 2 and be settled in the future European SFT Regulation.

**Q140. Do you agree that for the initial application of the new transparency regime the information should be made public within five minutes after the relevant non-equity transaction? Please provide reasons for your answer.**

No. AMAFI considers that five minutes is not sufficient given that a significant proportion of non-equity transaction is carried out on an OTC basis and relies on manual functionalities. The delay should be set up at 15 minutes as it is the case in other jurisdictions, and particularly in the US.

**Q141. Do you agree with the proposed text or would you propose an alternative option? Please provide reasons for your answer.**

No. AMAFI does not agree with these proposals.

They are mainly based on deferral periods which are too short and at least should be extended to take into account the role of market makers in these markets. They need to have sufficient time to hedge the risk they take when providing liquidity to the markets.

It must be noted that, in practice, in fixed income markets, the hedging of an exposure may take several weeks, and in exceptional circumstances, several months. Without the ability to de-risk, liquidity providers may be unwilling to enter certain types of trades which will severely reduce liquidity in these markets.

It must also be noted that the longest deferral periods for equities – a significantly more liquid asset class per se – under MiFID I is three days (even for liquid shares). The calibration for non-equity instruments needs to proceed on a much more cautious basis given the unknown impacts on liquidity.

Having said that, AMAFI considers that the post-trade transparency regime should be based on the following principles:

Liquid instruments

For liquid instruments, provided that the calibration of liquid instrument is sound, the publication of information is positive both for investors and for the quality of the price discovery process. The main obstacle for a “real time” publication comes, as stated above, from the necessity to give liquidity providers sufficient time to de-risk their positions. Concretely the risk occurs for all the transactions above the size specific to the instrument and can last for several minutes to several months.

Given that, a post-trade transparency regime based of the following could be workable:

Non-equity instruments assessed as having a liquid market	
Size of transaction	Details to be published
Size is below the thresholds for the size specific to the instrument	Publication of all details as close to real time as possible and no later than 15 minutes
Size is equal to or above size specific to the instrument	All details to be published as close to real time as technically possible and no later than 15 minutes, the information relating to the transacted volume specifies that the volume is equal or above the specific size.

This regime would be characterized by the fact that i) there is no actual deferral period and ii) for transactions above the size specific to the instrument, the volume is never disclosed.

Illiquid instruments

For illiquid instruments, the sole information that a transaction has been completed gives an undue advantage to arbitragers at the expense of liquidity providers. On the one hand, illiquid markets make it easy for arbitragers to guess who sits on which position. On the other hand, illiquid markets naturally make it very difficult for liquidity providers to de-risk their positions. Therefore it is all the more necessary to put in place a deferral period.

AMAFI considers that the following regime could be implemented.

Non-equity instruments assessed as not having a liquid market	
Deferral period	Details to be published after the deferral period
5 to 10 business days	All details to be published the information relating to the transacted volume specifies that the volume is equal or above the specific size.

For AMAFI, the above proposed transparency regime would meet the transparency objectives for non-equity instruments without deteriorating the functioning of the market for investors and issuers. Moreover, it would be consistent with the US regime. Achieving consistency with the SEC and CFTC rules is all the more important that, at least for liquid instruments, bonds and derivatives markets are global. Putting in place a more constraining regime would inevitably be at the expense of the European markets.

AMAFI is aware that this proposal does not necessary fit MiFIR requirements because it is not obvious that ESMA has the power to determine an indefinite masking of size. Therefore, ESMA should use its power under Article 11(4)(d) of MiFIR to put in place an extended period of time during which the volume could be masked. At the end of this period, the volume of the transaction would be published, either on a single basis or on an aggregated basis. According to us, the extended deferral period could be calibrated according to the following scheme:

Non-equity instruments assessed as having a liquid market	
Size of transaction	Length of the extended period of time
Size is below the thresholds for the size specific to the instrument	N/A
Size is equal to or above size specific to the instrument but below the large in scale threshold	120 minutes
Size is equal to or above large in scale threshold	Several weeks

Non-equity instruments assessed as not having a liquid market	
Size of transaction	Length of the extended period of time
All transactions	Several weeks

**Q142. Do you agree that the intra-day deferral periods should range between 60 minutes and 120 minutes?**

No. Were our proposal not adopted by ESMA, a single deferral period of 120 minutes for all trades above the SSTI threshold should be adopted.

**Q143. Do you agree that the maximum deferral period, reserved for the largest transactions, should not exceed end of day or, for transactions executed after 15.00, the opening of the following trading day? If not, could you provide alternative proposals? Please provide reasons for your answer.**

No. Were our proposal not adopted by ESMA, we propose that a 48-hour deferral period, after which all details except size should be published, and an XX-week extended time period for volume masking should be adopted in respect of all trades above the LIS threshold. Please see our response to Q 141 above.

**Q144. Do you consider there are reasons for applying different deferral periods to different asset classes, e.g. fixing specific deferral periods for sovereign bonds? Please provide arguments to support your answer.**

No. Even if AMAFI reckons that specific deferral periods could be calibrated according to the liquidity profile of the asset classes, we consider that one single regime, as proposed in our answer Q 141 above, would be more workable for market participants.

**Q145. Do you support the proposal that the deferral for non-equity instruments which do not have a liquid market should be until the end of day + 1? Please provide reasons for your answer.**

No. Were our proposal not adopted by ESMA, we suggest that a 48-hour deferral period, after which all details except size should be published, and an XX-week extended time period for volume masking should be adopted in respect of all trades in derivative classes which do not have a liquid market. Please see our response to Q 141 above.

**Q146. Do you think that one universal deferral period is appropriate for all non-equity instruments which do not have a liquid market or that the deferrals should be set at a more granular level, depending on asset class and even sub asset class. Please provide reasons for your answer.**

Yes. AMAFI recommends that a universal deferral period should be adopted for all non-equity classes which do not have a liquid market. Please see our response to Q 141 above.

**Q147. Do you agree with the proposal that during the deferred period for non-equity instruments which do not have a liquid market, the volume of the transaction should be omitted but all the other details of individual transactions must be published? Please provide reasons for your answer.**

Please see our answer to Q141 above.

**Q148. Do you agree that publication in an aggregated form with respect to sovereign debt should be authorised for an indefinite period only in limited circumstances? Please give reasons for your answers. If you disagree, what alternative approaches would you propose?**

Yes. Were our proposal not adopted by ESMA, we would support a specific regime for sovereign debt. Please see our response to Q 141 above.

**Q149. In your view, which criteria and/or conditions would it be appropriate to specify as indicating there is a need to authorise extended/indefinite deferrals for sovereign debt?**

Please see our answer to Q141 above.

**Q150. In your view, could those transactions determined by other factors than the valuation of the instrument be authorised for deferred publication to the end of day? Please provide reasons for your answer.**

In AMAFI's view, transactions determined by other factors than the valuation of the instrument are either (i) independent from any other transaction on the considered underlying, in which case they do not contain any relevant information on the instrument, or (ii) are linked to other transactions (give-up for instance) on the same underlying, in which case their publication before the deferral which could be granted for the underlying transactions could be equivalent to reducing, with no justification, the deferral for those transactions.

Then, post-trade transparency should (i) identify clearly their technical character and (ii) intervene only after the maximal deferral for the considered instrument.

### **3.9. The transparency regime of non-equity large in scale orders and transactions**

**Q151. Do you agree with the proposed option? Which option would be more suitable for the calibration of the large in scale requirements within an asset class?**

Yes. AMAFI agrees with the approach of ESMA and the proposed option, which implies the definition of homogeneous classes in terms of liquidity and would enable to set one LIS threshold for each class, and not several liquidity bands for each class.

For assets where an IBIA is chosen, the LIS could depend on the absolute level of liquidity.

**Q152. Do you consider there are reasons for opting for different options for different asset classes? Please provide arguments.**

AMAFI considers that the adoption of a single option for all asset classes should be privileged.

**Q153. Do you agree that the choice between the two options should be consistent with the approach adopted for the assessment of liquidity? If not, please provide arguments.**

Yes. AMAFI agrees that the choice between the two options should be consistent with the approach adopted for the assessment of liquidity, because such a consistency would greatly simplify the setting of the arrangements.

**Q154. Do you agree with the proposed approach? If no, which indicator would you consider more appropriate for the determination of large in scale thresholds for orders and transactions?**

Yes. AMAFI agrees with that the proposed approach.

**Q155. Do you agree that the proxy used for the determining the large in scale thresholds should be the same as the one used to assess the average size of transactions in the context of the definition of liquid markets? Please provide arguments.**

AMAFI welcomes the quest for a same proxy for the determining of the large in scale thresholds and the determination of liquidity, which would simplify the monitoring of these volumes.

In case another option is chosen for the determination of a liquid market (such as the one proposed in Q104), it could still be justified to use the ADV on the ground that it is coherent with what is currently in place for shares.

That being said, the case of derivatives with an underlying should be treated specifically: it would be relevant to bind their LIS with the one of their underlying security.

**Q156. In your view, which option would be more suitable for the determination of the large in scale thresholds? Please provide arguments.**

AMAFI has a strong preference for option 1 and rejects option 2 which is completely arbitrary from a market perspective and does not take into account the specifics of market structure.

**Q157. Alternatively which method would you suggest for setting the large in scale thresholds?**

AMAFI considers that, as noted above in Q155, a differentiated approach should be taken for bonds and derivatives not linked to a security on the one hand and derivatives with an underlying security on the other hand.

For bonds, in accordance with the approach taken on shares, there could be a gradation based on a relation to ADV.

**Q158. In your view, should large in scale thresholds for orders differ from the large in scale thresholds for transactions? If yes, which thresholds should be higher: pre-trade or post-trade? Please provide reasons to support your answer.**

AMAFI considers that there is no evident justification for different LIS thresholds in the non-equity universe, contrary to what happens for equity.

There are reasons for these two different approaches: pre-trade and post-trade LIS do not apply to the same transactions for shares, with pre-trade LIS applying to all transactions and post-trade LIS only applying when the market participant deals on own account which justifies significant difference between the two sets of thresholds (with a different relation depending on the liquidity), whereas in the non-equity universe, which is mostly quote-driven and led by market makers, these two thresholds would apply to the same transactions, with a similar objective which is to protect risk takers.

**Q159. Do you agree that the large in scale thresholds should be computed only on the basis of transactions carried out on trading venues following the implementation of MiFID II? Please, provide reasons for the answer.**

No. AMAFI does not totally agree with the analysis of ESMA concerning the transactions which should be used for the computation of the large in scale thresholds. Even if we welcome the fact that ESMA accepts to comprehend OTC transactions at an initial stage, and if the evolution of the market structure after the implementation of the new MIF package should largely reduce OTC trading, we support an approach which would recognise the importance that transactions concluded out of trading venues should be taken into account, because of the effects their exclusion could have on the calculation of thresholds.

**Q160. Do you think that the condition for deferred publication of large in scale transactions currently applying to shares (transaction is between an investment firm that deals on own account and a client of the investment firm) is applicable to non-equity instruments? Please provide reasons for your answer.**

Yes. AMAFI considers that the condition for deferred publication of large in scale transactions currently applying to shares (when on own account) is applicable to non-equity instruments, in order to offer the same protection for the firm at risk when it facilitates a trade. Owing to the fundamentally different nature of the non-equity market, which is quote-driven and led by market makers, this condition should apply extensively.

**Q161. Do you agree that the large in scale regime should be reviewed no earlier than two years after application of MiFIR in practice?**

Yes. AMAFI agrees with the periodicity of the reviews that ESMA wants to conduct on the large in scale waiver, in normal circumstances, which could open some room for an exceptional review in case of some dramatic changes.

### 3.10. Size specific to the instrument

**Q162. Do you agree with the above description of the applicability of the size specific to the instrument? If not please provide reasons for your answer.**

Yes. AMAFI agrees with the above description of the applicability of the size specific, which stems from the wording of level 1 text. This waiver is offered to risk takers in RFQ for the pre-trade transparency, while it is offered to all market participants in post-trade.

**Q163. Do you agree with the proposal that the size specific to the instrument should be set as a percentage of the large in scale size? Please provide reasons for you answer.**

No. AMAFI does not agree with the proposal that the size specific to the instrument should be set as a percentage of the large in scale size, which does not respond to the objective of the waiver, that is to protect risk takers. Please refer to our answers below for an alternative approach.

**Q164. In your view, what methodologies would be most appropriate for measuring the undue risk in order to set the size specific threshold?**

In AMAFI's view, the undue risk could be measured using two different methods:

- By assessing the size available on the trading venues used by market makers to unwind their positions. The best proxy here is the AVT observed on inter-dealer broker systems of the instrument or class of instruments concerned, as these inter-dealer brokers are primarily used by risk takers to hedge their risk.
- For options on a security, by assessing the level that would qualify as creating an "undue risk" on the said security. Indeed, the underlying security is the favoured tool to hedge the risk take on a derivative instrument. It would hence be logical and legitimate to link the size specific threshold for a derivative to the size specific threshold of its underlying (or, for shares, to the Large in Scale threshold).

**Q165. Would you suggest any other practical ways in which ESMA could take into account whether, at such sizes, liquidity providers would be able to hedge their risks?**

Please refer to Q164.

**Q166. Do you agree with ESMA's description of how the size specific to the instrument waiver would interact with the large in scale waiver? Please provide reasons for your answer.**

No. AMAFI does not agree with ESMA's description on how the size specific to the instrument waiver would interact with the large in scale waiver.

In our view, it is fundamental to understand that each waiver has a special purpose: size specific aims at protecting liquidity providers and should be limited in its application to liquidity providers, while LIS on the contrary is of use to all market participants

In some markets, where all transactions are large, it may be difficult to use LIS.

**Q167. Do you agree with ESMA's description of how the size specific to the instrument deferrals would interact with the large in scale deferrals? In particular, do you agree that the deferral periods for the size specific to the instrument and the large in scale should differ and have any specific proposals on how the deferral periods should be calibrated? Please provide reasons for your answer.**

No. AMAFI does not accept ESMA's approach: we consider that size specific is based on assessment of hedgeability while LIS is a statistical measure based on turnover.

There are situations where LIS apply but not size specific and the opposite.

We consider the deferral periods should be the same and be sufficiently long to protect liquidity providers.

### **3.11. The Trading Obligation for Derivatives**

**Q168. Do you agree that there should be consistent categories of derivatives contracts throughout MiFIR/EMIR?**

Yes. AMAFI agrees that there should be consistent categories of derivatives contracts throughout MiFIR/EMIR, for the sake of clarity and because Article 28 explicitly refers to EMIR.

**Q169. Do you agree with this approach to the treatment of third countries?**

Yes. AMAFI agrees with this approach.

**Q170. Do you agree with the proposed criteria based anti-avoidance procedure?**

Yes. AMAFI agrees with the proposed criteria based anti-avoidance procedure.

**Q171. Do you think it would be reasonable for ESMA to consult venues with regard to which classes of derivatives contracts are traded on venue? Do you think venues would be well placed to undertake this task?**

AMAFI considers that it would be reasonable for ESMA to consult venues with regard to which classes of derivatives contracts are traded on venue.

**Q172. The discussion in section 3.6 on the liquid market for non-equity instruments around 'average frequency', 'average size', 'number and type of active market participants' and average size of spreads is also relevant to this chapter and we would welcome respondent's views on any differences in how the trading obligation procedure should approach the following:**

AMAFI is of the view that when possible, the approach should be the same as the one chosen in section 3.6.

**Q173. Do you have a view on how ESMA should approach data gathering about a product's life cycle, and how a dynamic calibration across that life cycle might work? How frequently should ESMA revisit its assumptions? What factors might lead the reduction of the liquidity of a contract currently traded on venue? Are you able to share with ESMA any analysis related to product lifecycles?**

AMAFI is aware of the complexity of this task. Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, we are currently unable to answer it.

**Q174. Do you have any suggestions on how ESMA should consider the anticipated effects of the trading obligation on end users and on future market behaviour?**

AMAFI is of the view that it is primordial to make assessments as to how end users may react to the implementation of the trading obligation.

A good way to confine and manage carefully these effects would be to phase in the introduction of the obligation on certain sub-classes of instruments.

**Q175. Do you have any other comments on our overall approach?**

AMAFI understands that it is very difficult to gather data in this field.

### **3.12. Transparency Requirements for the Members of ESCB**

**Q176. Do you agree that the above identifies the types of operations that can be undertaken by a member of the ESCB for the purpose of monetary, foreign exchange and financial stability policy and that are within the MiFID scope? Please give reasons to support your answer.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q177. What is your view about the types of transactions for which the member of the ESCB would be able to provide prior notification that the transaction is exempt?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**3.13. Article 22, MiFIR: Providing information for the purposes of transparency and other calculations**

**Q178. Do you have any comments on the content of requests as outlined above?**

AMAFI strongly disagrees with the views expressed by ESMA in point 6 concerning market participants, since we consider that for the purpose of the definition of a liquid market for non-equity, market participants should designate market makers ([see Q105](#)).

**Q179. Do you have proposals on how NCAs could collect specific information on the number and type of market participants in a product?**

The solution we recommend would ultimately facilitate the collection of specific information on the number and type of market participants in a product, since market makers having signed a contract will be easily identified by venues ([see Q105](#)).

**Q180. Do you consider the frequency of data requests proposed as appropriate?**

Yes. AMAFI finds the frequency of data requests as appropriate.

**Q181. How often should data be requested in respect of newly issued instruments in order to classify them correctly based on their actual liquidity?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q182. What is your view of ESMA's initial assessment of the format of data requests and do you have any proposals for making requests cost-efficient and useful for all parties involved?**

AMAFI agrees with the flexible approach taken by ESMA in this field.

**Q183. Do you consider a maximum period of two weeks appropriate for responding to data requests?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q184. Do you consider a storage time for relevant data of two years appropriate?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

## 4. Microstructural issues

---

### 4.1. Microstructural issues: common elements for Articles 17, 48 and 49 MiFID II

**Q185. *Is there any element that has not been considered and/or needs to be further clarified in the ESMA Guidelines that should be addressed in the RTS relating to Articles 17, 48 and 49 of MiFID II?***

AMAFI does not consider that any other element needs further clarification at this stage.

Nevertheless, we would like to express our concerns on the staking of investment firm responsibilities with those of NCAs, DEA providers, clearers and trading venue, which will be burdensome without a real benefit. This will be especially the case for small-to-medium sized firms, which will have an implementation disadvantage.

We are of the view that these requirements do not appear proportional. While ESMA explicitly states that it “recognises that the risks stemming from algorithmic trading activities (for firms themselves and/or for the fair and orderly functioning of markets) are not homogenous across all firms,” ESMA has nevertheless removed any discretion for firms when it goes on to state that the extensive list of organisational requirements in the following section “should constitute a minimum.” We believe this statement is fundamentally contrary to the proportionality principle.

As a consequence, we recommend ESMA adopt an approach that simplifies the nature, scale and complexity factors and requires reviews ‘annually or more frequently if circumstances give rise. A more frequent self-assessment should be undertaken only in the event of a material change in the nature, scale, and complexity of the investment firm.

**Q186. *Do you agree with the definition of ‘trading systems’ for trading venues?***

AMAFI has not examined this question with its members who are trading venues and is therefore unable to answer it.

