

ICMA response to ESMA Level 2 Discussion Paper on MiFID II / MiFIR

Below is the response ICMA submitted on 1 August 2014 to ESMA's 22 May 2014 Discussion Paper on MiFID II / MiFIR (ESMA/2014/548) on the ESMA-mandated form, as supplemented by an annex ICMA submitted on 21 August 2014.

ICMA responded to the Discussion Paper from the perspective of its secondary markets constituency – see further the initial paragraphs of the response to Q101 for detail.

ICMA also responded to ESMA's 22 May 2014 Consultation Paper on MiFID II / MiFIR (ESMA/2014/549), which is being separately published on the ICMA website.

The Joint Associations Committee on retail structured products, which ICMA supports, also submitted a response to the Consultation Paper from that specific perspective, which is being separately published on the ICMA website.

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?

The International Capital Market Association (ICMA) is a unique organisation and an influential voice for the global capital market. It represents a broad range of capital market interests including global investment banks and smaller regional banks, as well as asset managers, exchanges, central banks, law firms and other professional advisers. ICMA's market conventions and standards have been the pillars of the international debt market for over 40 years. Please see www.icmagroup.org. Our response to this question 101 and to the discussion paper generally has been prepared on behalf of secondary market participants; we have not sought to provide views from investors and asset managers, who are separately represented in this debate.

ICMA agrees with the AFME response on fixed income (FI), the relevant part of which is set out below for ease of reference: AFME Response: "We recommend that categorisation of instruments should be centralised and should not be undertaken at investment firm level. ... We do not believe it is appropriate for operators of venues or investment firms operating venues to be responsible for actively categorising instruments, for the following reasons:

- The categorisation exercise would be highly duplicative resulting in slow operational process. The same instrument can trade on multiple venues. If every venue was responsible for categorising the instrument, the exercise would [be] duplicative, which would slow and intensify processing when the information is centralised. ...
- Categorisation involves a high level of subjectivity resulting in a many inconsistencies for the same instrument. ...
- There will be unintended consequences when an instrument is wrongly categorised. ..."

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

ICMA agree with ESMA's assessment that the most important assessment to be undertaken at Level 2 is the determination of whether an instrument has a liquid market. For these purposes, it is important not to 'mirror the equity regime' exactly, since even within ESMA's proposed broad class of bonds, there is more heterogeneity than among equities.

ICMA consider it important not to group all bonds into a single undifferentiated 'bond' class. Government bonds, investment grade corporate bonds, high yield bonds, and other categories have different liquidity characteristics, so it will be important to ensure that the transparency regime differentiates appropriately between them, so that in any particular case the transparency obligations are applied in a liquidity-sensitive way to a homogeneous group of instruments. A simple distinction between the proposed limited definition of sovereign debt and corporate bonds would not suffice.

ICMA agree that depository receipts for bonds should be treated as non-equities, and convertible bonds should be treated as bonds.

There are a number of issuers which fall outside the definition in the First company Law Directive which the market regards as corporate bonds, including non-EU companies, bodies corporate such as universities, limited liability partnerships (LLPs) and charities.

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?

ICMA agree that ESMA's technical standard on liquidity thresholds should be relevant for transparency purposes in MIFIR only.

ICMA agree with ESMA's identification of the importance of avoiding exacting transparency requirements which would further deteriorate the liquidity of illiquid instruments.

ICMA supports the approach set out in the first two paragraphs of the AFME fixed income (FI) response, which is set out for ease of reference below.

AFME Response:

Average frequency of trade – component

AFME partially agrees with ESMA's preferred options regarding the components for calculating liquidity. To ensure a simple and implementable approach, we agree with an approach based on absolute numbers rather than using a relative concept. We recommend Option 1: the number of transactions in a given time period is a sufficient parameter for liquidity if the calibration is sufficiently dynamic.

Time period for calculation

With regards to the time period, we propose a monthly calibration. We recommend that a monthly retrospective calibration will be sufficiently dynamic to detect changes in liquidity but will ensure a model that is not too volatile. We agree with ESMA that defining the time period is critical and that the longer the time period, the higher the risk of skewed distribution.

ICMA conclusion

Although a shorter the time period may introduce more operational complexity, we believe this can be mitigated by the use of appropriate market automation. But for automation to work efficiently, the industry will need to change its practices, particularly in relation to trade matching and allocation; this process is already affected by other reforms such as the move to T+2 settlement (international bonds settle on T+3 today). Considerable further detailed work will be needed to establish, on the basis of evidence, how best to balance the conflicting demands of liquidity and transparency at reasonable cost. We would welcome the opportunity to work with ESMA on this.