**Q187. *Do you agree that the requirements under Articles 48 and 49 of MiFID II are only relevant for continuous auction order book systems and quote-driven trading systems and not for the other systems mentioned above?***

AMAFI has not examined this question with its members who are trading venues and is therefore unable to answer it.

**Q188. *Which hybrid systems, if any, should be considered within the scope of Articles 48 and 49, and why?***

AMAFI has not examined this question with its members who are trading venues and is therefore unable to answer it.

**Q189. Do you agree with the definition of “trading system” for investment firms?**

No, the proposed definition is too large because it encompasses “those supporting elements without which it would be impossible to implement those techniques”, which is unclear and can be interpreted broadly and differently by each NCA.

AMAFI is of the view that the first part of the definition in paragraph 13 is sufficient (“the algorithmic technologies... transmission of these orders to the market” because it covers all stages of trading: input (signals from the market), production (strategies) and output (orders transmitted to the market).

**Q190. Do you agree with the definition of ‘real time’ in relation to market monitoring of algorithmic trading activity by investment firms?**

No, AMAFI does not agree.

First of all, the definition should make clear that this relates to monitoring for the purpose of the firm’s risk management or the safeguarding of the orderly functioning of the market, as proposed in paragraph 17.

Furthermore, AMAFI is concerned that risk management is very large in terms of the different matters covered (credit, operational, liquidity...), so that imposing a real-time monitoring for algorithmic trading as regards risk management generally seems disproportionate.

Finally, AMAFI notes that many post-execution controls happen immediately after the order has been executed, on an automated basis, so that the 5 seconds delay will not be an issue. However this does not work in all situations. In many cases, the pre-execution controls and the post-execution ones would bring the same information because the data needed to operate a sensible control will not be available within 5 seconds. This is especially the case as regards risk management of the firm, which often involves getting data from other information systems of the firm which may only be available in batches .

AMAFI is of the view that ESMA should leave firms to organize themselves as to what real-time monitoring means for them depending of the type of algorithmic trading they engage in and their organization. They will anyhow be subject to stringent MiFID II requirements in terms of impact of their trading on the market, testing, etc. so that going into such details does not seem necessary.

**Q191. Is the requirement that real time monitoring should take place with a delay of maximum 5 seconds appropriate for the risks inherent to algorithmic trading and from an operational perspective? Should the time frame be longer or shorter? Please state your reasons.**

See our answer to Question 190.

**Q192. Do you agree with the definition of ‘t+1’ in relation to market monitoring of algorithmic trading activity by investment firms?**

AMAFI disagrees that the mandate in Article 17 for the elaboration of technical standards imposes such a prescriptive level of detail in terms of organization of market abuse detection. AMAFI notes that Regulation 596/2014, dedicated to market abuse, does not provide for such a prescriptive monitoring framework and only prescribes in Article 16.2 the reporting of potential market abuses to competent authorities “without delay”.

AMAFI strongly disagrees with the principle that market abuse alerts pertaining to algorithmic trading should be generated overnight. Market abuse's impact on markets is not the same in terms of scale and systemic consequences than a dysfunctional algorithm, so that different monitoring principles should apply. If ESMA has identified types of market abuse that would require such a monitoring, which would not be caught by the other controls in place not pertaining to market abuse, then a better solution would be to target these specifically in the technical standards.

We also strongly question the feasibility of this requirement because the recuperation of market data may not happen on T (some markets close at midnight or provide their data late – Eurex, commodities markets) and some alerts (e.g. the ones based on historical trends) need several days of data to be meaningful.

**Q193. Do you agree with the parameters to be considered to define situations of 'severe market stress' and 'disorderly trading conditions'?**

No.

ESMA equates the concept of "exceptional circumstances" in Article 13.3 a) and 13. 7c) with the concepts of "severe market stress" and "disorderly trading conditions" of Article 48 (1). AMAFI is of the view that the terms "exceptional circumstances" in Article 13 cover a larger scope than external events such as those referred to in Article 48. It should also cover internal events, exceptional in nature, which may prevent the firm from carrying out its role as a market maker, such as a major technological outage.

**Q194. Do you agree with the above approach?**

AMAFI has not examined this question with its members who are trading venues and is therefore unable to answer it.

**Q195. Is there any element that should be added to/removed from the periodic self-assessment?**

AMAFI has not examined this question with its members who are trading venues and is therefore unable to answer it.

**Q196. Would the MiFID II organisational requirements for investment firms undertaking algorithmic trading fit all the types of investment firms you are aware of? Please elaborate.**

The requirement in paragraphs 47 and 48 to carry out a "detailed and robust" self-assessment twice a year is disproportionate for any firm in AMAFI's view. Any serious self-assessment exercise is time consuming and resource-intensive because it implies the involvement of each important person in the process. A requirement to perform such an assessment twice a year means that the first self assessment of the year would not be finished when the second one would have to start.

AMAFI notes that the purpose of the self assessment is not to identify where the risks lie and whether they are efficiently mitigated but to determine "how [the firm] should apply the proportionality principle". It seems therefore quite disproportionate to impose such a frequent self-assessment for the sole purpose of determining how to apply proportionality, all the more that the firms should anyway "at all times be in a

*position to demonstrate to its NCA why the firm believes the requirement does not correspond to its circumstances”.*

If ESMA were to keep a prescriptive frequency, then this should be an annual review of the initial assessment made, in the light of the changes (internal and external factors) experienced by the firm over the year, it should not be for carrying out again the full assessment.

Similarly, AMAFI considers that is quite ironic that, to apply proportionality, firms should have to consider, “at least”, 35 different items, presented in a “non-exhaustive list” and score them both individually and in relation to each other, let alone that some of the items are a bit obscure (e.g., item i.f. “the latency sensitivity of the firm’s strategies and trading activities”, item i.h. “the connectivity solutions of the firm”) or subjective (item iii.e “the diversity of the firm’s connectivity, technology or clearing solutions”, item iii. g. “the speed of changes”).

This list should instead provide examples, and firms should be able to carry out their assessment as they do today on many other matters of regulation where proportionality applies.

In summary, AMAFI considers that ESMA’s approach to proportionality as proposed is in effect... disproportionate.

**Q197. Do you agree with the approach described above regarding the application of the proportionality principle by investment firms? Please elaborate.**

See our answer to Question 196.

**Q198. Are there any additional elements that for the purpose of clarity should be added to/removed from the non-exhaustive list contained in the RTS? Please elaborate.**

See our answer to Question 196.

#### **4.2. Organisational requirements for investment firms (Article 17 MiFID II)**

**Q199. Do you agree with a restricted deployment of algorithms in a live environment? Please elaborate**

No.

Overall, AMAFI notes that the requirements in Section 4.2 are very detailed and prescriptive, leaving no room for adaptation by firms, whereas it may not be proportionate nor adapted to go through all this testing in all situations. The overall result is a perception of a piling-up of controls, with no feasibility check, creating such a high benchmark that no firm would end up fully compliant.

AMAFI suggests instead substituting to these detailed requirements a principle requiring adequate testing, proportionate to the envisaged change, leaving some discretion in the way firms would carry out their testing.

**Q200. Do you agree with the parameters outlined for initial restriction? Please elaborate.**

See our answer to Question 199.

**Q201. Do you agree with the proposed testing scenarios outlined above? Would you propose any alternative or additional testing scenarios? Please elaborate.**

See our answer to Question 199.

**Q202. Do you agree with ESMA's approach regarding the conditions under which investment firms should make use of non-live trading venue testing environments? Please elaborate.**

No. AMAFI believes that the requirement to test trading strategies and algorithms in the non-live trading venue testing environment for each market is good in principle but faces some serious challenges practically in terms of availability and quality (relevance of the testing data for example) of the venues' testing environments and also in terms of the complexity such testing can involve (for example, a strategy on the Euro Stoxx index would involve a test across 28 different markets at the same time).

AMAFI suggests, as mentioned in Question 199, to allow a degree of discretion for firms to decide how to carry out appropriate testing of their trading strategies and algorithms.

If ESMA were to keep its approach unchanged it should at least provide for several months/years of ramp-up before it becomes compulsory.

**Q203. Do you consider that ESMA should specify more in detail what should be the minimum functionality or the types of testing that should be carried out in non-live trading venue testing environments, and if so, which?**

No, for the reasons explained in our answer to Question 199.

**Q204. Do you consider that the requirements around change management are appropriately laid down, especially with regard to testing? Please elaborate.**

No, for the reasons explained in our answer to Question 199.

**Q205. Do you agree with the proposed monitoring and review approach? Is a twice yearly review, as a minimum, appropriate?**

No, AMAFI does not agree.

Paragraphs 35 and 36 raise issues as regards separation of duties:

- It is stated that the trader should not be involved in the monitoring of the activity, which in our view is not appropriate. The trader is the first line of defense against improper behavior of an algorithm and is often the best placed to identify it.
- IT support will also be involved in monitoring the orderly functioning of the algorithms but it should not necessarily "have the authority to take remedial action" if this involves some trading capacity. Proper escalation process should be in place to ensure that problems identified can be acted upon by the people who have the necessary authority.

- Contrary to what is stated in paragraph 36, staff involved in supporting the trading operations of the firm do not necessarily need to have “*authorizations with the relevant trading venues*”. There may need to be a clear separation between people who monitor the activity and the ones who are able to direct orders and remediation actions to the market.

The twice yearly review is excessive – this review should be mandated by the changes made to the algorithms used by the firm (see our answer to Question 196). If ESMA were to keep a frequency it should be annual, and/or each time a significant change has been made. In any case, we are skeptical that this requirement is really useful considering the need to thoroughly test any new trading strategy prior to its implementation and the fact that the trading systems are used daily, hence are “tested” live every day.

Finally, AMAFI disagrees with paragraph 41 on two aspects. It is not clear what this validation process refers to and how different it is from the sign off procedures described in paragraphs 22 and 23. In addition, paragraph 41 also states that the compliance function should be made aware of the results of the validation reports as a matter of principle. If the compliance function is involved in the monitoring of the trading systems at the firm, then internal policies and procedures will provide for the compliance function to receive these reports. But this will be the consequence of an organizational choice by the firm, it will not result from the responsibilities of the function as set in MiFID II. The compliance function is not, by nature of its role, involved in the monitoring of the trading systems of the firm. It can obviously provide advice on regulatory matters if needed but it is generally not in the scope of the function to be involved in the running of the firm’s trading systems. This sentence should therefore be removed or at least qualified as follows: “*Compliance function ~~should~~ **can** be made aware of the results of these validation reports, where appropriate”.*

**Q206. To what extent do you agree with the usage of drop copies in the context of monitoring? Which sources of drop copies would be most important?**

We are uncertain as to what is a drop copy – does it refer to the acknowledgements sent by trading venues after receiving an order? ESMA should define it.

With this understanding, item (iii) does not seem feasible to us except if markets were to send position reports to firms in a systematic and exhaustive way.

**Q207. Do you agree with the proposed approach?**

No. Again, AMAFI views these requirements as overly prescriptive and disproportionate.

It is concerned that so many requirements will lead to further concentration of firms, at the expense of competition.

**Q208. Is the proposed list of pre trade controls adequate? Are there any you would add to or remove from the list?**

No. We have the same comment as in Question 205 as regards paragraphs 66 and 67 on the involvement of the compliance function, on a systematic basis, in matters that are commonly dealt with by risk management and do not pertain per se to the missions of the compliance function.

Compliance function is a second line of defense – it should be involved neither in carrying out the activities of the firm, nor in its daily trading flow. It should not be required to approve the overriding of

controls, as it would be contrary to the principle of independence on which the function is built. In addition, it should not substitute itself to the management of these activities who are best placed to assess the relevance of an overriding request. Compliance will be involved in reviewing the organization and ensuring that the responsibilities are properly allocated. It will also be involved in making sure that the overriding rules applicable to compliance controls are adequate and properly implemented. However, it should not be involved in the running of the system itself on a day-to-day basis.

Furthermore, it is disproportionate that both risk management and compliance function staff should approve each overriding.

References to the compliance function in paragraphs 66 and 67 should therefore be removed.

**Q209. To what extent do you consider it appropriate to request having all the pre-trade controls in place? In which cases would it not be appropriate? Please elaborate.**

AMAFI has not examined this question and is therefore unable to answer it.

**Q210. Do you agree with the record keeping approach outlined above?**

No, AMAFI does not agree.

Article 17 sets a mandate to develop technical standards as regards the 5<sup>th</sup> subparagraph of Article 17(2), i.e. the obligation to store records of all placed orders. ESMA's discussion paper covers items that are related neither to orders nor to quotations, exceeding the level 1 mandate. Items (i.) to (vii.) of the proposal are therefore out of scope.

Finally, the level 1 text refers to an "approved form", which is unclear as to which approval it is referring to. AMAFI understands this to mean that the records should be consistently in the form decided by the firm as per its procedures. ESMA should clarify this point.

**Q211. In particular, what are your views regarding the storage of the parameters used to calibrate the trading algorithms and the market data messages on which the algorithm's decision is based?**

If this requirement were to apply, it would create a massive burden on firms in terms of capacity, considering the amount of parameters used and market data messages received by a firm each day. These requirements are in effect disproportionate, making compliance quasi-impossible in respect of the costs it would involve, all the more that such records should be stored for 5 years. In addition, as regards market data, this requirement would actually end up duplicating the records stored by trading venues that NCAs have access to for enforcement.

Firms should be able to explain how their algorithm work and provide the orders sent by them, they should not be asked to be in a position to reconstitute the decision process of the algorithms and replay the market.

**Q212. Do you consider that the requirements regarding the scope, capabilities, and flexibility of the monitoring system are appropriate?**

Paragraphs 78 and 82 are not consistent: the first one refers to the implementation of automated alert systems where appropriate; the second requires automated alert systems to be put in place. ESMA's

position is therefore unclear. If an amount of automation seems necessary to monitor market abuse in algorithmic trading, this should not result in having to buy third-party systems, which are generally very costly and not easy to calibrate. In this context, the sentence in paragraph 81 which states that the system should have “*integrated workflow creation and management capabilities*” seems also to imply that third-party systems should be used (although we are unclear as to what this means exactly in practice).

The same paragraph 81 requires generation of alerts on a T+1 basis. We reiterate our answer to Question 192 that this may not always be feasible or relevant depending on the markets concerned.

As regards setting an obligation to retain market data or to only retrieve market data when necessary, AMAFI believes that ESMA should not be prescriptive in this matter. This will depend on how the monitoring system is designed and firms should have some discretion to build the system that is best adapted to their organization and activities. In addition, some alerts may be dealt with without the need for market data, whereas others will require access to market data. An alert that has been investigated using market data will contain some amount of market data stored to explain the outcome of the investigation, but this will not always be the case.

**Q213. Trade reconciliation – should a more prescriptive deadline be set for reconciling trade and account information?**

“*As soon as practicable*” is a strong requirement in our view. AMAFI does not see the value of setting a prescriptive deadline, nor for NCAs, neither for firms.

AMAFI believes that this paragraph should not be part of the section of the DP dealing with market abuse. The purpose of trade and account reconciliation is a lot broader than market abuse alone.

**Q214. Periodic reviews – would a minimum requirement of undertaking reviews on a half-yearly basis seem reasonable for investment firms engaged in algorithmic trading activity, and if not, what would be an appropriate minimum interval for undertaking such reviews? Should a more prescriptive rule be set as to when more frequent reviews need be taken?**

No, AMAFI objects to reviewing the monitoring system twice a year; such frequency should be dictated by the changes made to the firm’s trading systems, client base, organization, etc. It should not be set arbitrarily at the risk otherwise of resulting in an administrative process with no added value.

**Q215. Are there any elements that have not been considered and / or need to be further clarified here?**

Item iv. requires firms to perform due diligence on the “*training and competency of individuals entering orders*”. Such requirement would benefit from further explanation as to its practicalities. Would it be sufficient to get a detailed attestation by the DEA user that its staff have performed the necessary training (internal or external) to deal on the markets concerned and that they have the necessary level of competency? If not, what is expected from DEA providers?

This is an important matter because it creates competitive distortions between DEA providers, such that it needs to be detailed further by ESMA for harmonization purpose.

**Q216. What is your opinion of the elements that the DEA provider should take into account when performing the due diligence assessment? In your opinion, should any elements be added or removed? If so, which?**

The “ownership structure” in paragraph ii is already covered by the KYC diligence referred to in paragraph i.

Paragraphs iii and 95 seem to imply that the DEA user should send its algorithms to the firm. This is not consistent with level 1 and would create a major issue in terms of feasibility due to the competitive nature of this information and the intellectual property attached to it. DEA users should explain to the firms the nature of their algorithmic strategies and the controls they have in place but it should not be required from firms that they obtain their source codes, especially when this is not required by level 1.

**Q217. Do you agree that for assessing the adequacy of the systems and controls of a prospective DEA user, the DEA provider should use the systems and controls requirements applied by trading venues for members as a benchmark?**

No, AMAFI does not agree. The objective of the assessment should be to ensure that the DEA user will comply with market rules and have the necessary governance and control structure around its trading; it should not be to apply the same requirements as if it were a member of each trading venue concerned, which will be complex and costly and would be lacking flexibility necessary to adapt systems and controls to each DEA user’s situation.

**Q218. Do you agree that a long term prior relationship (in other areas of service than DEA) between the investment firm and a client facilitates the due diligence process for providing DEA and, thus, additional precautions and diligence are needed when allowing a new client (to whom the investment firm has never provided any other services previously) to use DEA? If yes, to what extent does a long term relationship between the investment firm and a client facilitate the due diligence process of the DEA provider? Please elaborate.**

Due to the very short timeframe left for consultation, AMAFI is unable to answer this question.

**Q219. Do you agree with the above approach? Please elaborate.**

Similarly to our previous comment in Question 215, it is not clear what elements of proof investment firms will need to gather as regards the proper training of the DEA users. Firms can ensure they receive the necessary information to check on the adequacy of the training provided to the employees of the DEA user but are not in position to check the accuracy of their client’s statement. The provision of training by firms to DEA users does not seem to us to be a practical and effective solution given the costs it would involve, the training competencies needed, the need to adapt to different clients and the fact that there are safeguards around the use of the trading systems at the DEA provider, which also help prevent misuse of the systems and disorderly trading.

**Q220. Do you agree with the above approach, specifically with regard to the granular identification of DEA user order flow as separate from the firm’s other order flow? Please elaborate.**

For the same reasons as developed in our answer to Question 216, AMAFI does not agree that DEA users should register their algorithms with the DEA provider as provided for by paragraph 114.

**Q221. Are there any criteria other than those listed above against which clearing firms should be assessing their potential clients?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q222. Should clearing firms disclose their criteria (some or all of them) in order to help potential clients to assess their ability to become clients of clearing firms (either publicly or on request from prospective clients)?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q223. How often should clearing firms review their clients' ongoing performance against these criteria?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q224. Should clearing firms have any arrangement(s) other than position limits and margins to limit their risk exposure to clients (counterparty, liquidity, operational and any other risks)? For example, should clearing firms stress-test clients' positions that could pose material risk to the clearing firms, test their own ability to meet initial margin and variation margin requirements, test their own ability to liquidate their clients' positions in an orderly manner and estimate the cost of the liquidation, test their own credit lines?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q225. How regularly should clearing firms monitor their clients' compliance with such limits and margin requirements (e.g. intra-day, overnight) and any other tests, as applicable?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q226. Should clearing firms have a real-time view on their clients' positions?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q227. How should clearing firms manage their risks in relation to orders from managers on behalf of multiple clients for execution as a block and post-trade allocation to individual accounts for clearing?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q228. Which type(s) of automated systems would enable clearing members to monitor their risks (including clients' compliance with limits)? Which criteria should apply to any such automated systems (e.g. should they enable clearing firms to screen clients' orders for compliance with the relevant limits etc.)?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

#### **4.3. Organisational requirements for trading venues (Article 48 MiFID II)**

**Q229. Do you agree with requiring trading venues to perform due diligence on all types of entities willing to become members/participants of a trading venue which permits algorithmic trading through its systems?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q230. Do you agree with the list of minimum requirements that in all cases trading venues should assess prior to granting and while maintaining membership? Should the requirements for entities not authorised as credit institutions or not registered as investment firms be more stringent than for those who are qualified as such?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q231. If you agree that non-investment firms and non-credit institutions should be subject to more stringent requirements to become member or participants, which type of additional information should they provide to trading venues?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q232. Do you agree with the list of parameters to be monitored in real time by trading venues? Would you add/delete/redefine any of them? In particular, are there any trading models permitting algorithmic trading through their systems for which that list would be inadequate? Please elaborate.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q233. *Regarding the periodic review of the systems, is there any element that has not been considered and/or needs to be further clarified in the ESMA Guidelines that should be included?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q234. *Do you agree with the above approach?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q235. *Do you think ESMA should determine minimum standards in terms of latency or is it preferable to consider as a benchmark of performance the principle “no order lost, no transaction lost”?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q236. *Do you agree with requiring trading venues to be able to accommodate at least twice the historical peak of messages?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q237. *Do you agree with the list of abilities that trading venues should have to ensure the resilience of the market?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q238. *Do you agree with the publication of the general framework by the trading venues? Where would it be necessary to have more/less granularity?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q239. *Which in your opinion is the degree of discretion that trading venues should have when deciding to cancel, vary or correct orders and transactions?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q240. Do you agree with the above principles for halting or constraining trading?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q241. Do you agree that trading venues should make the operating mode of their trading halts public?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q242. Should trading venues also make the actual thresholds in place public? In your view, would this publication offer market participants the necessary predictability and certainty, or would it entail risks? Please elaborate.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q243. Do you agree with the proposal above?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q244. Should trading venues have the ability to impose the process, content and timing of conformance tests? If yes, should they charge for this service separately?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q245. Should alternative means of conformance testing be permitted?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q246. Could alternative means of testing substitute testing scenarios provided by trading venues to avoid disorderly trading conditions? Do you consider that a certificate from an external IT audit would be also sufficient for these purposes?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q247. What are the minimum capabilities that testing environments should meet to avoid disorderly trading conditions?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q248. Do you agree with the proposed approach?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q249. In particular, should trading venues require any other pre-trade controls?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q250. Do you agree that for the purposes of Article 48(5) the relevant market in terms of liquidity should be determined according to the approach described above? If, not, please state your reasons.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q251. Are there any other markets that should be considered material in terms of liquidity for a particular instrument? Please elaborate.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q252. Which of the above mentioned approaches is the most adequate to fulfil the goals of Article 48? Please elaborate**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q253. Do you envisage any other approach to this matter?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q254. Do you agree with the list of elements that should be published by trading venues to permit the provision of DEA to its members or participants?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q255. Do you agree with the list of systems and effective controls that at least DEA providers should have in place?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q256. Do you consider it is necessary to clarify anything in relation to the description of the responsibility regime?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q257. Do you consider necessary for trading venues to have any other additional power with respect of the provision of DEA?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

#### **4.4. Market making strategies, market making agreements and market making schemes**

**Q258. Do you agree with the previous assessment? If not, please elaborate.**

No.

Broadly speaking, AMAFI understands that the intended purposes of the obligations concerning market making introduced by Articles 17 and 48 of MiFID II is a reduction of the impact of potentially systemic volatility peaks in instruments where algorithmic traders are present.

In this context, we want to insist on the crucial role played by market makers in financial markets, because ESMA's focus on the supervision of algorithmic activities, which explains this new set of obligations, should not conceal the importance of market making activities.

Without market makers, equities would be less liquid, prices more volatile, and it will be more expensive to trade on the market. It is thanks to this activity, supported by the technological and risk management developments, that bid-ask spreads have significantly decreased in the last decade. That is why, in order to preserve market quality, even though we support reinforced market making trading obligations, we want to ensure that the minimum obligations on market makers will be carefully calibrated and not too stringent, so as not to damage their economic model. As demonstrated in the following answers to your questions (especially to Q275 and Q280), we invite ESMA to pay heed to these preliminary principles when drafting the new set of rules framing this activity.

More specifically, AMAFI agrees that the requirements in Articles 17 and 48 of MiFID II in terms of market making agreements are correlated and hence should be addressed jointly.

**Q259. Do you agree with the preliminary assessments above? What practical consequences would it have if firms would also be captured by Article 17(4) MiFID II when posting only one-way quotes, but doing so in different trading venues on different sides of the order book (i.e. posting buy quotes in venue A and sell quotes in venue B for the same instrument)?**

Yes. AMAFI agrees with ESMA's preliminary assessment.

On the question of one-way quotes posted in different trading venues, we consider that they should not be captured by Article 17(4), since then equities arbitrage, which is not and has never been considered as market making, would be captured. These firms, which do not have a market making economic model, would be negatively impacted, which would dramatically harm market quality.

**Q260. For how long should the performance of a certain strategy be monitored to determine whether it meets the requirements of Article 17(4) of MiFID II?**

AMAFI questions the usefulness of the introduction of an observation period to determine whether a certain strategy can be qualified as market making. We consider that there is no need for such a timeframe, which would only give a possibility to game for some investment firm and would be arbitrary.

The parameters of a market making agreement should contain, in our view, enough information to determine the nature of the strategy. It will notably comprise the obligations regarding: (1) maximum spread, (2) minimum size or amount and (3) minimum percentage quoting presence during applicable trading hours.

**Q261. What percentage of the observation period should a strategy meet with regard to the requirements of Article 17(4) of MiFID II so as to consider that it should be captured by the obligation to enter into a market making agreement?**

Following our answer to the previous question, AMAFI does not deem necessary to establish an observation period. In this context, we believe that the determination of whether an investment firm is operating a market making strategy should only match with the parameters of market making agreements, as stated in our answer to Q260.

**Q262. Do you agree with the above assessment?**

No. Broadly speaking, AMAFI considers that regulation should apply equally to market participants regardless of their means of market access, so as to support a level playing field. Even though we understand the rationale behind ESMA's proposal, we are of the view that in this case, the DEA provider through which the investment firm operates a market making strategy should be obligated to enter into a binding market making agreement.

Otherwise, there would also be a discrepancy with existing regulations on market making, where the activity of bona fide market making, rather than the status of the investment firm, triggers eligibility for applicable exemptions.

**Q263. Do you agree with this interpretation?**

Yes. AMAFI agrees with the interpretation that, in principle, a quote is firm as long as it is executable.

**Q264. Do you agree with the above assessment? If not, please elaborate.**

Yes. AMAFI agrees with ESMA's assessment that the definition of market making strategy only contains strategies where an investment firm operates a firm, simultaneous two-way quote in at least one financial instrument on a single trading venue.

**Q265. Do you agree with the above interpretation?**

No. AMAFI does not agree that specifying "simultaneous" in a time frame is useful. We consider that linking this criterion to 'one second' risks making it obsolete and easy to evade. We would suggest that 'simultaneous two-way quote' be defined as where a firm "actively quotes on both sides of the order book during the same continuous trading period".

**Q266. Do you agree with the above proposal?**

No. AMAFI considers that, as recognised by ESMA, to look the company-wide net exposure in a single product on a single trading venue will not work in case several strategies are set.

**Q267. Do you agree with the above proposal?**

Yes. AMAFI agrees with the proposed approach.

**Q268. Do you agree with the approach described (non-exhaustive list of quoting parameters)?**

Yes. AMAFI strongly supports the approach proposed by ESMA, which consists in setting principles rather than 'hard-coded' conditions.

We consider that the parameters to be set by ESMA should reflect the content of current market practice, notably concerning the most important coming from participation in such schemes, namely minimum size, maximum spread, and percentage of presence in the market during applicable trading hours.

**Q269. What should be the parameters to assess whether the market making schemes under Article 48 of MiFID II have effectively contributed to more orderly markets?**

AMAFI is of the view that an assessment of market liquidity is a good means of evaluating the contribution to more orderly markets. The bid-ask spread and the volume present in a limit order-book can be good indicators.

The methodology of Eurex Exchange's 2013 data-driven market analysis of the behaviour of high frequency trading firms in times of market volatility can also be useful to assess the recovery of liquidity after market volatility.

**Q270. Do you agree with the list of requirements set out above? Is there any requirement that should be added / removed and if so why?**

No. AMAFI does not agree with the list of requirements set out above. We consider that there is no need to complement the requirements already imposed on algorithmic trading activities.

**Q271. Please provide views, with reasons, on what would be an adequate presence of market making strategies during trading hours?**

In AMAFI's view, the adequate presence of market making strategies should be consistent with the obligations under the market making agreement. This should then depend upon the minimum percentage presence required in a market making agreement during applicable trading hours.

This will vary per product, segment and per venue. Generally for shares, 80% is the standard, but we consider that it should not be generalised to other instruments.

**Q272. Do you consider that the average presence time under a market making strategy should be the same as the presence time required under a market making agreement?**

No. As stated above, AMAFI considers that there should be consistency between the criteria which obligates a firm to enter into a market making agreement with the obligations under the market making agreement.

**Q273. Should the presence of market making strategies during trading hours be the same across instruments and trading models? If you think it should not, please indicate how this requirement should be specified by different products or market models?**

No. As stated above, AMAFI does not think that the same presence should be required across instruments and trading models.

**Q274. Article 48(3) of MiFID II states that the market making agreement should reflect "where applicable any other obligation arising from participation in the scheme". What in your opinion are the additional areas that that agreement should cover?**

AMAFI considers that this should be decided by trading venues. Under current market practice, the main obligations arising from participation in the scheme are: minimum size, maximum spread, and percentage of presence in the market during applicable trading hours.

**Q275. Do you disagree with any of the events that would qualify as 'exceptional circumstances'? Please elaborate.**

AMAFI considers that the approach of ESMA regarding what would qualify as 'exceptional circumstances' is far too stringent, and would have detrimental consequences for market making activities.

Even if we understand that ESMA desires to limit the circumstances under which investment firms operation market making strategies can cease providing liquidity, so as to secure stability of liquidity, we

are of the view that the approach proposed would risk thwarting MiFID II's objectives of achieving liquidity resilience. It is also contrary to existing market practice.

**Q276. Are there any additional 'exceptional circumstances' (e.g. reporting events or new fundamental information becoming available) that should be considered by ESMA? Please elaborate.**

AMAFI is of the opinion that ESMA should establish non-exhaustive parameters and follow the wording of Level 1. In our view, the best solution would be to leave investment firms to make an assessment on these grounds, which could be tested ex post facto for reasonableness and prudence by regulators and trading venues. We fear that a limitation beforehand would result in firms avoiding the business model of market making.

**Q277. What type of events might be considered under the definition of political and macroeconomic issues?**

AMAFI considers that should be considered under the definition of political and macroeconomic issues any event that an investment firm's risk management would deem relevant cause to suspend market making. This could be checked in a post-facto manner for reasonableness and prudence by the relevant NCA.

**Q278. What is an appropriate timeframe for determining whether exceptional circumstances no longer apply?**

AMAFI opines that, in accordance with the notion of force majeure in contract law, the timeframe for the validity of exceptional circumstances should be linked to the reality of how long these circumstances are prevalent. A process of validation a posteriori can be put in place.

**Q279. What would be an appropriate procedure to restart normal trading activities (e.g. auction periods, notifications, timeframe)?**

AMAFI is of the view that this should depend on the effects of the exceptional circumstances, in particular whether they concern only an investment firm or the market.

**Q280. Do you agree with this approach? If not, please elaborate.**

No. AMAFI does not agree with this approach.

ESMA has set out four requirements that must be met by trading venues having market making schemes in place, namely (1) determine a ceiling on the liquidity resulting from market making activity and be in a position to identify the volume of trades resulting from orders placed by firms acting under the market making scheme; (2) be able to prevent access at member level and/or connection level, as well as have the ability to delete orders in the market and transactions that have occurred; (3) have publicly available information in relation to the compliance of investment firms participating; and (4) publicly disclose the identities of the market makers..

Starting with the first requirement, as stated above we consider it can be harmful to set a ceiling for a share of liquidity coming from market making activity.

As for the second requirement, we are of the view that it should be limited to cases provided by the venue rulebook, so as to limit arbitrary decisions.

Concerning the requirement to have publicly available information in relation to the compliance of investment firms participating, AMAFI questions the exposure of competitive, business-sensitive information. We believe such a publication is not justified, and that such information should only be transmitted to the regulators.

As for the publication of the identity of the market makers, we accept this proposal.

**Q281. *Would further clarification be necessary regarding what is “fair and non-discriminatory”? In particular, are there any cases of discriminatory access that should be specifically addressed?***

No. AMAFI has nothing to add on this point.

**Q282. *Would it be acceptable setting out any type of technological or informational advantages for participants in market making schemes for liquid instruments? If yes, please elaborate.***

AMAFI is of the opinion that market makers should be exempt from Order to Trade Ratios, as stated in our answer to Q304.

**Q283. *In which cases should a market operator be entitled to close the number of firms taking part in a market making scheme?***

Generally speaking, AMAFI considers that liquidity attracts liquidity and that the idea of capping the number of market makers is counterproductive.

In our view, the tendency to consider that the liquidity brought by market making is not true liquidity is not justified: even if this liquidity is not “natural”, it is still real liquidity. The more market makers, the better for the market in general since they contribute to price formation transparency, market efficiency and competition.

**Q284. *Do you agree that the market making requirements in Articles 17 and 48 of MiFID II are mostly relevant for liquid instruments? If not, please elaborate how you would apply the requirements in Articles 17 and 48 of MiFID II on market making schemes/agreements/strategies to illiquid instruments.***

Yes. AMAFI agrees that the market making requirements in Article 17 and 48 of MiFID II are mostly relevant for liquid instruments.

**Q285. *Would you support any other assessment of liquidity different to the one under Article 2(1)(17) of MiFIR? Please elaborate.***

No. AMAFI believes that it is important to use the same assessment, for the sake of simplicity.

**Q286. What should be deemed as a sufficient number of investment firms participating in a market making agreement?**

AMAFI does not think a sufficient number of investment firms participating in a market making agreement can be set for all the different trading venues, which face very diverse situations.

**Q287. What would be an appropriate market share for those firms participating in a market making agreement?**

As stated above, AMAFI believes that such a control of the share would be impractical and counterproductive.

**Q288. Do you agree that market making schemes are not required when trading in the market via a market making agreement exceeds this market share?**

No. AMAFI disagrees with the setting of such a limit.

**Q289. In which cases should a market operator be entitled to close the number of firms taking part in a market making scheme?**

In general, AMAFI does not agree with the approach proposed by ESMA on this question. We consider that market forces deliver the intended outcome

#### **4.5. Order-to-transaction ratio (Article 48 of MiFID II)**

**Q290. Do you agree with the types of messages to be taken into account by any OTR?**

AMAFI considers the rules governing the OTR computation, though sensible, should be further specified in order to get a homogeneous treatment at the Union level.

For example, some markets may manage the amendment of an order as the cancellation of the existing order and the submission of a new order, which would be counted as two messages, while other markets may only consider the modification of the orders as such. Furthermore, some order types encompass by nature features that trigger automatic modifications or cancellations (fill or kill, immediate or cancel, peg orders, etc.), and their treatment may differ.

Then, it appears to us that ESMA should ensure an homogeneous treatment for such order types across European markets. AMAFI is also of the opinion that, with regards to the primary purpose of the OTR computation, which is to make sure that instructions sent by the market participants do not saturate the system capacity, only messages sent by the participants should be taken into account, while messages directly induced by the order type shall be excluded.

**Q291. What is your view in taking into account the value and/or volume of orders in the OTRs calculations? Please provide:**

In AMAFI's view, it is important to take into account the value of the orders so as to limit gaming possibilities. The value would give better information than the volume, since a volume of exchange considered as abnormal can be very different from instrument to instrument.

**Q292. Should any other additional elements be taken into account to calibrate OTRs? If yes, please provide an explanation of why these variables are important.**

AMAFI considers that OTRs should be computed for each type of instruments. Otherwise, we believe that the ratios would lack significance and can convey misleading information.

**Q293. Do you agree with the proposed scope of the OTR regime under MiFID II (liquid cash instruments traded on electronic trading systems)?**

Yes. AMAFI agrees with the proposed scope of the OTR regime under MiFID II.

**Q294. Do you consider that financial instruments which reference a cash instrument(s) as underlying could be excluded from the scope of the OTR regime?**

AMAFI considers that financial instruments which reference a cash instrument as underlying could be excluded from the scope of the OTR regime.

**Q295. Would you make any distinction between instruments which have a single instrument as underlying and those that have as underlying a basket of instruments? Please elaborate.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q296. Do you agree with considering within the scope of a future OTR regime only trading venues which have been operational for a sufficient period in the market?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q297. If yes, what would be the sufficient period for these purposes?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q298. What is your view regarding an activity floor under which the OTR regime would not apply and where could this floor be established?**

AMAFI considers that an activity floor is a pointless provision, since it can easily be circumvented through the multiplication of memberships.

**Q299. Do you agree with the proposal above as regards the method of determining the OTR threshold?**

No. AMAFI is not in agreement with the proposal regarding the determination of the OTR threshold based on a multiplier of the average OTR measured on a venue.

In our view, the OTR threshold can be set by using a multiple of the standard deviation.

**Q300. In particular, do you consider the approach to base the OTR regime on the 'average observed OTR of a venue' appropriate in all circumstances? If not, please elaborate.**

AMAFI considers that the approach to base the OTR regime on the 'average OTR of a venue' is not appropriate in all circumstances.

**Q301. Do you believe the multiplier  $x$  should be capped at the highest member's OTR observed in the preceding period?**

No. AMAFI does not agree with this approach.

**Q302. In particular, what would be in your opinion an adequate multiplier  $x$ ? Does this multiplier have to be adapted according to the (group of) instrument(s) traded? If yes, please specify in your response the financial instruments/market segments you refer to.**

As stated in our answer to Q299, AMAFI is of the opinion that the standard deviation should be used.

**Q303. What is your view with respect to the time intervals/frequency for the assessment and review of the OTR threshold (annually, twice a year, other)?**

AMAFI agrees with the yearly assessment and review of the OTR threshold.