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

ICMA broadly agrees with the AFME approach, which we have summarised as follows:

We agree with ESMA that Option 2 is more appropriate for the fixed income market: for the average size to be calculated based on the total turnover over a period divided by the number of trading days in that time period (ADT). We strongly recommend that the ADT should be calculated by dividing the notional volume turnover (rather than market value) by the number of days in the period. In considering the frequency of trades, we recommend that the time period should be monthly rather than yearly. This is consistent with the approach taken in our response to Question 103

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

ICMA agrees with AFME's analysis of the fixed income markets. The first paragraph of their response is set out below: AFME Response: "AFME recommends Option 1 for the determination of the number of market participants. While AFME agrees with Option 1 for capturing the number of market participants for bonds and SFPs, we note that this parameter is not as critical a measure of liquidity as frequency of trades and ADT. If ESMA decides to use number of market participants as a parameter, we agree with ESMA's approach in that it should be used as a backstop."

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

ICMA agrees with the AFME response in respect of fixed income (FI) which is set out below for ease of reference: AFME Response: “No. AFME does not agree:

- (i) The parameter should only apply to instruments that substantially trade on lit order book systems.

We strongly agree that the bid-ask spreads should only be used on lit order book trading systems. Further, the parameter should only be applied to instruments that trade on an order book on a substantial basis. In all other circumstances, bid-ask spreads are not reliable and readily available measures of liquidity.

- (ii) End-of-day spreads should not be used – intraday snapshots of spreads linked to volume is more meaningful.

With regards to bid-ask spreads used as measures of liquidity for instruments traded on order book, we would not recommend the use of average bid-ask spread calculated over a certain period that are based on end-of-day spreads because:

- End-of-day spreads may not be representative of the spread incurred by market members during the course of the trading session;
- End-of-day spreads may not be reliable as they could be fed by participants that have no intentions to trade; and
- Measuring a spread irrespective of the type, and even more importantly, of the size of the quotes, can be misleading, as a narrow spread on a very limited size should in no instance be considered as evidence of liquidity for institutional market participants.

We consider that the following alternatives could be considered:

- Venues could be asked to publish average spreads (based on actual trades) over each trading session (based on randomly determined snapshots).
- To be meaningful, spreads need to be related to available sizes. Relative sizes could be measured for (i) the average value trade and (ii) the size specific for the given instrument.”

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

ICMA agrees with the AFME response in respect of fixed income (FI)

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

ICMA agrees with the AFME response in respect of fixed income (FI)

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

ICMA agrees with the AFME response in respect of fixed income (FI)

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?

For international bonds, trading frequency and ADT should be considered with equal weighting. The bid-ask spread is a more readily observable indicator of market conditions than the number of market participants.

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?

ICMA agrees with AFME that, given the elements of the definition in MiFIR, we do not propose an alternative approach.

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.

ICMA believes that the authorities should follow the approach of analysing the evidence from the market and developing the thresholds from there. For international bonds, it is important to make arrangements in Europe which respect the way the market has evolved over time.

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

Like AFME, ICMA agrees with the IBIA approach. In the case of international securities, ESMA will need to consider that it will not necessarily have a holistic view of trading, which may create challenges in applying the criteria in MiFID and MiFIR.

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?

In relation to post-trade transparency, we think it is desirable not to impose a deadline of 'end of day' for disclosure purposes. This is because of the risk that market participants will be unwilling to accept risk trades late in the day. The reason for this is that they will not have as much time to unwind the position as they would have if they were allowed to delay publication for a set number of hours based on the trading day. We have repeated this and extended our argument under question 142. As we note there, liquidity varies over the trading day and for other cyclical reasons.

Our response to question 142 is set out for ease of reference below.

ICMA agrees with AFME that the proposal for intra-day deferral carries significant risks to the market. MiFIR Articles 11 and 21 provide that all the details of the trade may be deferred in circumstances where there is a large in scale trade, a trade in an illiquid instrument or a trade above a size specific to the instrument.

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

ICMA agrees with the main points of the AFME response, set out for ease of reference below.

Calculation of sudden drops in liquidity for the purposes of temporary suspension

We agree with ESMA that the purpose of temporary suspension is to deal with more structural aspects of liquidity and the latter is meant to address unexpected and sudden drops in liquidity. For the temporary suspension provisions to be fit for purpose, the measures need to detect sudden drops in liquidity in real time (or thereabouts) and apply immediately. As such, the periodic liquidity assessment approach proposed for the assessment of a liquid market is not appropriate for the temporary suspension. If the calculation requires a period of data collection, it will not be able to detect sudden drops of liquidity in a sufficiently timely manner needed to protect the markets and mitigate financial stability risks.