**Q304. What are your views in this regard? Please explain.**

According to AMAFI, it is of important that firms engaged in a market making agreement under Articles 17 and 48 of MiFID II should benefit from an exemption from the OTR regime, since their activity is useful for the rest of market participants and they would suffer from the application of these provisions.

Moreover, we are of the view that they should not be taken into account in the calculation. Hence we would favour the third option proposed by ESMA in point 20.

#### 4.6. Co-location (Article 48(8) of MiFID II)

**Q305. What factors should ESMA be considering in ensuring that co-location services are provided in a ‘transparent’, ‘fair’ and ‘non-discriminatory’ manner?**

AMAFI agrees that co-location services should be provided in a ‘transparent’, ‘fair’ and ‘non-discriminatory’ manner. We are of the view that, so as to ensure these characters, ESMA should consider the following factors:

- Non-discriminatory pricing:

Trading venues must publish or make available on demand their commercial policy including the list of prices as well as the objective conditions for accessing the co-location services.

In particular, these services should be available on a stand alone basis and not as bundled packages that may discriminate between market participants

- Transparency of data centre agreements:

Trading venues should make available clear documentation about their products and services with all relevant information including pricing. Under no circumstances should trading venues be allowed to inform only certain market participants of the existence of certain services. The fees charged to market participants must be uniform between market participants using the same services and should not discriminate against different classes of market participants – they should offer their services to all qualified participants on identical and transparent terms.

#### 4.7. Fee structures (Article 48 (9) of MiFID II)

**Q306. Do you agree with the approach described above?**

Yes. AMAFI considers that the approach proposed by ESMA is acceptable provided it is used as a basis for more transparency and hence more competition between markets, and not as a justification to directly interfere in the fee policy of the structure. The Association particularly approves of the point 8.i. since a large number of its members have complained about an increase in fees which has not been all the time clearly justified.

**Q307. Can you identify any practice that would need regulatory action in terms of transparency or predictability of trading fees?**

AMAFI considers that the question of market data is particularly contentious these days and needs particular attention.

**Q308. Can you identify any specific difficulties in obtaining adequate information in relation to fees and rebates that would need regulatory action?**

No. AMAFI is not aware of any specific difficulties in that field. We are of the view that any such difficulties are overcome by the requirement to publish.

We are supportive a marketplace that promotes transparency to all market participants in all aspects of operations, from execution to other services.

**Q309. Can you identify cases of discriminatory access that would need regulatory action?**

AMAFI does not have any information on this matter. We were only informed that in the past, there were cases of trading venues restricting faster access to vendors, and also of cases of discrimination on the FX market, which is outside of the remit of this consultation.

**Q310. Are there other incentives and disincentives that should be considered?**

Yes. AMAFI considers that the contentious discussion around the 'maker-taker' model and the on payments for order flow (PFOF) model could be explored by ESMA.

**Q311. Do any of the parameters referred to above contribute to increasing the probability of trading behaviour that may lead to disorderly and unfair trading conditions?**

No. AMAFI does not consider that the structural parameters of fee schedules are significant inducements one way or another to trading behaviour that might lead to increasing the probability of disorderly trading conditions.

**Q312. When designing a fee structure, is there any structure that would foster a trading behaviour leading to disorderly trading conditions? Please elaborate.**

No, except perhaps for the case described in Q313.

**Q313. Do you agree that any fee structure where, upon reaching a certain threshold of trading by a trader, a discount is applied on all his trades (including those already done) as opposed to just the marginal trade executed subsequent to reaching the threshold should be banned?**

Yes. AMAFI considers that the so-called 'cliff edge' pricing, where upon reaching a certain threshold of trading by a trader, a discount is applied on all his trades, should be banned, since the risks it creates seem disproportionate to the benefits it could bring. It could indeed incentivise opportunistic behaviours, such as excessive messaging.

**Q314. Can you identify any potential risks from charging differently the submission of orders to the successive trading phases?**

No. AMAFI has not identified any potential risks from charging differently the submission of orders to the successive trading phases.

**Q315. Are there any other types of fee structures, including execution fees, ancillary fees and any rebates, that may distort competition by providing certain market participants with more favourable trading conditions than their competitors or pose a risk to orderly trading and that should be considered here?**

AMAFI is not aware of any other types of fee structures which offer certain market participants with more favourable trading conditions than their competitors or pose a risk to orderly trading.

**Q316. Are there any discount structures which might lead to a situation where the trading cost is borne disproportionately by certain trading participants?**

No. AMAFI does not believe that there are any discount structures which might lead to a situation where the trading cost is borne disproportionately by certain trading participants.

**Q317. For trading venues charging different trading fees for participation in different trading phases (i.e. different fees for opening and closing auctions versus continuous trading period), might this lead to disorderly trading and if so, under which circumstances would such conditions occur?**

It is not necessarily the case that charging different fees for different trading phases will lead to disorderly markets.

However, AMAFI notes that there may be incidences where a trading venue may be able to use its leverage in trading phases where it has the monopoly, exerting pricing power, which would lead to an anti-competitive market. This is also the case for small and mid cap markets where there is no actual competition within trading venues.

**Q318. Should conformance testing be charged?**

No. AMAFI is not of the view that trading venues should charge for technical conformance testing, since it is a mandatory step to confirm a system's functionality.

**Q319. Should testing of algorithms in relation to the creation or contribution of disorderly markets be charged?**

AMAFI considers that charges for the testing of algorithms should not be a revenue generating product, as costs for investment firms in complying with regulatory requirements must be reasonable. Any charges should be nominal, only to cover the provider's costs.

**Q320. Do you envisage any scenario where charging for conformance testing and/or testing in relation to disorderly trading conditions might discourage firms from investing sufficiently in testing their algorithms?**

Yes. AMAFI considers that if the cost is unreasonable or disproportionate, it can discourage firms from investing sufficiently in testing their algorithms.

**Q321. Do you agree with the approach described above?**

No. AMAFI strongly disagree with point iii concerning rebates and penalties. In our view, the market maker, as in any commercial contract, is paid for performance: if he fails to meet his contractual obligations, he does not receive rebates. We believe that imposing a penalty for lack of performance, on top of the missed rebates (which would result in a double penalty), will have a profoundly negative impact on the business case of providing liquidity, because many market maker can reconsider and give up their important role, while deterring new entrants.

Apart from this question of penalties, we agree with points i and ii, and we note that effective measures to monitor performance is already market practice

**Q322. How could the principles described above be further clarified?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q323. Do you agree that and OTR must be complemented with a penalty fee?**

Yes. AMAFI agrees that an OTR must be complemented with a penalty fee.

Also, we consider that, when the breach of the OTR is the result of an exceptional circumstance, no penalty fee should be imposed on any investment firm.

Moreover, under no circumstances do we believe that the breach of an OTR should lead to a suspension or limitation of the trading, since this can trigger even more risks.

**Q324. In terms of the approach to determine the penalty fee for breaching the OTR, which approach would you prefer? If neither of them are satisfactory for you, please elaborate what alternative you would envisage.**

AMAFI prefers option 1. There would be risks in applying a single penalty fee model, since each platform and its products can vary greatly.

**Q325. Do you agree that the observation period should be the same as the billing period?**

Yes. AMAFI agrees that the observation period should be the same as the billing period.

**Q326. Would you apply economic penalties only when the OTR is systematically breached? If yes, how would you define “systematic breaches of the OTR”?**

Yes. AMAFI agrees with ESMA's approach on the application of economic penalties only when the OTR is systematically breached. We are of the view that the definition of “systematic breaches of the OTR” should be left to trading venues.

**Q327. Do you consider that market makers should have a less stringent approach in terms of penalties for breaching the OTR?**

As stated above in our answer to Q304, AMAFI considers that market makers should be exempt from any OTR regime.

**Q328. Please indicate which fee structure could incentivise abusive trading behaviour.**

Apart from the 'cliff edge' pricing model presented above, AMAFI does not see any fee structure which could incentivise abusive trading behaviour.

Broadly speaking, AMAFI is of the view that the parameters of fee structures are not significant inducements one way or another to market abuse.

**Q329. In your opinion, are there any current fee structures providing these types of incentives? Please elaborate.**

As for today, AMAFI is not aware of any fee structure currently used by trading venue that has triggered participants to engage in abusive trading behaviour.

#### **4.8. Tick sizes (Article 48(6) and Article 49 of MiFID II)**

**Q330. Do you agree with the general approach ESMA has suggested?**

AMAFI agrees with the general approach suggested by ESMA and its general assessment. We share the view of ESMA that the lack of harmonisation and the risk of a "race to the bottom" can have detrimental effects on markets and should be prevented. That is why we support the introduction of a new regime, and since we consider that tick sizes can be a good means to make the market structure change, and that a moderate increase of viscosity is desirable in the current context.

Considering that, we would like to emphasise that reforms in that field, though certainly necessary, should be introduced carefully, and that we strongly recommend a step-by-step approach, in order to avoid unintended and potentially detrimental consequences for the market participants and at large for the rest of the economy, with an impact on liquidity which is difficult to measure accurately. The lack of track records in that field, or when available the contradictory or patchy results of experiences or surveys, suggest that these changes should be introduced in a phased manner, with regular testing and a possibility to step back if needed.

**Q331. Do you agree with adopting the average number of daily trades as an indicator for liquidity to satisfy the liquidity requirement of Article 49 of MiFID II? Are there any other methods/liquidity proxies that allow comparable granularity and that should be considered?**

AMAFI considers that the adopting of the average number of daily trades as a proxy for liquidity in this specific section makes sense: it is indeed the best indicator of liquidity in the context of Article 49.

As stated in point 4.8.13 of the Discussion Paper, it has several qualities: it allows granularity for the calibration of the tick size, is easily observable, is stable and does not constitute redundant information.

We would like to underline that this indicator would also be consistent with the definition of Article 2(17)(b) of MiFIR, even if the liquidity indicator in Article 49 does not target the same objective as the aforementioned definition.

**Q332. *In your view, what granularity should be used to determine the liquidity profile of financial instruments? As a result, what would be a proper number of liquidity bands?***

In AMAFI's view, the number of liquidity bands should be set between 3 and 5. We consider that the granularity should be set so that:

- There are not too many ranges of liquidity: the tick-size regime must remain simple and manageable by all market players; it is also important for each liquidity band to comprise enough instruments in order to have the possibility to conduct relevant statistical analysis (especially considering the need of impact analyses);
- There are not too few ranges of liquidity, which should prevent, in particular, a too large impact on tick size of a move from one band to the next, which could arise if there are too few ranges and could lead to disruptive effects on the trading activity.

**Q333. *What is your view on defining the trade-off between constraining the spread without increasing viscosity too much on the basis of a floor-ceiling mechanism?***

AMAFI considers that when discussing the optimal balance between liquidity aggregation and the increasing viscosity, we must take into account the recent evolution of equity market microstructure and keep in mind clear objectives.

After the entry into force of MIF I, tick sizes have been used as a competitive instrument between venues: lowered tick sizes would attract certain arbitrage flows (the cost of over-bidding is directly correlated to tick sizes), that in return would attract agency execution flow, under the constraint of best execution.

This led to a massive fall of tick sizes (thus, they got divided by 10 on most stocks between 2006 and the FESE agreement in 2009), with reduced spreads (which can be seen as a benefit for each investor willing to buy or sell a stock), but also less stability in the price formation process, since liquidity aggregates on far more prices, and hence in far lower quantities.

As reaffirmed in Q300, AMAFI considers that the reform of the tick size regime must aim at ending the decrease in tick sizes. We reckon that a moderate increase of tick sizes could have positive effects for equity markets.

This being stated, we agree that the best indicator to calibrate the tick size in an optimal way is to use the spread to tick ratio, which should be set at a moderate level.

**Q334. *What do you think of the proposed spread to tick ratio range?***

AMAFI agrees that the spread to tick ratio is the best indicator to define the optimal level of viscosity for a given stock, as mentioned in Q333.

Nevertheless, we believe that the concept of spread should be specified, because it is only meaningful when attached to a minimum available size: a narrow bid-ask spread for minimal available sizes is less relevant than the effective spread for a tradable size. That is to say that we are of the opinion that tick sizes should be calibrated by taking into account volume-based spreads to tick ratio. In that instance, the spread should be measured as the effective spread for volumes which should be a multiple of the Standard Market Size for the considered instrument.

Considering the proposed indicator (e.g. the ratio between the observable bid-ask spread and the tick size, regardless of the size available at the best limits), we estimate, after consultation of our members, that, for liquid instruments, the correct ration would be around 1.5, and should not fall below 1.2 or exceed 2.0.

**Q335. *In your view, for the tick size regime to be efficient and appropriate, should it rely on the spread to tick ratio range, the evolution of liquidity bands, a combination of the two or none of the above?***

In AMAFI's opinion, the tick size regime should be based on a targeted spread to tick ratio range, and that liquidity bands and price bands should then be established to build categories as homogenous as possible. As answered in Q332, this advocates for 3 to 5 liquidity bands.

These conclusion stem from our views exposed above on the need to get a table as simple as possible to implement, with enough bands (both in terms of price and liquidity) to avoid huge steps when moving from one band to the other, and that will aim at keeping the spread-to-tick ratio (at least for most liquid stocks) in a range between 1.2 and 2.0.

**Q336. *What is your view regarding the common tick size table proposed under Option 1? Do you consider it easy to read, implement and monitor? Does the proposed two dimensional tick size table (based on both the liquidity profile and price) allow applying a tick size to a homogeneous class of stocks given its clear-cut price and liquidity classes?***

AMAFI considers that the tick size table proposed under Option 1 is acceptable and easy to read, even if operationally speaking it is a little more complex than the FESE tables currently applied which only comprise two liquidity bands. We consider that this should not have a big impact on market players, since there is no requirement for the liquidity bands to be managed on a real-time basis, as it is already the case with FESE tables currently used.

Implementation and monitoring should not be an issue.

The details provided in Appendix 4.8.1. (specifically with regards the original table and the refined table) give clear indication that the price and liquidity bands have been properly set so as to define homogeneous populations of stocks from a spread to tick point of view, which is welcomed by AMAFI.

**Q337. *What is your view regarding the determination of the liquidity and price classes?***

For the determination of the liquidity and price classes, AMAFI considers that the levels chosen have been appropriately set to define homogeneous populations in terms of spread to tick ratio.

**Q338. Considering that market microstructure may evolve, would you favour a regime that allows further calibration of the tick size on the basis of the observed market microstructure?**

Considering the recent past evolutions, AMAFI reckons that (i) equity market microstructure can change quite rapidly in response to context modifications and that (ii) in this field, regulations can have unintended effects.

For instance, while regulators accepted to introduce some competition amongst trading venues through MiFID I, they did not provide for the impact on tick sizes, which got divided by 40, or Average Value Trades, which got divided by more than 3. This can explain why they had not prepared any reactive instrument for review.

That is the reason why we expressed in Q330 our view that any reform on market microstructure comes with a possibility to be corrected in case of negative effects.

As a matter of example, we believe that, while regulators were volunteer in introducing some competition amongst trading platforms through the implementation of MiFID, they did not foresee the impact on tick sizes (that got divided by 10) or Average Value Trades (that got divided by more than 3), hence the reason why they had not built any reactive tool for review and remediation. It then appears essential to monitor the consequences of a reform during an observation period. A provisional period or a limited scope could be envisaged.

**Q339. In your view, does the tick size regime proposed under Option 1 offer sufficient predictability and certainty to market participants in a context where markets are constantly evolving (notably given its calibration and monitoring mechanisms)?**

AMAFI opines that the tick size regime proposed under Option 1 tackle the main problems of market structure and can have positive effects. As it is presently designed, its calibration mechanism seems to offer a good level of predictability for market players.

Nevertheless, as mentioned in our answer to Q338, past experiences revealed the potentially massive unintended effects of regulations in that field. Consequently, we reiterate our backing for a limited scope before the full implementation of any reform in market microstructure and possibilities to correct its possible detrimental effects, after an observation time.

Testing in real market conditions on a sample of stocks should be a preliminary exercise for any new tick size regime.

**Q340. The common tick size table proposed under Option 1 provides for re-calibration while constantly maintaining a control sample. In your view, what frequency would be appropriate for the revision of the figures (e.g., yearly)?**

AMAFI considers that a yearly recalibration would be suitable for the tick size regime proposed in Option 1.

More fundamentally, as previously expressed in Q339, we are of the view that a change in the tick size regime should come with an array of tests on a sample of stocks before being implemented on a European basis.

**Q341. In your view, what is the impact of Option 1 on the activity of market participants, including trading venue operators? To what extent, would it require adjustments?**

In AMAFI's view, the impact of Option 1 on the activity of market participants would be:

- globally speaking, an increase in tick sizes;
- for most liquid stocks, which represent close to 95% of European equity flows, a rather balanced effect, with 1/3 of the stocks not registering a change in tick size, 1/3 an increase (median impact \*2) and 1/3 a decrease (median impact /2);
- an impact probably different in each country, notably because all countries do not use the same FESE tables.

It remains difficult to foresee the impact of these changes on the activity of market participants, even if the magnitude of changes being relatively moderate, one would expect that the impact on their activity would not be massive.

That should not prevent authorities, such as requested in Q339, to run a test in real conditions so as to avoid unpredictable and harmful consequences.

**Q342. Do you agree that some equity-like instruments require an equivalent regulation of tick sizes as equities so as to ensure the orderly functioning of markets and to avoid the migration of trading across instrument types based on tick size? If not, please outline why this would not be the case.**

AMAFI considers that the most intuitive answer would be to apply the same tick size regime as for equities to other equity-like instruments.

Since MiFID II tries to put an end to the competition based on tick sizes amongst trading venues, it seems sensible to ensure that the new tick size regime does not create risks of migration of trading across instrument types.

According to us, the reflection should be global and consider both equity-like instrument and non-equity. It seems important to pay particular attention to the treatment of instruments that are equivalent to shares (Depositary Receipts, 'German Genussscheine', Spanish 'Participaciones Preferentes', etc), and also to instruments based on equity underlying (Exchange Trade Funds, Securitised Derivatives, Futures, Options, etc.). A clarification on the regime of the first of these two groups seems more urgent than for other instruments, so as to limit risks of arbitrage.

**Q343. Are there any other similar equity-like instruments that should be added / removed from the scope of tick size regulation? Please outline the reasons why such instruments should be added / removed?**

AMAFI recognizes that a change on the equity tick size regime will have side effects on other instruments, certainly on the products mentioned in our answer to Q342.

In our view, these effects should be monitored with attention, and should be taken into account in case a recalibration of the regime is engaged. This adds another reason for a step-by-step implementation of the new regime, which should be tested so as to check that all induced.

For instance, market making strategies on futures may be impacted by a change in the tick size used for equities, since the spread for the futures (be it single stock futures or index futures) and the spread for the underlying stock(s) – e.g. the hedge – may evolve differently afterwards, which could impact the profitability of the activity and the appetite for risk of market makers.

**Q344. Do you agree that depositary receipts require the same tick size regime as equities’?**

AMAFI believes that, as stated above, it is essential to make the equity-like regime coherent with regime applied to equity. As a consequence, we consider that depositary receipts should follow the same tick size regime as equities.

**Q345. If you think that for certain equity-like instruments (e.g. ETFs) the spread-based tick size regime<sup>1</sup> would be more appropriate, please specify your reasons and provide a detailed description of the methodology and technical specifications of this alternative concept.**

AMAFI considers the regime defined for equities should apply to ETFs.

We reckon that, as for other instruments based on equity underlying, the tick size regime should take into account the own liquidity of the instrument, but also the liquidity of the underlying. For the choice of the tick size, we consider that the highest liquidity level between the ETF and its underlying basket should be taken into account.

For instance:

- for an ETF with low intrinsic liquidity but based on a liquid basket – this can be the case for a EUROSTOXX 50 with limited Asset Under Management –, the tick size should be dictated by the liquidity of the basket,
- conversely, the tick size for a liquid ETF on an emerging basket should be based on the intrinsic liquidity of the ETF.

This option would ensure that tick sizes differences alone do not create arbitrages between similar ETFs from different issuers.

**Q346. If you generally (also for liquid and illiquid shares as well as other equity-like financial instruments) prefer a spread-based tick size regime<sup>2</sup> vis-à-vis the regime as proposed under Option 1 and tested by ESMA, please specify the reasons and provide the following information:**

AMAFI believes, as stated above, that the tick size regime of Option 1 is acceptable provided it is duly tested.

In any case, as detailed in our answers to Q339 to Q343, regardless of the regime finally retained, we strongly recommend running a test in real conditions on a panel of stocks, before implementing the new tick size regime on a European basis.

<sup>1</sup> Please see the description of Option 2 regarding tick sizes below.

<sup>2</sup> Please see the description of Option 2 regarding tick sizes below.

**Q347. Given the different tick sizes currently in operation, please explain what your preferred type of tick size regulation would be, giving reasons why this is the case.**

AMAFI does not see any theoretical reasons not to apply the same tick size regime to equity-like instruments as for equities.

As stated above, we recommend strongly implementing the new regime first on a sample of instruments, which would include equity-like instruments, so as to check that any unintended effect is identified and properly managed.

**Q348. Do you see a need to develop a tick size regime for any non-equity financial instrument? If yes, please elaborate, indicating in particular which approach you would follow to determine that regime.**

AMAFI considers that the new tick size regime on equity would have side effects on the activity of some related non-equity instruments, as mentioned in our answer to Q343. This could concern mainly securitised derivatives and futures, by impacting the microstructure for the natural hedge of these instruments.

These side effects may not require the definition of a tick size regime, but we are of the opinion that they should be carefully monitored, and that the implementation of the new regime on a sample of instruments would be ideal in order to check that any unintended effect is identified and properly managed.

**Q349. Do you agree with assessing the liquidity of a share for the purposes of the tick size regime, using the rule described above? If not, please elaborate what criteria you would apply to distinguish between liquid and illiquid instruments.**

AMAFI is of the opinion that the liquidity indicator of Article 49 should be consistent with the definition of liquidity in Article 2(1)(17)(b) of MiFIR.

Nevertheless, an alignment of the liquidity indicator of Article 49 on the definition of Article 2(1)(17)(b) of MiFIR is not our preferred option, since it would not give enough granularity in the tick size table, and would in particular create massive changes on the tick size of instruments moving from the liquid to the illiquid category.

As detailed in our answer to Q332, AMAFI opines that the number of liquidity bands for the purpose of the new tick size regime should be set between 3 and 5.

**Q350. Do you agree with the tick sizes proposed under Option 2? In particular, should a different tick size be used for the largest band, taking into account the size of the tick relative to the price? Please elaborate.**

The tick sizes proposed under Option are derived from FESE Table 2, which is already implemented by one of the main European markets (London Stock Exchange).

AMAFI wonders what the Discussion targets with “the largest band”. If this relates to the price band above 100,000.00, we hardly see this as a material concern, since virtually no stock should be captured in that band.

**Q351. Should the tick size be calibrated in a more granular manner to that proposed above, namely by shifting a band which results in a large step-wise change?**

AMAFI considers that, in order to remain implementable, the new tick size must rely on a table with a reasonable number of liquidity and price bands.

This is especially relevant for price bands, as changes from one band to the other will determine tick size changes on an intra-day basis. We hence believe that the table proposed under Option 2 should not be refined further to the 20 price bands it already contains.

Regarding the liquidity dimension of the proposed table, as stated in our answer to Q349, we believe that more granularity could be useful with regards the liquidity bands.

**Q352. Do you agree with the above treatment for a newly admitted instrument? Would this affect the subsequent trading in a negative way?**

AMAFI wants to reiterate that a cautious approach would be welcome in order to implement smoothly a new tick size regime.

This should be particularly the case for newly admitted instruments, for which the price formation process may be more fragile than for other stocks. In order to favour stability in the price discovery for these instruments, we agree that they are considered as illiquid instruments during an initial calibration period.

Nota: we believe that this should apply whatever option is finally retained.

**Q353. Do you agree that a period of six weeks is appropriate for the purpose of initial calibration for all instruments admitted to the pan-European tick size regime under Option 2? If not, what would be the appropriate period for the initial calibration?**

AMAFI considers that a six weeks calibration period would be appropriate for all instruments admitted to the pan-European tick size regime under Option 2.

**Q354. Do you agree with the proposal of factoring the bid-ask spread into tick size regime through SAF? If not, what would you consider as the appropriate method?**

AMAFI has serious concerns with regards the "Spread Adjustment Factor" approach proposed under Option 2, as we think that this can lead to a new "race to the bottom" in terms of tick sizes.

We find that the proposed framework is rather ill-balanced with regards the impact of the SAF on tick sizes of stocks from 2017 onwards, since the outcome of any calibration exercise (be it after the 6 weeks initial calibration period or after each yearly review) can only be a decrease of the tick size, and never an increase.

In the end, we consider that the SAF approach would be appropriate only if the floor on spread-to-tick ratio is complemented by a ceiling that, for most liquid stocks, should not be above 2.0 to 2.5 (see our answer to Q356).

**Q355. Do you agree with the proposal to take an average bid-ask spread of less than two ticks as being too narrow? If not, what level of spread to ticks would you consider to be too narrow?**

AMAFI does not agree that the proposal to take an average bid-ask spread of less than two ticks as being too narrow.

As explained in our answer to Q334, we consider that the notion of bid-ask spread would deserve to be adjusted, as it only makes sense when only linked to a minimum available size: a narrow bid-ask spread for minimal available sizes is less relevant than the effective spread for a tradable size.

That is to say that we are of the opinion that tick sizes should be calibrated by taking into account volume-based-spreads to tick ratio. In that instance, the spread should be measured as the effective spread for volumes that should be a multiple of the Standard Market Size for the considered instrument.

Considering the bid-ask spread, our experience shows that, for liquid instruments, the ratio is correct around 1.5, and should not fall below 1.2 or exceed 2.0.

**Q356. Under the current proposal, it is not considered necessary to set an upper ceiling to the bid-ask spread, as the preliminary view under Option 2 is that under normal conditions the risk of the spread widening indefinitely is limited (and in any event a regulator may amend SAF manually if required). Do you agree with this view? If not, how would you propose to set an upper ceiling applicable across markets in the EU?**

AMAFI favours the setting of an upper ceiling to the spread to tick ratio. We believe that, for most liquid stocks, the average spread to tick ration should not be above 2.0 or 2.5.

Setting such a ceiling could prove useful to make sure that the tick sizes remain adapted to each instrument and that the viscosity in the order book does not fall below reasonable levels, that would harm the price formation process, even if theoretically, an abnormally important spread to tick ratio would create arbitrage opportunities, the realization of which would in turn reduce the spread.

**Q357. Do you have any concerns of a possible disruption which may materialise in implementing a review cycle as envisioned above?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q358. Do you agree that illiquid instruments, excluding illiquid cash equities, should be excluded from the scope of a pan-European tick size regime under Option 2 until such time that definitions for these instruments become available? If not, please explain why. If there are any equity-like instruments per Article 49(3) of MiFID II that you feel should be included in the pan-European tick size regime at the same time as for cash equities, please list these instruments together with a brief reason for doing so.**

AMAFI considers that a prudent approach has to be taken in defining a tick size regime for equity-like instruments, but we do not see strong rationale to exclude illiquid non-equity instruments from the scope of the tick size regime.

As detailed in our answers to questions Q342 to Q345, we believe that the tick size regime for equity like instruments should:

- depend on the type of instrument, making a clear difference between instruments that track the performance of a given share and other instruments,
- for instruments that track the performance of a given share, be based on the liquidity of that share,
- for other instruments, take into account both the intrinsic liquidity of the instrument and the liquidity of the underlying.

**Q359. Do you agree that financial instruments, other than those listed in Article 49(3) of MiFID II should be excluded from the scope of the pan-European tick size regime under Option 2 at least for the time being? If not, please explain why and which specific instruments do you consider necessary to be included in the regime.**

As stated in our answers to Q343 and Q348, AMAFI believes that – without regard to which option is retained in the end – the implementation of a new equity tick size regime could have side effects on the activity around some related non-equity instruments, specifically securitised derivatives and futures, by impacting the microstructure for the natural hedge of these instruments.

Such side effects may not require the definition of a tick size regime, but in any case we recommend implementing the new regime first on a sample of instruments, so as to check that any unintended effect is identified and properly managed.

**Q360. What views do you have on whether tick sizes should be revised on a dynamic or periodic basis? What role do you perceive for an automated mechanism for doing this versus review by the NCA responsible for the instrument in question? If you prefer periodic review, how frequently should reviews be undertaken (e.g. quarterly, annually)?**

AMAFI supports a periodic revision of tick sizes, rather than a dynamic mechanism, since the latter would require significant investments from all markets participants to adapt, and could produce significant unintended effects, with no easy method to limit these.

Given the variety of direct and indirect effects that will need to be monitored when reviewing tick sizes, and the need for an in-depth analysis of these effects, we believe that a yearly review would be appropriate.

## **5. Data publication and access**

---

### **5.1. General authorisation and organisational requirements for data reporting services (Article 61(4), MiFID II)**

**Q361. Do you agree that the guidance produced by CESR in 2010 is broadly appropriate for all three types of DRS providers?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q362. Do you agree that there should also be a requirement for notification of significant system changes?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q363. Are there any other general elements that should be considered in the NCAs' assessment of whether to authorise a DRS provider?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

## **5.2. Additional requirements for particular types of Data Reporting Services Providers**

**Q364. Do you agree with the identified differences regarding the regulatory treatment of ARMs.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q365. What other significant differences will there have to be in the standards for APAs, CTPs and ARMs?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

## **5.3. Technical arrangements promoting an efficient and consistent dissemination of information – Machine readability Article 64(6), MiFID II**

**Q366. Do you agree with the proposal to define machine-readability in this way? If not, what would you prefer?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

#### 5.4. Consolidated tape providers

- Q367.** *Should the tapes be offered to users on an instrument-by-instrument basis, or as a single comprehensive tape, or at some intermediate level of disaggregation? Do you think that transparency information should be available without the need for value-added products to be purchased alongside?*

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

- Q368.** *Are there other factors or considerations regarding data publication by the CTP that are not covered in the standards for data publication by APAs and trading venues and that should be taken into account by ESMA?*

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

- Q369.** *Do you agree that CTPs should be able to provide the services listed above? Are there any others that you think should be specified?*

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

#### 5.5. Data disaggregation

- Q370.** *Do you agree that venues should not be required to disaggregate by individual instrument?*

AMAFI agrees that venues should not be required to disaggregate by individual instrument, which would be far too cumbersome.

- Q371.** *Do you agree that venues should be obliged to disaggregate their pre-trade and post-trade data by asset class?*

AMAFI supports the obligation for venues to disaggregate of their pre-trade and post-trade data by asset class.

- Q372.** *Do you believe the list of asset classes proposed in the previous paragraph is appropriate for this purpose? If not, what would you propose?*

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q373. Do you agree that venues should be under an obligation to disaggregate according to the listed criteria unless they can demonstrate that there is insufficient customer interest?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q374. Are there any other criteria according to which it would be useful for venues to disaggregate their data, and if so do you think there should be a mandatory or comply-or-explain requirement for them to do so?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q375. What impact do you think greater disaggregation will have in practice for overall costs faced by customers?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

## **5.6. Identification of the investment firm responsible for making public the volume and price transparency of a transaction (Articles 20(3) (c) and 21(5)(c), MiFIR)**

**Q376. Please describe your views about how to improve the current trade reporting system under Article 27(4) of MiFID Implementing Regulation.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

## **5.7. Access to CCPs and trading venues (Articles 35-36, MiFIR)**

**Q377. Do you agree that exceeding the planned capacity of the CCP is grounds to deny access?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q378. How would a CCP assess that the anticipated volume of transactions would exceed its capacity planning?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q379. Are there other risks related to the anticipated volume of transactions that should be considered? If so, how would such risks arise from the provision of access?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q380. Do you agree that exceeding the planned capacity of the CCP is grounds to deny access?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q381. How would a CCP assess that the number of users expected to access its systems would exceed its capacity planning?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q382. Are there other risks related to number of users that should be considered? If so, how would such risks arise from the provision of access?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q383. In what way could granting access to a trading venue expose a CCP to risks associated with a change in the type of users accessing the CCP? Are there any additional risks that could be relevant in this situation?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q384. How would a CCP establish that the anticipated operational risk would exceed its operational risk management design?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q385. Are there other risks related to arrangements for managing operational risk that should be considered? If so, how would such risks arise from the provision of access?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q386. Given there will be costs to meeting an access request, what regard should be given to those costs that would create significant undue risk?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q387. To what extent could a lack of harmonization in certain areas of law constitute a relevant risk in the context of granting or denying access?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q388. Do you agree with the risks identified above in relation to complexity and other factors creating significant undue risks?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q389. Are there other risks related to complexity and other factors creating significant undue risks that should be considered? If so, how would such risks arise from the provision of access?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q390. Do you agree with the analysis above and the conclusion specified in the previous paragraph?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q391. To what extent would a trading venue granting access give rise to material risks because of anticipated volume of transactions and the number of users? Can you evidence that access will materially change volumes and the number of users?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q392. To what extent would a trading venue granting access give rise to material risks because of arrangements for managing operational risk?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q393. Given there will be costs to meeting an access request, what regard should be given to those costs that would create significant undue risk?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q394. Do you believe a CCP's model regarding the acceptance of trades may create risks to a trading venue if access is provided? If so, please explain in which cases and how.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q395. Could granting access create unmanageable risks for trading venues due to conflicts of law arising from the involvement of different legal regimes?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q396. Are there other risks related to complexity and other factors creating significant undue risks that should be considered? If so, how would such risks arise from the provision of access?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q397. Do you agree with the conditions set out above? If you do not, please state why not.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q398. Are there any other conditions CCPs and trading venues should include in their terms for agreeing access?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q399. Are there any other fees that are relevant in the context of Articles 35 and 36 of MiFIR that should be analysed?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q400. Are there other considerations that need to be made in respect of transparent and non-discriminatory fees?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q401. Do you consider that the proposed approach adequately reflects the need to ensure that the CCP does not apply discriminatory collateral requirements? What alternative approach would you consider?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q402. Do you see other conditions under which netting of economically equivalent contracts would be enforceable and ensure non-discriminatory treatment for the prospective trading venue in line with all the conditions of Article 35(1)(a)?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q403. The approach above relies on the CCP's model compliance with Article 27 of Regulation (EU) No 153/2013, do you see any other circumstances for a CCP to cross margin correlated contracts? Do you see other conditions under which cross margining of correlated contracts would be enforceable and ensure non-discriminatory treatment for the prospective trading venue?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q404. Do you agree with ESMA that the two considerations that could justify a national competent authority in denying access are (a) knowledge it has about the trading venue or CCP being at risk of not meeting its legal obligations, and (b) liquidity fragmentation? If not, please explain why.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q405. How could the above mentioned considerations be further specified?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q406. Are there other conditions that may threaten the smooth and orderly functioning of the markets or adversely affect systemic risk? If so, how would such risks arise from the provision of access?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q407. Do you agree with ESMA's proposed approach that where there are equally accepted alternative approaches to calculating notional amount, but there are notable differences in the value to which these calculation methods give rise, ESMA should specify the method that should be used?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q408. Do you agree that the examples provided above are appropriate for ESMA to adopt given the purpose for which the opt-out mechanism was introduced? If not, why, and what alternative(s) would you propose?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q409. For which types of exchange traded derivative instruments do you consider there to be notable differences in the way the notional amount is calculated? How should the notional amount for these particular instruments be calculated?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q410. Are there any other considerations ESMA should take into account when further specifying how notional amount should be calculated? In particular, how should technical transactions be treated for the purposes of Article 36(5), MiFIR?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

## **5.8. Non-discriminatory access to and obligation to license benchmarks**

**Q411. Do you agree that trading venues require the relevant information mentioned above? If not, why?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q412. *Is there any other additional information in respect of price and data feeds that a trading venue would need for the purposes of trading?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q413. *Do you agree that CCPs require the relevant information mentioned above? If not, why?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q414. *Is there any other additional information in respect of price and data feeds that a CCP would need for the purposes of clearing?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q415. *Do you agree that trading venues should have access to benchmark values as soon as they are calculated? If not, why?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q416. *Do you agree that CCPs should have access to benchmark values as soon as they are calculated? If not, why?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q417. *Do you agree that trading venues require the relevant information mentioned above? If not, why?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q418. *Is there any other additional information in respect of composition that a trading venue would need for the purposes of trading?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q419. Do you agree that CCPs require the relevant information mentioned above? If not, why?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q420. Is there any other additional information in respect of composition that a CCP would need for the purposes of clearing?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q421. Do you agree that trading venues and CCPs should be notified of any planned changes to the composition of the benchmark in advance? And that where this is not possible, notification should be given as soon as the change is made? If not, why?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q422. Do you agree that trading venues need the relevant information mentioned above? If not, why?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q423. Is there any other additional information in respect of methodology that a trading venue would need for the purposes of trading?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q424. Do you agree that CCPs require the relevant information mentioned above? If not, why?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q425. Is there any other additional information in respect of methodology that a CCP would need for the purposes of clearing?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q426. *Is there any information in respect of the methodology of a benchmark that a person with proprietary rights to a benchmark should not be required to provide to a trading venue or a CCP?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q427. *Do you agree that trading venues require the relevant information mentioned above (values, types and sources of inputs, used to develop benchmark values)? If not, why?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q428. *Is there any other additional information in respect of pricing that a trading venue would need for the purposes of trading?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q429. *In what other circumstances should a trading venue not be able to require the values of the constituents of a benchmark?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q430. *Do you agree that CCPs require the relevant information mentioned above? If not, why?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q431. *Is there any other additional information in respect of pricing that a CCP would need for the purposes of clearing?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q432. *In what other circumstances should a CCP not be able to require the values of the constituents of a benchmark?***