We do not agree with using ADT to measure sudden drops in liquidity. This measure would not be sufficiently timely – it would require a period of testing and as ESMA observes, given extremely uneven distributions, it might not correctly capture the decline.

We agree with ESMA that a combination of qualitative criteria in combination with quantitative criteria.

Operational structure for temporary suspension

As ESMA recognises, a quick and straightforward assessment of liquidity for the purposes of temporary suspension is of the utmost importance. We recommend that it is also critical that the application of the thresholds can be undertaken in a quick and straightforward manner – i.e. if the threshold can be applied immediately but the approval process for applying the threshold takes days or weeks, temporary suspension will not be fit for purpose.

Expiration or renewal of temporary suspension

Following the three-month period of a temporary suspension, the determination as to whether the suspension is renewed or lifted cannot be based on price. A market event may cause the price of an instrument to drop but after three months, the liquidity of the instrument may return but the price may not resume to pre-event levels (it may adjust to a new level). Therefore, we suggest that ESMA needs to determine whether the suspension for an instrument is renewed or lifted based on whether liquidity has returned to the same level prior to the initial application for temporary suspension. This can be done by comparing the frequency and ADT of the instrument in the third month of suspension to the frequency and ADT of the instrument in the month prior to suspension.

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

Please see ICMA's answer to question 117.

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.

ICMA agrees with AFME's response in relation to fixed income, which is set out for ease of reference below. AFME Response: "No. We do not agree with ESMA's definition of request for quote:

As ESMA indicates in paragraph 10 of Section 3.7, the defining feature of these systems is the provisions of liquidity from members to market participants only on request and the requesting participant is the only counterparty to which the quote is disclosed and the only counterparty entitled to trade against it. The latter feature (the exclusivity feature) has not been incorporated into ESMA's definition. We strongly recommend that this feature is an essential part of the request for quote system.

Further, generally in a RFQ system, a market participant typically requests a quote following the provision of an indicative price or indicative prices. These indicative prices are not firm and are an essential part of trading. A quote no longer becomes indicative when the price becomes firm. ESMA states that an actionable indication of interest contains all necessary information to agree a trade – this does not mean the details of the trade such as price and volume. The distinguishing feature between an actionable indication of interest (AIOI) and an indicative price is that the AIOI is firm.

Therefore, we recommend the following definition:

*"A trading system where a quote or quotes are provided to a member or participant in response to a request **for a quote submitted** by one or more other members or participants. **The quote is exclusively provided to the requesting member or market participant and is indicated to be a firm quote.** The requesting member or participant may conclude a transaction by accepting the quote or quotes provided to it on request."*

We do, however, agree with ESMA that the definition should be sufficiently broad to capture a variety of protocols sharing the same core characteristics."

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.

ICMA agrees with AFME's response, set out for ease of reference below. AFME Response: "AFME partially agrees. If the investment firm responds to the client with quotes that are indicated to be firm (i.e. actionable), the protocol is RFQ. As discussed in answer to DP Question 119 in relation to RFQ protocols, if the stream provided is not firm, then it is indicative."

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.

Like AFME, ICMA believes that the determination as to whether a trading protocol is request for quote should be based on core principles rather than categorisation of types of protocols.

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

ICMA broadly agrees with the AFME response which is set out below.

AFME Response

Fixed Income

No. AFME does not agree with the definition

The current definition proposed by ESMA is: "*A trading system where transactions between members are arranged through voice negotiation*"

AFME recommends the following definition:

"A trading system where transactions between members are arranged actively by the operator of trading venue through voice negotiation or any medium that replicates voice negotiation"

(i) *The operator of the trading venue must be actively arranging transactions between members/market participants*

This definition suggests that the venue can be passive in the voice negotiation. If this is the case, a telephone company or another type of telecommunications company (e.g. providing instant messaging) providing the dealers and clients with the communication systems to bilaterally trade would be classified as a voice trading venue and would need to register as an RM, MTF and OTF. This cannot be correct. The trading venue providing the voice trading system needs to take an active role in the arrangement of the trade.

(ii) *Voice trading systems should include any medium that replicates voice negotiation*

AFME does not agree with this narrow definition of the term "voice trading system" since not only does this describe what current is the normal and accepted market model. There is no definition of the term 'voice negotiation' and further limiting of the definition only to negotiation through voice may exclude the completion of transactions. Indeed, voice trading system as prescribed does not appear to include the one to one negotiation that may be carried out by other means such as compliant and recorded instant messaging systems or email (which may then be stored in a 'durable medium' as defined under MiFID record keeping requirements).