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q433. Do you agree that trading venues require the additional information mentioned above? If not, why?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q434. Do you agree that CCPs require the additional information mentioned above? If not, why?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q435. Is there any other information that a trading venue would need for the purposes of trading?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q436. Is there any other information that a CCP would need for the purposes of clearing?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q437. Do you agree with the principles described above? If not, why?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q438. Do users of trading venues need non-publicly disclosed information on benchmarks?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q439. Do users of CCPs need non-publicly disclosed information on benchmarks?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q440. Where information is not available publicly should users be provided with the relevant information through agreements with the person with proprietary rights to the benchmark or with its trading venue / CCP?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q441. Do you agree with the conditions set out above? If not, please state why not.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q442. Are there any other conditions persons with proprietary rights to a benchmark and trading venues should include in their terms for agreeing access?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q443. Are there any other conditions persons with proprietary rights to a benchmark and CCPs should include in their terms for agreeing access?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q444. Which specific terms/conditions currently included in licensing agreements might be discriminatory/give rise to preventing access?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q445. Do you have views on how termination should be handled in relation to outstanding/significant cases of breach?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q446. Do you agree with the approach ESMA has taken regarding the assessment of a benchmark's novelty, i.e., to balance/weight certain factors against one another? If not, how do you think the assessment should be carried out?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q447. Do you agree that each newly released series of a benchmark should not be considered a new benchmark?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q448. Do you agree that the factors mentioned above could be considered when assessing whether a benchmark is new? If not, why?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q449. Are there any factors that would determine that a benchmark is not new?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

## **6. Requirements applying on and to trading venues**

---

### **6.1. Admission to Trading**

**Q450. What are your views regarding the conditions that have to be satisfied in order for a financial instrument to be admitted to trading?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q451. In your experience, do you consider that the requirements being in place since 2007 have worked satisfactorily or do they require updating? If the latter, which additional requirements should be imposed?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q452. More specifically, do you think that the requirements for transferable securities, units in collective investment undertakings and/or derivatives need to be amended or updated? What is your proposal?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q453. How do you assess the proposal in respect of requiring ETFs to offer market making arrangements and direct redemption facilities at least in cases where the regulated market value of units or shares significantly varies from the net asset value?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q454. Which arrangements are currently in place at European markets to verify compliance of issuers with initial, on-going and ad hoc disclosure obligations?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q455. What are your experiences in respect of such arrangements?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q456. What is your view on how effective these arrangements are in performing verification checks?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q457. What arrangements are currently in place on European regulated markets to facilitate access of members or participants to information being made public under Union law?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q458. What are your experiences in respect of such arrangements?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q459. How do you assess the effectiveness of these arrangements in achieving their goals?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q460. Do you agree with that, for the purpose of Article 51 (3) (2) of MiFID II, the arrangements for facilitating access to information shall encompass the Prospectus, Transparency and Market Abuse Directives (in the future the Market Abuse Regulation)? Do you consider that this should also include MiFIR trade transparency obligations?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

## **6.2. Suspension and Removal of Financial Instruments from Trading -connection between a derivative and the underlying financial instrument and standards for determining formats and timings of communications and publications**

**Q461. Do you agree with the specifications outlined above for the suspension or removal from trading of derivatives which are related to financial instruments that are suspended or removed?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q462. Do you think that any derivatives with indices or a basket of financial instruments as an underlying the pricing of which depends on multiple price inputs should be suspended if one or more of the instruments composing the index or the basket are suspended on the basis that they are sufficiently related? If so, what methodology would you propose for determining whether they are “sufficiently related”? Please explain.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q463. Do you agree with the principles outlined above for the timing and format of communications and publications to be effected by trading venue operators?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

## **7. Commodity derivatives**

---

### **7.1. Ancillary Activity**

**Q464. Do you see any difficulties in defining the term ‘group’ as proposed above?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q465. What are the advantages and disadvantages of the two alternative approaches mentioned above (taking into account non-EU activities versus taking into account only EU activities of a group)? Please provide reasons for your answer.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q466. What are the main challenges in relation to both approaches and how could they be addressed?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q467. Do you consider there are any difficulties concerning the suggested approach for assessing whether the ancillary activities constitute a minority of activities at group level? Do you consider that the proposed calculations appropriately factor in activity which is subject to the permitted exemptions under Article 2(4) MiFID II? If no, please explain why and provide an alternative proposal.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q468. Are there other approaches for assessing whether the ancillary activities constitute a minority of activities at group level that you would like to suggest? Please provide details and reasons.**

See answer to question 469.

**Q469. How should “minority of activities” be defined? Should minority be less than 50% or less (50 - x)%? Please provide reasons.**

AMAFI cannot agree with ESMA’s proposal.

It ignores the goal at stake as defined by level 1 legislator. With MiFID 2, the political choice has been to deeply reinforce the legal framework within which investment firms provide financial market services and products. The willingness was to prevent the financial system from systemic risk, to improve the good functioning of the market and, last but not the least, to increase the level of protection benefitting to investors. To this end, one of the numerous questions dealt by level 1 was how to treat market participants in commodities markets. To avoid regulatory arbitrages, and considering the importance of commodities markets for end users, it has been decided that all these market participants shall be submitted to MiFID 2, except those for which this activity “*is an ancillary activity to their main business*”.

As a result, a lot of market participants are brought under MiFID, in a cumbersome process, leading them to make important changes to their systems and procedures. This is clear from the experience of the credit institutions and investment firms that implemented MiFID 1 in 2007. This constraint has to be taken into account so as not to unduly destabilise companies that play a major role in the European economy. Nevertheless, it must not be used to challenge the directive’s fundamental principles.

In this context, the definition of ancillary activity is key for the determination of the scope of the regulation and to implement the political willingness expressed by level 1 legislator.

AMAFI does not put into question the legitimacy for excluding from the basis of calculation the capital employed for intra-group transactions, transactions in derivatives reducing commercial and treasury financing risks, and transactions entered into to fulfill obligations to provide liquidity.

But then, the remaining activity which will be assessed with regards to the overall activity at group level is limited and the percentage that will be retained has to be realistic. We are of the opinion that an ancillary activity is an activity exercised in addition to another but not as important.

Obviously, the figure of 50% is not realistic. Few cases, if not none, will fall within the scope of MiFID.

To put this figure in perspective, the French legislation allow the French credit institutions to carry out non banking activities and other connex activities provided that the annual revenue of those activities do not exceed 10 % of their net banking income (see Règlement n° 86-21 du 24 novembre 1986 relatif aux activités non bancaires).

Besides, as such, ESMA's proposal could be put into question to justice as not coherent with level 1 text.

Therefore, and given that a large number of transactions are excluded from the calculation basis, we suggest that, instead of 50%, ESMA proposes a 10% figure.

**Q470. Do you have a view on whether economic or accounting capital should be used in order to define the elements triggering the exemption from authorisation under MiFID II, available under Article 2(1)(j)? Please provide reasons.**

Due to the very short timeframe left for consultation, and considering the different priorities within the whole consultation, AMAFI is currently unable to answer it.

**Q471. If economic capital were to be used as a measure, what do you understand to be encompassed by this term?**

Due to the very short timeframe left for consultation, and considering the different priorities within the whole consultation, AMAFI is currently unable to answer it.

**Q472. Do you agree with the above assessment that the data available in the TRs will enable entities to perform the necessary calculations?**

Due to the very short timeframe left for consultation, and considering the different priorities within the whole consultation, AMAFI is currently unable to answer it.

**Q473. What difficulties do you consider entities may encounter in obtaining the information that is necessary to define the size of their own trading activity and the size of the overall market trading activity from TRs? How could the identified difficulties be addressed?**

Due to the very short timeframe left for consultation, and considering the different priorities within the whole consultation, AMAFI is currently unable to answer it.

**Q474. What do you consider to be the difficulties in defining the volume of the transactions entered into to fulfil liquidity obligations?**

Due to the very short timeframe left for consultation, and considering the different priorities within the whole consultation, AMAFI is currently unable to answer it.

**Q475. How should the volume of the overall trading activity of the firm at group level and the volume of the transactions entered into in order to hedge physical activities be measured? (Number of contracts or nominal value? Period of time to be considered?)**

Due to the very short timeframe left for consultation, and considering the different priorities within the whole consultation, AMAFI is currently unable to answer it.

**Q476. Do you agree with the level of granularity of asset classes suggested in order to provide for relative comparison between market participants?**

Due to the very short timeframe left for consultation, and considering the different priorities within the whole consultation, AMAFI is currently unable to answer it.

**Q477. What difficulties could there be regarding the aggregation of TR data in order to obtain information on the size of the overall market trading activity? How could these difficulties be addressed?**

Due to the very short timeframe left for consultation, and considering the different priorities within the whole consultation, AMAFI is currently unable to answer it.

**Q478. How should ESMA set the threshold above which persons fall within MiFID II's scope? At what percentage should the threshold be set? Please provide reasons for your response.**

Due to the very short timeframe left for consultation, and considering the different priorities within the whole consultation, AMAFI is currently unable to answer it.

**Q479. Are there other approaches for determining the size of the trading activity that you would like to suggest?**

Due to the very short timeframe left for consultation, and considering the different priorities within the whole consultation, AMAFI is currently unable to answer it.

**Q480. Are there other elements apart from the need for ancillary activities to constitute a minority of activities and the comparison between the size of the trading activity and size of the overall market trading activity that ESMA should take into account when defining whether an activity is ancillary to the main business?**

Due to the very short timeframe left for consultation, and considering the different priorities within the whole consultation, AMAFI is currently unable to answer it.

**Q481. Do you see any difficulties with the interpretation of the hedging exemptions mentioned above under Article 2(4)(a) and (c) of MiFID II? How could potential difficulties be addressed?**

Due to the very short timeframe left for consultation, and considering the different priorities within the whole consultation, AMAFI is currently unable to answer it.

**Q482. Do you agree with ESMA's proposal to take into account Article 10 of the Commission Delegated Regulation (EU) No 149/2013 supplementing EMIR in specifying the application of the hedging exemption under Article 2(4)(b) of MiFID II? How could any potential difficulties be addressed?**

Due to the very short timeframe left for consultation, and considering the different priorities within the whole consultation, AMAFI is currently unable to answer it.

**Q483. Do you agree that the obligations to provide liquidity under Article 17(3) and Article 57(8)(d) of MiFID II should not be taken into account as an obligation triggering the hedging exemption mentioned above under Article 2(4)(c)?**

Due to the very short timeframe left for consultation, and considering the different priorities within the whole consultation, AMAFI is currently unable to answer it.

**Q484. Could you provide any other specific examples of obligations of "transactions in commodity derivatives and emission allowances entered into to fulfil obligations to provide liquidity on a trading venue" which ESMA should take into account?**

Due to the very short timeframe left for consultation, and considering the different priorities within the whole consultation, AMAFI is currently unable to answer it.

**Q485. Should the (timeframe for) assessment be linked to audit processes?**

Due to the very short timeframe left for consultation, and considering the different priorities within the whole consultation, AMAFI is currently unable to answer it.

**Q486. How should seasonal variations be taken into account (for instance, if a firm puts on a maximum position at one point in the year and sells that down through the following twelve months should the calculation be taken at the maximum point or on average)?**

Due to the very short timeframe left for consultation, and considering the different priorities within the whole consultation, AMAFI is currently unable to answer it.

**Q487. Which approach would be practical in relation to firms that may fall within the scope of MiFID in one year but qualify for exemption in another year?**

Due to the very short timeframe left for consultation, and considering the different priorities within the whole consultation, AMAFI is currently unable to answer it.

**Q488. Do you see difficulties with regard to the two approaches suggested above?**

Due to the very short timeframe left for consultation, and considering the different priorities within the whole consultation, AMAFI is currently unable to answer it.

**Q489. How could a possible interim approach be defined with regard to the suggestion mentioned above (i.e. annual notification but calculation on a three years rolling basis)?**

Due to the very short timeframe left for consultation, and considering the different priorities within the whole consultation, AMAFI is currently unable to answer it.

**Q490. Do you agree that the competent authority to which the notification has to be made should be the one of the place of incorporation?**

Due to the very short timeframe left for consultation, and considering the different priorities within the whole consultation, AMAFI is currently unable to answer it.

## 7.2. Position Limits

**Q491. Do you agree with ESMA's proposal to link the definition of a risk-reducing trade under MiFID II to the definition applicable under EMIR? If you do not agree, what alternative definition do you believe is appropriate?**

Yes, AMAFI agrees that the definition of risk reducing trade under MiFID II should be the same as under EMIR

**Q492. Do you agree with ESMA's proposed definition of a non-financial entity? If you do not agree, what alternative definition do you believe is appropriate?**

Yes, AMAFI agrees with ESMA's proposed definition. A consistency is needed in that matter.

**Q493. Should the regime for subsidiaries of a person other than entities that are wholly owned look to aggregate on the basis of a discrete percentage threshold or on a more subjective basis? What are the advantages and risks of either approach? Do you agree with the proposal that where the positions of an entity that is subject to substantial control by a person are aggregated, they are included in their entirety?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q494. Should the regime apply to the positions held by unconnected persons where they are acting together with a common purpose (for example, “concert party” arrangements where different market participants collude to act for common purpose)?**

Yes, AMAFI supports rules applying to “concert party”.

**Q495. Do you agree with the approach to link the definition of economically equivalent OTC contract, for the purpose of position limits, with the definitions used in other parts of MiFID II? If you do not agree, what alternative definition do you believe is appropriate?**

Yes, AMAFI does agree with approach 1.

The criteria are objective and simple. In addition, it is coherent with the rest of the MiFID 2 definition.

Furthermore, we make clear that all the answers given to the following questions are made on the basis of approach 1

**Q496. Do you agree that even where a contract is, or may be, cash-settled it is appropriate to base its equivalence on the substitutability of the underlying physical commodity that it is referenced to? If you do not agree, what alternative measures of equivalence could be used?**

Yes. The underlying physical commodity is a determining criterion.

**Q497. Do you believe that the definition of “economically equivalent” that is used by the CFTC is appropriate for the purpose of defining the contracts that are not traded on a trading venue for the position limits regime of MiFID II? Give reasons to support your views as well as any suggested amendments or additions to this definition.**

AMAFI, by principle, does support the coherence and convergence with the US regime. For global markets as commodities ones, it is important to attempt to harmonise applicable legal framework in different jurisdiction, and mainly between the US and Europe.

However, this principle cannot be systematic and generalised.

The US approach for defining the notion of “economically equivalent”, which is currently subject to consultation and review, is complex and has to be replaced in its local context. The definition of financial instruments differs from the European one, the scope of contracts to be subject to position limits is more limited than what is provided for under the European framework. In the US, position reporting for OTC contracts applies to non US investments firms whereas such a reporting is not provided for in Europe for non European investments firms.

Commodities field is a new one for a lot of European regulators, unlike CFTC which has a thorough experience in this matter. Considering the importance of commodities markets for its end users, Europe needs to fit, as precisely as possible, its framework to the goal at stake. Thus, a step by step approach is essential and AMAFI recommends opting for approach 1, at least as a starting point.

Applying approach 2, from the beginning, for the sake of 'convergence with the US', would be done at the expense of European financial markets participants.

In addition, under approach 2, ESMA is not clear on how the identification as well as the monitoring of the OTC contracts within the scope of the definition will be carried out. Potentially, each OTC contract the price of which is set in reference of a future contract may be included within the scope of the definition, which raises serious operational difficulties.

See also Q532.

**Q498. What arrangements could be put in place to support competent authorities identifying what OTC contracts are considered to be economically equivalent to listed contracts traded on a trading venue? ?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q499. Do you agree with ESMA's proposal that the "same" derivative contract occurs where an identical contract is listed independently on two or more different trading venues? What other alternative definitions of "same" could be applied to commodity derivatives?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q500. Do you agree with ESMA's proposals on aggregation and netting? How should ESMA address the practical obstacles to including within the assessment positions entered into OTC or on third country venues? Should ESMA adopt a model for pooling related contracts and should this extend to closely correlated contracts? How should equivalent contracts be converted into a similar metric to the exchange traded contract they are deemed equivalent to?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q501. Do you agree with ESMA's approach to defining market size for physically settled contracts? Is it appropriate for cash settled contracts to set position limits without taking into account the underlying physical market?**

1. For the purpose of determining the market size, the depth of the underlying physical market should be taken into account, in all markets, whenever it is possible, including for the cash settled markets. In fact, arbitrages are more likely to happen in physical markets.
2. For physically settled contracts, the reference to the deliverable supply is central but not sufficient. Open interest should also be taken into account.
3. Open interest of economically equivalent OTC contracts should always be taken into account. This, all the more that the position limits will be applied on positions on trading venues as well as economically equivalent OTC contracts. When the volumes traded on venues represent small

volumes compared to OTC executions, the open interest on venues does not reflect the reality of the market.

**Q502. Do you agree that it is preferable to set the position limit on a contract for a fixed (excluding exceptional circumstances) period rather than amending it on a real-time basis? What period do you believe is appropriate, considering in particular the factors of market evolution and operational efficiency?**

YES, AMAFI thinks that it is necessary to set the position limit for a fixed period. The real-time appears to be too burdensome for both market participants and the national competent authorities.

**Q503. Once the position limits regime is implemented, what period do you feel is appropriate to give sufficient notice to persons of the subsequent adjustment of position limits?**

To avoid any market disruption, AMAFI suggests that market participants should have a 3 up to 6 months adjustment period for any change in position limits.

**Q504. Should positions based on contracts entered into before the revision of position limits be grandfathered and if so how?**

Yes, AMAFI does support the principle of grandfathering prior positions.

In addition, setting position limits on a new market is not relevant as liquidity may be too low or too fragile.

**Q505. Do you agree with ESMA's proposals for the determination of a central or primary trading venue for the purpose of establishing position limits in the same derivative contracts? If you do not agree, what practical alternative method should be used?**

Yes, AMAFI agrees.

In addition, on point 57, when ESMA proposes that the venue is that on which the largest volume of open interest is held, measured in the number of lots of the relevant contract, AMAFI recommends that the term 'contract' refers to the total amount of listed maturities for a contract.

**Q506. Should the level of "significant volume" be set at a different level to that proposed above? If yes, please explain what level should be applied, and how it may be determined on an ongoing basis?**

No. ESMA's proposal is well balanced in that matter.

**Q507. In using the maturity of commodity contracts as a factor, do you agree that competent authorities apply the methodology in a different way for the spot month and for the aggregate of all other months along the curve?**

AMAFI does agree on setting an overall limit covering all months combined. It should also include options.

The methodology must reflect the different objectives assigned to each of type of position limit:

- Position limits for the spot month play a vital part in orderly delivery by ensuring that the deliverable commodities are available and that delivery occurs in a timely fashion in accordance with the procedures established by the system. For this reason, it is important that the entity in charge of physical settlement, the clearing house, be involved in preparing the methodology.
- Other position limits, meanwhile, whether for single months or all months combined, are designed to ensure market integrity. With a system of single-month limits, positions have to be carefully graduated across the maturity since open interest may vary considerably during the period, depending on how far off the end date is. This kind of approach is extremely restrictive.

**Q508. *What factors do you believe should be applied to reflect the differences in the nature of trading activity between the spot month and the forward months?***

For the spot month limit, the most important factor is the deliverable supply (storable and ready to be delivered).

For the forward month, the assessment could be made from the total mass of existing supply provided there is centralized, comprehensive and reliable data concerning the existing supply at the global level.

**Q509. *Do you agree with ESMA's proposal for trading venues to provide data on the deliverable supply underlying their contracts? If you do not agree, what considerations should be given to determining the deliverable supply for a contract?***

Concerning the provision of data for spot month limit, it may be relevant to rely on clearing houses since they play a major role in the delivery process and thus have a good visibility on the deliverable supply.

Concerning the data for other maturities, AMAFI agrees on the trading venues to provide such data.

**Q510. *In the light of the fact that some commodity markets are truly global, do you consider that open interest in similar or identical contracts in non-EEA jurisdictions should be taken into account? If so, how do you propose doing this, given that data from some trading venues may not be available on the same basis or in the same timeframe as that from other trading venues?***

AMAFI agrees on taking into account open interest in identical contract in non-EEA jurisdictions if such information is available.

However, for 'similar contracts', the definition of 'similar' has to remain very narrow to validly allow an assimilation.

**Q511. *In the absence of published or easily obtained information on volatility in derivative and physical commodity markets, in what ways should ESMA reflect this factor in its methodology? Are there any alternative measures that may be obtained by ESMA for use in the methodology?***

AMAFI disagrees with the use of volatility criterion. It is not relevant:

- The volatility does not necessarily reflect speculation. It may be the result of a variation of market fundamentals.

- In this context, it will be all the more important not to curb the activities and the ability of the participants which, otherwise, could result in a reduction of liquidity in markets which precisely would need, at that time, more participants.

Instead, AMAFI suggests using the criterion of volumetry.

**Q512. Are there any other considerations related to the number and size of market participants that ESMA should consider in its methodology?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q513. Are there any other considerations related to the characteristics of the underlying commodity market that ESMA should consider in its methodology?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q514. For new contracts, what approach should ESMA take in establishing a regime that facilitates continued market evolution within the framework of Article 57?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q515. The interpretation of the factors in the paragraphs above will be significant in applying ESMA's methodology; do you agree with ESMA's interpretation? If you do not agree with ESMA's interpretation, what aspects require amendment?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q516. Are there any other factors which should be included in the methodology for determining position limits? If so, state in which way (with reference to the proposed methodology explained below) they should be incorporated.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q517. What do you consider to be the risks and/or the advantages of applying a different methodology for determining position limits for prompt reference contracts compared to the methodology used for the position limit on forward maturities?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q518. How should the position limits regime reflect the specific risks present in the run up to contract expiry?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q519. If a different methodology is set for the prompt reference contract, would it be appropriate to make an exception where a contract other than the prompt is the key benchmark used by the market?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q520. Do you agree that the baseline for the methodology of setting a position limit should be the deliverable supply? What concrete examples of issues do you foresee in obtaining or using the measure?**

Yes, AMAFI does agree.

The baseline for the methodology should indeed be the deliverable supply. However, the notion of deliverable should be understood as the 'storable' supply in the different delivery points.

In order to avoid restricting the exchanges, the limit should be applied within the few days prior to the maturity date. It could be applied the 2 days prior to the maturity date with a progressive application within the 12 prior days.

See also Q501.

**Q521. If you consider that a more appropriate measure exists to form the baseline of the methodology, please explain the measure and why it is more appropriate. Consideration should be given to the reliability and availability of such a measure in order to provide certainty to market participants.**

See Q501.

**Q522. Do you agree with this approach for the proposed methodology? If you do not agree, what alternative methodology do you propose, considering the full scope of the requirements of Article 57 MiFID II?**

AMAFI agrees on expressing the baseline in absolute value. It is simpler and offer more visibility.

In addition, it is important that the expression of the baseline be coherent for each asset class.

**Q523. Do you have any views on the level at which the baseline (if relevant, for each different asset class) should be set, and the size of the adjustment numbers for each separate factor that ESMA must consider in the methodology defined by Article 57 MiFID II?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q524. Does the approach to asset classes have the right level of granularity to take into account market characteristics? Are the key characteristics the right ones to take into account? Are the conclusions by asset class appropriate?**

AMAFI does not understand and does not support the inclusion of 'inflation rates and economic statistics' within the scope the commodity markets for the purpose of position limits. The objective of PL mechanism is not relevant for such underlying.

We also recommend distinguishing between 'base metal' and 'precious metals.'

**Q525. What trading venues or jurisdictions should ESMA take into consideration in defining its position limits methodology? What particular aspects of these experiences should be included within ESMA's work?**

All trading venues from the EU should be taken into consideration but also trading venues from third countries as soon as they concentrate enough liquidity. For this approach to be feasible AMAFI strongly encourages ESMA to coordinate its efforts with the CFTC notably.

**Q526. Do you agree that the RTS should accommodate the flexibility to express position limits in the units appropriate to the individual market? Are there any other alternative measures or mechanisms by which position limits could be expressed?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q527. How should the methodology for setting limits take account of a daily contract structure, where this exists?**

This paragraph / question need to be clarified.

The deliverable supply is the most important element.

**Q528. Do you agree that limits for option positions should be set on the basis of delta equivalent values? What processes should be put in place to avoid manipulation of the process?**

Yes, AMAFI agrees.

**Q529. Do you agree that the preferred methodology for the calculation of delta-equivalent futures positions is the use of the delta value that is published by trading venues? If you do not, please explain what methodology you prefer, and the reasons in favour of it?**

For listed positions, AMAFI agrees on the use of the delta value published by trading venues. However, it can't go beyond; the delta value of OTC economically equivalent contracts can't be calculated by the trading venues.

For OTC economically equivalent contracts, we support the use by markets participants of their own internal models / delta calculations.

**Q530. Do you agree that the description of the approach outlined above, combined with the publication of limits under Article 57(9), would fulfil the requirement to be transparent and non-discriminatory?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q531. What challenges are posed by transition and what areas of guidance should be provided on implementation? What transitional arrangements would be considered to be appropriate?**

This new regime will generate important developments within the firms. It is crucial to give them sufficient time to adapt.

It is also very important to streamline the different flows of reporting in order to avoid disparate reporting which will at the end be extremely time-consuming for both firms and regulators.

### **7.3. Position Reporting**

**Q532. Do you agree that, in the interest of efficient reporting, the data requirements for position reporting required by Article 58 should contain elements to enable competent authorities and ESMA to monitor effectively position limits? If you do not agree, what alternative approach do you propose for the collection of information in order to efficiently and with the minimum of duplication meet the requirements of Article 57?**

#### GENERAL STATEMENT:

1. AMAFI would like to draw ESMA's attention on consequences particularly important that are arising from the way the reporting obligation under article 58.2 is conceived:

Article 58.2 provides for the obligation for investment firms to provide, on a daily basis, the competent authority with a complete breakdown of their positions taken on a trading venue and equivalent OTC contracts as well as those of their clients and the clients of their clients.

From this provision, we understand that the reporting obligation for equivalent OTC contracts only lie on investments firms. This means that contracts concluded on equivalent OTC contracts

between two non financial counterparts or with a non-EU investment firm (which would not be a member or a participant of EU RMs, MTFs or clients of OTFs) are not subject to the reporting obligation of article 58.2 of MiFID 2.

The consequences of such a scheme must be well identified:

- On equivalent OTC contracts, it will favor the disintermediation or/ and non EU investment firms. Considering the developments and constraints that imply the position reporting, clients of investments firms will be inclined to choose the frame which allows them not to report.
- A part of positions won't be subject to position limits since they are not reported.

Consequences are potentially highly harmful for the coherence of the European position limit mechanism as well as for the European industry competitiveness.

2. Article 58 (3) provides for the obligation for members and participants of trading venues to provide those trading venues with details of their own positions and their clients' positions in on-venue contracts. These reports are required on a daily basis.

Market participants and their members are aware only of the transactions they carry out for their clients. Therefore, they are unable to report the trades that those same clients may be making through other participants

Clearing members offering a clearing service have the information concerning the position of their direct client. However, they do not have the information concerning the ultimate client in case of omnibus account (gross or net OSA). In this case, this is the institution which holds the client's clearing account who will have the information.

It is essential to well identify who are the ones who hold the required information and are henceforth able to report. Otherwise, information won't be able to be collected and the ultimate objectives of articles 57 and 58 will be missed.

**Q533. Do you agree with ESMA's definition of a "position" for the purpose of Article 58? Do you agree that the same definition of position should be used for the purpose of Article 57? If you do not agree with either proposition, please provide details of a viable alternative definition.**

ESMA document is not clear on the basis of positions reporting, whether on a net basis or a gross one:

- On point 14, ESMA considers that a position is the net accumulation of purchase and sell transactions in a particular commodity derivative (...) (called also 'open interest').
- On point 16, ESMA states that all positions must be reported on a gross basis indicating whether they are either long or short

The suggested definition of a position as being the 'net accumulation of purchase and sell transactions is not clear.

In addition, open interest is a notion which relates to the market and not directly to the entity that holds the position.

Instead, AMAFI suggests that a position held by a person be the total amount of her purchase and/or sell prior to the netting occurs at the clearing level.

**Q534. Do you agree with ESMA's approach to the reporting of spread and other strategy trades? If you do not agree, what approach can be practically implemented for the definition and reporting of these trades?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q535. Do you agree with ESMA's proposed approach to use reporting protocols used by other market and regulatory initiatives, in particular, those being considered for transaction reporting under MiFID II?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q536. Do you have any specific comments on the proposed identification of legal persons and/or natural persons? Do you consider there are any practical challenges to ESMA's proposals? If yes, please explain them and propose solutions to resolve them.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q537. What are your views on these three alternative approaches for reporting the positions of an end client where there are multiple parties involved in the transaction chain? Do you have a preferred solution from the three alternatives that are described?**

AMAFI supports option 3 as it is the only one which appears as realistic.

Approach 1 raises serious issues: some concerning the confidentiality of client data and some other concerning regulatory risks on clients (reporting within the AML framework ...)

Approach 2 would be more acceptable in terms of confidentiality but this approach would be at odds with the global G-20 objective, to better identify the risks within the financial system, through notably a better identification system for parties to financial transactions. It has been materialized by the LEI developments, which will help to the identification, aggregation and pooling of risk information.

With such an approach, regulators would hardly be able to aggregate the different positions of a same entity.

**Q538. What alternative structures or solutions are possible to meet the obligations under Article 58 to identify the positions of end clients? What are the advantages or disadvantages of these structures?**

See Q 537.

**Q539. Do you agree with ESMA's proposal that only volumes traded on-exchange should be used to determine the central competent authority to which reports are made? If you do not agree, what alternative structure may be used to determine the destination of position reports?**

Yes, AMAFI agrees that the determination of the central competent authority should be made according to volumes traded on-exchange. However, we think that a flexible approach should be foreseen allowing (1) market participants to choose another national competent authority for reporting purposes and (2) to modify the central competent authority easily if volumes traded on another exchange increase significantly.

**Q540. Do you agree that position reporting requirements should seek to use reporting formats from other market or regulatory initiatives? If not mentioned above, what formats and initiatives should ESMA consider?**

Yes, the EMIR trade reporting and the MiFID transaction reporting should be used.

**Q541. Do you agree that ESMA should require reference data from trading venues and investment firms on commodity derivatives, emission allowances, and derivatives thereof in order to increase the efficiency of trade reporting?**

Yes, AMAFI agrees.

**Q542. What is your view on the use of existing elements of the market infrastructure for position reporting of both on-venue and economically equivalent OTC contracts? If you have any comments on how firms and trading venues may efficiently create a reporting infrastructure, please give details in your explanation.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q543. For what reasons may it be appropriate to require the reporting of option positions on a delta-equivalent basis? If an additional requirement to report delta-equivalent positions is established, how should the relevant delta value be determined?**

See Q528.

**Q544. Does the proposed set of data fields capture all necessary information to meet the requirements of Article 58(1)(b) MiFID II? If not, do you have any proposals for amendments, deletions or additional data fields to add the list above?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the various implications of this question, AMAFI is currently unable to answer it.

**Q545. Are there any other fields that should be included in the Commitment of Traders Report published each week by trading venues other than those shown above?**

The proposed COT format needs to be more specific, particularly for the notion of ‘commodity derivative contract’.

It should first be clarified if the report is carried out per maturity of a commodity derivative contract or all maturities combined.

Secondly, for options, the logic would command:

- Firstly, to aggregate the purchase of call options and the sale of put options, all strikes combined and on another hand, to aggregate the sale of call options and purchase of put options.
- And secondly, to specify the notion of ‘short’ and ‘long’, namely short and long in the underlying and by reference to the aggregates mentioned before.

## **8. Market data reporting**

---

### **8.1. Obligation to report transactions**

**Q546. Do you agree with ESMA’s proposal for what constitutes a ‘transaction’ and ‘execution of a transaction’ for the purposes of Article 26 of MiFIR? If not, please provide reasons.**

No. Even if we broadly agree with ESMA’s proposals for what constitutes a “transaction” and “execution of a transaction for the purposes of Article 26 of MiFIR, we think that one should refer to reportable actions or events, rather than define a transaction and the execution of a transaction.

Furthermore, AMAFI would like to raise the following points:

- § 114 and 115 states that ESMA “golden source” could not be used to select the financial instruments eligible to the Transaction Reporting. We totally disagree with this statement, as it would result in each investment firm developing a costly “internal golden source”. Moreover, it would create discrepancies between those golden sources at the expense of the quality of the reporting. This risk is further compounded by the significant enlargement of eligible financial instruments.
- Repurchases under repurchase agreements (repos and reverse repos) are not currently reportable events. The reasons why they should be reported under MiFID II/MiFIR are not clear and should be explained by the regulators considering that such transactions are not readily subject to market abuse. All the more in view of the forthcoming Regulation on Securities Financing Transactions (SFTs), which appears to be the adequate regulation to encapsulate all requirements relating to SFTs.
- It is not clear how Exchange For Swaps (EFS) on commodities for instance should be reported. Indeed, after having entered into an OTC derivative transaction, the two counterparties novate the transaction, usually on same day, to a Clearing House. Should the two transactions be reported or only one of them? In the latter case, which one should be reported? We think that in this instance, consistency with EMIR corresponding provisions should be maintained.

- In case of clearable transactions (in particular for Exchange Trades Derivatives – ETDs -), ESMA should precise which transactions are reportable, as the execution of clients orders involve many steps and third parties: executing brokers, clearing brokers, the trading venue, the CCP, clients' custodians. We think that reportable transactions should only encompass those entailing an execution or a Reception/Transmission of an Order (RTO). Thus, related transactions between clearing brokers, the CCP and custodian should not be reported. In particular, the reporting give-up trades (when the executing broker gives up the clearing to a different clearing broker) should be specified.
- § 15. v should be further clarified to specify the precise non-reportable events or actions depending on securities types.
- § 15. vi should be further specified. We are afraid that the distinction between reportable intra-entity transactions and non-reportable transaction may not appear clear to investment firms, resulting in different interpretations and inconsistent reporting arrangements across investment firms.

**Q547. Do you anticipate any difficulties in identifying when your investment firm has executed a transaction in accordance with the above principles?**

Yes. See our answer to Q546 above.

**Q548. Is there any other activity that should not be reportable under Article 26 of MiFIR?**

As stated above, AMAFI considers that the reporting of Securities Financing Transactions should not be included in the scope MiFID II/MiFIR transaction reporting regime. Besides that, we do not believe that there are other activities that should not be deemed reportable.

**Q549. Do you foresee any difficulties with the suggested approach? Please elaborate.**

Yes. We anticipate a lot of difficulties in this area because in many situations it will be difficult to assess which investment firm transmits the order and which is in charge of the execution of the order. We understand that when transmitting an order to another for execution, an investment firm may decide to transaction report by its own the details of the executed order linked to the client, while the executing investment firm will declare the "market information".

The notion of "transmission of orders" is not clear and should be more precisely defined by ESMA for reporting purposes. Does it mean that the investment firm needs to be agreed for the RTO investment service (Reception and Transmission of orders in relation to one or more financial instruments)? Or should be understood as something wider for example any investment firm giving orders to another one?

In addition, AMAFI would welcome clarity around report matching in the situation where the party transmitting an order does not provide sufficient information, and so is required to submit a transaction report itself. AMAFI understands that there is a field for including a report matching number, so that it is clear that the multiple reports submitted in fact relate to a single transaction. However, it is not clear how the report matching number would be obtained in time for each party in the chain to include such reference on the transaction report before the relevant entity is required to submit the report

**Q550. 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.**

AMAFI considers that should standardise the format of the reference data to be obtained from venues and in turn used in the reporting. We think that this should be all the more achievable since ESMA supervises them and since these data will feed ESMA golden source.

We strongly advise that ESMA takes the opportunity to request that all EEA trading venues provide systematically their MIC in their execution files. Indeed, this information is often missing today resulting in firms having difficulties to identify and report the correct MIC.

As regards the Report Matching Number (field 91), we would like to stress the following points:

- Field taxonomy should be aligned on the one soon to be prescribed by the FSB for UTIs, USIs;
- As for riskless principal trading, this field should be populated only for the market side executions, not for the client side;
- While we expect the EEA trading venues to provide their members with these numbers for all the executions made with them, we are afraid that trading venues outside the EEA may not be willing to systematically populate this field, in turn making it impossible for the market participants to agree on a unique number. For this reason, we suggest this number not to be compulsory in those instances;
- As regards OTC transactions, while for transactions on OTC derivatives firms subject to EMIR have already agreed upon a process where the applicable UTI is exchanged on trade confirmation, we would like to stress that a process yielding to an equivalent result in terms of UTI exchange would have first to be agreed and implemented at industry level, which might result in sizeable work for the industry and the related organizations;

As for the Counterparty identification code, (field 20), where the transaction is executed on an anonymous order book, we strongly advise to populate the field with the MIC of the market (and not with the LEI of the CCP), as this appears to be the most natural choice and is the simplest solution for the industry.

How does ESMA envisage that firms report products for which a request for admission to trading has been made yet don't have an ISIN?

On another hand, we are afraid that the number of available fields to adequately report complex derivatives may be insufficient. As this is a complex issue, ESMA should elaborate very precise guidelines on how the many kinds of complex derivatives should be reported, bearing in mind that in view of the variety and the complexity of those derivatives and the fact that the reporting will probably never entail the necessary level of details to exhaustively report the characteristics of any kind of complex derivative, ESMA will have to opt for a sometimes imperfect reporting of at least transactions main characteristics. The industry would welcome a close dialogue with ESMA when elaborating those detailed standards, so that those transactions are reported the same way to all involved national regulators, even if in some instances imperfectly. This is all the more necessary as it is likely to entail significant development costs at investment firms level.

Finally, AMAFI considers that proliferation of non-essential fields should be avoided, as it increases the risk of errors being made in reports and places a disproportionate additional burden on firms.

**Q551. Do you have any comments on the designation to identify the client and the client information and details that are to be included in transaction reports?**

The issues are different whether we consider the identification of natural persons (mainly retail clients) and legal persons.

Natural persons

AMAFI would like to point out the fact that the costs from investment firms to collect, propagate and report client identification and details will overreach the regulatory benefits in order to detect market abuse behaviours. It is likely that the information collected by regulators would not achieve a sufficient level of reliability enabling them not to rely on additional enquiries to their reporting firms, as it is the case today.

Indeed MIFIR request to report final client's identification for natural persons is likely to entail a huge change management process for all retail networks. Retail networks will have, not only to collect client's identification number, which source and format will depend on client's nationality, residence, ... depending on each national regulator's choice but also to populate these data in their systems and in turn convey them down to bank's trade execution tools. This is further compounded by the fact that:

- National identification numbers chosen by national regulators may not be consistent from one regulator to the other (ranging from national social security number to national identity card number, authorization of residence number, passport number, etc.);
- Many of the identification numbers will evolve over time (for instance for national identity cards, authorizations of residence, passports ...).

As a matter of fact, retail networks currently collect systematically sufficient client identification information, but this information is kept manually in client's file. Furthermore, the collected identification information may be much more homogeneous than the currently considered identification numbers by the various national regulators and will for sure differ in many instances from those requested for MiFIR transaction reporting. The collection, registration, maintenance and conveyance between bank's various information systems will thus result in tremendous changes in client relationship handling and data collection, and in information systems.

In addition, the identifications numbers currently considered by the various national regulators are almost certainly likely to trigger issues in terms of personal data protection, in particular in view of the stringent existing regulations in some European countries. It is thus of paramount importance that national regulators work closely with the relevant national authorities in charge of personal data protection to ensure that the selected identifications numbers do not infringe or would not let investment firms to infringe some injunctions of applicable personal data protection laws when transaction reporting. This difficulty is obviously compounded by existing banking secrecy laws in Europe.

But the same type of concerns apply to banking secrecy laws in general, as for instance evidenced with the implementation of EMIR (where in many instances, banks have to collect their client's prior authorisation to be able to report client's name in EMIR report – notwithstanding instances where client's prior authorisation is not legally binding according to the laws of client's country of residence).

The abundance of the requested information for each natural person - date of birth, detailed address... - should also be stressed at it brings additional complexity to the whole process.

In view of the above, one should assess whether the investments incurred by these rules are proportionate or not to the practical usage regulators will be able to do of this information, notwithstanding the fact that to achieve an acceptable level of reliability of those reported data is likely to be a big

challenge. Indeed, the European Authorities must ascertain that the proposed obligations are proportionate to the expected benefit.

We would like to formulate the following proposals:

1. National regulators should work in close interaction with the investment firms they supervise in order to achieve a workable identification system.

There is already a simple identification system of natural persons, used across Europe: it is the identification of bankrupt persons ("*interdits bancaires*"), which is composed of person's birth date in DDMMYY format followed by the 5 first letters of person's last name. We strongly advise to use this system as it considerably simplifies the process for all parties. In any instance, the client identification should be permanent, i.e. not prone to change over time.

2. Reportable data for natural persons should be limited to this identification (i.e. not be comprised with other client data). In case of need, national regulators could request from an investment firm the details of a given client / of a given set of clients, or retrieve those data or some of them by themselves.
3. The implementation of the reporting of natural persons identification could be phased over time: At inception (in January 2017), client's identification would be requested for all new clients being nationals/residents of the country of incorporation of the investment firm. One year later, this obligation would be extended to all existing nationals/residents of that firm. In January 2019, it would be extended to all nationals/residents of EEA countries.
4. Investment firms should be subject to the reporting of clients' identification on a best efforts basis, at least to start with. Indeed, at inception, one should not face a situation where banks could not accept orders from some clients or would be prevented from accepting them in case of a missing identification (notwithstanding the fact that banks should at any time abide by applicable KYC, AML, prevention of financial crime... obligations), as they may be detrimental to markets liquidity and orderly operation.

#### Legal persons

As regards the identification of legal persons, while we recognise the advantages expected from the widest possible usage of LEIs, one should not disregard the difficulties currently encountered by investment firms to collect their clients' LEI, especially when the regulation requesting these LEIs does not apply directly to them. This is indeed evidenced with EMIR, where investment firms are in some instances confronted with blunt refusals from non-European clients to apply for an LEI. And here, we have again to deal with the same banking secrecy issues as those recalled above (again evidenced for EMIR reporting, where investment firms strive sometimes unsuccessfully to secure clients' approval).

Furthermore, it is not clear whether, even in Europe, there is a legal obligation for clients of regulated firms to get an LEI.

In addition, the fact that LEIs have to be renewed on an annual basis already triggers situations where clients LEIs are not valid any longer, because the client has not renewed it in time.

For all these reasons, we think that, as proposed above for natural persons identification, one should not face a situation where banks would be prevented from accepting a client order in case of a missing LEI, at least at inception.

Going further, for legal persons without an LEI nor a BIC code, we do not believe that sufficiently standardised national codes enable to identify all persons with a reasonable level of reliability. For this

reason, we think that for those legal persons, the reporting of an internal code is a more operational solution both for investment firms and for regulators.

**Q552. What are your views on the general approach to determining the relevant trader to be identified?**

AMAFI anticipates a lot of difficulties for investment firms to make a distinction between the trader/actor who makes the investment decision and the trader/actor who executes the trade. Investment firms will have to face operational difficulties in relaying the corresponding information in their systems and in their reporting. Indeed, firms will have to consider many front-office organization instances depending on the roles taken by the different front-officers: sales, traders, sales-traders, facilitators and combinations among these different actors. Therefore AMAFI would like ESMA to clarify the scenario where multiple traders are working on an order, but not as part of a formal committee. For instance, should the Trader ID of the primary trader who worked on the trade be the one reported?

For this reason, we think that the reporting of the party who makes the investment decision should be phased in.

Besides that, data protection of personal details is a key consideration. In particular, firms' reporting technologies are in some cases based in other countries and so the data protection risk of having full personal details in such databases should be considered?\*

Therefore, AMAFI considers that the reporting should only include the relevant Trader ID (based on our proposal above to identify natural persons). Any further information could be provided by the investment firm on request.

**Q553. In particular, do you agree with ESMA's proposed approach to assigning a trader ID designation for committee decisions? If not, what do you think is the best way for NCAs to obtain accurate information about committee decisions?**

Please refer to answer to question Q552: In view of the practical difficulty to identify a reliable way the committee which makes the investment decision, the reporting of this information should be phased in.

**Q554. Do you have any views on how to identify the relevant trader in the cases of Direct Market Access and Sponsored Access?**

We indeed think that in the case of a Direct Market Access (DMA) or of a Sponsored Access, since the order is directly inputted by the client in the order routing system, it is not relevant to report the identification of a trader of the investment firm. (In other words, the fields related to the identification of the trader who takes the decision should be left blank.) If the order routing system is an automaton, automaton identification will have to be reported for trade execution.

**Q555. Do you believe that the approach outlined above is appropriate for identifying the 'computer algorithm within the investment firm responsible for the investment decision and the execution of the transaction'? If not, what difficulties do you see with the approach and what do you believe should be an alternative approach?**

Yes. We are supportive of the approach outlined, though we would like to stress that one should leverage on reporting arrangements implemented by firms to comply with Bafin requirements.

**Q556. 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.**

The way waivers should be reported must be standardized by ESMA. Based on that, while the identification of the relevant waiver is practically possible, it will indeed entail significant evolution in information systems as virtually all order routing systems and all execution feedbacks from venues will have to be amended to include these additional information. These changes will in addition span over years since investment banks will be constrained by venues information systems releases calendars

**Q557. Do you agree with ESMA's proposed approach to adopt a simple short sale flagging approach for transaction reports? If not, what other approaches do you believe ESMA should consider and why?**

No. Nevertheless, AMAFI considers that there is no consistency of reporting short sale flags on transactions carried out by exempted activities under the Short Selling Regulation, since these activities are indeed exempted. Therefore exempted activities under the Short Selling Regulation should also be exempted from reporting short sale flags.

Furthermore, the value of the reported short sell flag should be determined based on trader's book, not based on bank's aggregate position. Indeed, as the Transaction Reporting is viewed by regulators as a privileged tool to enable them to detect possible market abuses, a short sell information relating to trader's book seems much more relevant for that purpose than an information relating to the whole firm position. Lastly, as the Short Selling Regulation already requests from firms to report their aggregate short sell positions, the additional reporting of short sell flags related to whole firm position would not provide regulators with much added value.

**Q558. Which option do you believe is most appropriate for flagging short sales? Alternatively, what other approaches do you think ESMA should consider and why?**

Option 1 is the most appropriate one.

That being said, investment firms should not be, in any case, held accountable in the event a given client would not provide the value of the short sell flag for a given order. Indeed, investment firms should be subject to a best efforts obligation in collecting client's value of the short sell flag.

**Q559. What are your views regarding the two options above?**

Option 1 is the most appropriate. The most effective solution will be to maintain a simple approach to the flagging of short sales. Investment firms should be able to flag short sales executed in a principal capacity and should be able to rely on their clients to notify them that a transaction represents a short sale at the time of execution.

Further, the designation of the short sale should only be from the point of view of the trader or decision maker executing the transaction which is being reported, and not at a legal entity level, given that to monitor holdings at any higher level would be complex and costly to implement. The trader executing the transaction cannot be expected to have a view outside their own desk etc.

**Q560. Do you agree with ESMA's proposed approach in relation to reporting aggregated transactions? If not, what other alternative approaches do you think ESMA should consider and why?**

AMAFI agrees with ESMA's proposed approach in relation to reporting aggregated transactions. The designation of the short sale flag should for the market side leg be as if the investment firm is trading as principal while the designation of the transaction as a short sale for the client side legs should be as indicated by the client at execution.

**Q561. Are there any other particular issues or trading scenarios that ESMA should consider in light of the short selling flag?**

AMAFI considers that the flagging of short sales applies to transactions in shares and sovereign debt only. It does not apply to derivative transactions or to instruments other than shares and sovereign debt. AMAFI would welcome a restating of this position by ESMA.

**Q562. Do you agree with ESMA's proposed approach for reporting financial instruments over baskets? If not, what other approaches do you believe ESMA should consider and why?**

Yes. AMAFI agrees with ESMA's proposed approach.

Now we would like to stress again the necessity for ESMA to maintain a golden source of the financial instruments eligible to the Transaction Reporting (or more precisely the financial instruments for which transactions on them or having them as underlying should be reported). Not doing this would result in each investment firm developing a costly "internal golden source", yielding to inevitable discrepancies between those golden sources and to a general situation of over- or under-reporting by virtually all investment managers. This would in turn jeopardize the stability of the future reporting and regulators ability to exploit the reporting. This risk is further compounded by the significant enlargement of eligible financial instruments.

**Q563. Which option is preferable for reporting financial instruments over indices? Would you have any difficulty in applying any of the three approaches, such as determining the weighting of the index or determining whether the index is the underlying in another financial instrument? Alternatively, are there any other approaches which you believe ESMA should consider?**

AMAFI considers that the third option is the more consistent and the more practical one.

**Q564. Do you think the current MiFID approach to branch reporting should be maintained?**

No. We strongly support ESMA proposal that, should investment firm's head office hold all the reportable information, it has the ability to make a unique reporting to its home regulator, the latter one dispatching the reporting to the concerned host regulators as the case may be.

**Q565. Do you anticipate any difficulties in implementing the branch reporting requirement proposed above?**

No. We strongly support ESMA proposal that, should investment firm's head office hold all the reportable information, it has the ability to make a unique reporting to its home regulator, the latter one dispatching the reporting to the concerned host regulators as the case may be.

Now, ESMA need to specify the detailed information the head office has to report in those instances.

**Q566. Is the proposed list of criteria sufficient, or should ESMA consider other/extra criteria?**

Yes. The proposed list of criteria is sufficient.

**Q567. Which format, not limited to the ones above, do you think is most suitable for the purposes of transaction reporting under Article 26 of MiFIR? Please provide a detailed explanation including cost-benefit considerations.**

AMAFI supports the FpML format.

## **8.2. Obligation to supply financial instrument reference data**

**Q568. Do you anticipate any difficulties in providing, at least daily, a delta file which only includes updates?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q569. Do you anticipate any difficulties in providing, at least daily, a full file containing all the financial instruments?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q570. Do you anticipate any difficulties in providing a combination of delta files and full files?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q571. Do you anticipate any difficulties in providing details of financial instruments twice per day?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q572. What other aspects should ESMA consider when determining a suitable solution for the timeframes of the notifications? Please include in your response any foreseen technical limitations.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q573. Do you agree with the proposed fields? Do trading venues and investment firms have access to the specified reference data elements in order to populate the proposed fields?**

AMAFI considers that there will be problems with instruments falling in the “Others” category. For instance, for derivative contracts, there is no ISIN or All and a special and there should be further reflection on this point.

**Q574. Are you aware of any available industry classification standards you would consider appropriate?**

AMAFI is not aware of any industry taxonomy which can be used for this purpose.

**Q575. For both MiFID and MAR (OTC) derivatives based on indexes are in scope. Therefore it could be helpful to publish a list of relevant indexes. Do you foresee any difficulties in providing reference data for indexes listed on your trading venue? Furthermore, what reference data could you provide on indexes?**

AMAFI is of the view that details of reference data for indexes should be available at public data providers.

Furthermore, we consider that providing the correct identification code which can be used to source the reference data from another data provider should be sufficient.

**Q576. Do you agree with ESMA’s intention to maintain the current RCA determination rules?**

Yes, AMAFI agrees with ESMA’s intention to maintain the current RCA determination rules, since they work well.

**Q577. What criteria would you consider appropriate to establish the RCA for instruments that are currently not covered by the RCA rule?**

AMAFI considers that it may be considerably difficult to determine the RCA for financial instruments with non-security underlying, such as FX derivatives or derivatives on a specific commodity contract. Hence we are of the view that further consideration should be given to this point.

### 8.3. Obligation to maintain records of orders

**Q578.** *In your view, which option (and, where relevant, methodology) is more appropriate for implementation? Please elaborate.*

AMAFI supports option 1, in which ESMA determines the list of data elements required but not the format in which they are maintained.

**Q579.** *In your view, what are the data elements that cannot be harmonised? Please elaborate.*

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q580.** *For those elements that would have to be harmonised under Option 2 or under Option 3, do you think industry standards/protocols could be utilised? Please elaborate.*

Under Option 2 or Option 3, which AMAFI does not support, we are of the view that ESMA-endorsed industry standard or taxonomy would be needed.

**Q581.** *Do you foresee any difficulties with the proposed approach for the use of LEI?*

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q582.** *Do you foresee any difficulties maintaining records of the Client IDs related with the orders submitted by their members/participants? If so, please elaborate.*

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q583.** *Are there any other solutions you would consider as appropriate to track clients' order flows through member firms/participants of trading venues and to link orders and transactions coming from the same member firm/participant?*

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q584.** *Do you believe that this approach allows the order to be uniquely identified If not, please elaborate*

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q585. Do you foresee any difficulties with the implementation of this approach? Please elaborate**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q586. Do you foresee any difficulties with the proposed approach? Please elaborate**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q587. Do you foresee any difficulties with the proposed approach? Please elaborate.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q588. Would the breakdown in the two categories of order types create major issues in terms of mapping of the orders by the Trading Venues and IT developments? Please elaborate**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q589. Do you foresee any problems with the proposed approach?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q590. Are the proposed validity periods relevant and complete? Should additional validity period(s) be provided? Please elaborate.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q591. Do you agree that standardised default time stamps regarding the date and time at which the order shall automatically and ultimately be removed from the order book relevantly supplements the validity period flags?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q592. Do venues use a priority number to determine execution priority or a combination of priority time stamp and sequence number?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q593. Do you foresee any difficulties with the three options described above? Please elaborate.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q594. Is the list of specific order instructions provided above relevant? Should this list be supplemented? Please elaborate.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q595. Are there any other type of events that should be considered?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q596. Do you foresee any difficulties with the proposed approach? Please elaborate.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q597. Do you foresee any problems with the proposed approach? Do you consider any other alternative in order to inform about orders placed by market makers and other liquidity providers?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q598. Do you foresee any difficulties in generating a transaction ID code that links the order with the executed transaction that stems from that order in the information that has to be kept at the disposal of the CAs? Please elaborate.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q599. Do you foresee any difficulties with maintaining this information? Please elaborate.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

#### **8.4. Requirement to maintain records of orders for firms engaging in high-frequency algorithmic trading techniques (Art. 17(7) of MIFID II)<sup>3</sup>**

**Q600. Do you foresee any difficulties with the elements of data to be stored proposed in the above paragraph? If so, please elaborate.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q601. Do you foresee any difficulties in complying with the proposed timeframe?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

#### **8.5. Synchronisation of business clocks**

**Q602. Would you prefer a synchronisation at a national or at a pan-European level? Please elaborate. If you would prefer synchronisation to a single source, please indicate which would be the reference clock for those purposes.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q603. Do you agree with the requirement to synchronise clocks to the microsecond level?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q604. Which would be the maximum divergence that should be permitted with respect to the reference clock? How often should any divergence be corrected?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

---

<sup>3</sup> Please note that this section has to be read in conjunction with the section on the “Record keeping and co-operation with national competent authorities” in this DP.

## 9. Post-trading issues

---

### 9.1. Obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing (STP)

**Q605.** *What are your views generally on (1) the systems, procedures, arrangements supporting the flow of information to the CCP, (2) the operational process that should be in place to perform the transfer of margins, (3) the relevant parties involved these processes and the time required for each of the steps?*

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q606.** *In particular, who are currently responsible, in the ETD and OTC context, for obtaining the information required for clearing and for submitting the transaction to a CCP for clearing? Do you consider that anything should be changed in this respect? What are the current timeframes, in the ETD and OTC context, between the conclusion of the contract and the exchange of information required for clearing on one hand and on the other hand between the exchange of information and the submission of the transaction to the CPP?*

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q607.** *What are your views on the balance of these risks against the benefits of STP for the derivatives market and on the manner to mitigate such risks at the different levels of the clearing chain?*

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q608.** *When does the CM assume the responsibility of the transactions? At the time when the CCP accepts the transaction or at a different moment in time?*

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q609.** *What are your views on how practicable it would be for CM to validate the transaction before their submission to the CCP? What would the CM require for this purpose and the timeframe required? How would this validation process fit with STP?*

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q610. What are your views on the manner to determine the timeframe for (1) the exchange of information required for clearing, (2) the submission of a transaction to the CCP, and the constraints and requirements to consider for parties involved in both the ETD and OTC contexts?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q611. What are your views on the systems, procedures, arrangements and timeframe for (1) the submission of a transaction to the CCP and (2) the acceptance or rejection of a transaction by the CCP in view of the operational process required for a strong product validation in the context of ETD and OTC? How should it compare with the current process and timeframe? Does the current practice envisage a product validation?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q612. What should be the degree of flexibility for CM, its timeframe, and the characteristics of the systems, procedures and arrangements required to supporting that flexibility? How should it compare to the current practices and timeframe?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q613. What are your views on the treatment of rejected transactions for transactions subject to the clearing requirement and those cleared on a voluntary basis? Do you agree that the framework should be set in advance?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

## **9.2. Indirect Clearing Arrangements**

**Q614. Is there any reason for ESMA to adopt a different approach (1) from the one under EMIR, (2) for OTC and ETD? If so, please explain your reasons.**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.

**Q615. In your view, how should it compare with current practice?**

Due to the very short timeframe left for consultation, and considering the need to carefully examine the details of the standards, AMAFI is currently unable to answer it.