This wider, integrated and essentially 'hybrid' scope describes the current operation of the wholesale multilateral market in which technologies that replicate and enhance voice execution, and which are able to store details on a durable medium, are widely employed.

In the view of AFME and the ICMA therefore, a voice trading system should include hybrid execution methodologies for which there are multiple means of communications. Further we would note that as the organisation that represents multilateral markets, in practice both globally and specifically in the US under Dodd-Frank, 'voice' covers forms of electronic communication other than those involving the spoken word, such as, instant messaging and email under the term 'by any means of interstate com-

merce'. Therefore the AFME would specifically request that the definition be expanded to " ... or any medium that replicates voice negotiation".

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

ICMA believes it is essential that the trading system protocols are workable for fixed income and are not solely based on the equities systems. In particular, provision must be made for indicative prices to be disseminated as well as firm price.

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

ICMA agrees with the AFME response, the second paragraph of which is set out below. AFME Response: "We believe that, for RFQ systems, making the 'bids and offers and attaching volumes submitted by each responding entity' pre trade transparent may have serious counter-productive effects. The requirements are disproportionately onerous and do not provide the relevant transparency. As at today, the answers provided to a request-for-quote are only known to the entity which submitted the request. The entities answering to the RFQ do not see the process provided by the other responding entities and, more importantly, third parties. This asymmetry of information is justified by the fact that the responding entities take on risk that would be increased, with no benefit for both parties, if the bids and offers were made publicly known. As the fixed income market is generally quite illiquid, disclosure on a price-by-price basis to the wider public pre trade disclosure could have severe consequences. Specifically, it is essential that market makers on venue operating an RFQ protocol are not required to disclose pre trade prices to other market makers (i.e. other price makers).

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?

ICMA does not believe there are any further systems that need to be added.

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?

ICMA agrees with the WMBA; our view is set out for ease of reference below. The following two modes of trading should be added.

"Voice on voice" trading– whereby one or more brokers speak to one or more clients or counterparties either through spoken or through email or instant messaging.

'Voice on electronic' trading– whereby the trader asks the broker to act on the trader's behalf through voice means following which the broker acts on the trader's behalf via non- voice electronic means. Inter-dealer broker systems are multilateral "all-to-all" systems ["B2B"] as defined, rather than dealer to client ["B2C"] bilateral negotiations which are expected to be captured under the Systematic Internaliser regime. This may be broadly categorised as: - 'Voice on voice' trading: whereby one or more brokers speak to one or more clients or counterparties either through spoken or through email or instant messaging. - 'Voice on electronic' trading: whereby the trader asks the broker to act on his/her behalf through voice means following which the broker acts on his/her behalf via non- voice electronic means.- RFQ as Orderbook/liquidity search. In addition, ESMA should also note that technology does allow a voice system to carry out one to many as well as one to one and this alone gives participants better transparency whilst not addressing the public issue.

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?

ICMA agrees with the WMBA; our view is set out for ease of reference below. IDBs widely advertise pre-trade information to all interested parties in the trading system. Dissemination is done including: - Indicative screen prices or other price related factors (such as yields, rates, volatilities or correlations)- Announcements via telephone or voice box or through

electronic messaging and/or email- Reports of RFQ / RFS requests. As previously mentioned, most voice trading systems are in products with a strict professional and eligible participants market only ("wholesale") and have no participation by 'retail clients'. On this basis there is very little pre-trade information currently given to the public due to the absence of demand. For participants, it is in the arranger's best interest to disseminate and advertise order information to all participants as soon as possible in order to increase the chances of a concluding trade. Therefore by default, members get the necessary pre-trade information.

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

ICMA does not believe it appropriate for ESMA to dictate an exhaustive list of methods a trading system should use to fulfil its disclosure requirements (i.e. paragraph 21). We recommend that if a venue fulfils its requirements in an alternative manner, then it should be permitted to do so.

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

ICMA believes that it is important for those providing indicative prices to provide only the price and not the method by which the price is developed.

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.

ICMA agrees with ESMA that the content and format of the information to be made public should be harmonised and standardised as much as possible. In order for the information to be useful for the market, the information reported needs to be consistent and possible to aggregate in a meaningful way. The industry would welcome the opportunity to work with ESMA to develop the details further. We believe that for the MiFID II publication regime to be workable, the format should be clarified and standardised.

ICMA agrees with ESMA's approach to make the reporting fields for post trade publication as consistent as possible with those under the transaction reporting requirements, where it is meaningful to do so (paragraph 11). We agree with ESMA (paragraph 10) that the credit rating should not be included in the public information as part of post trade transparency. We recommend that Systematic Internalisers aggregate reports should be staggered by a quarter. For example, ESMA should not require a Q4 report to be made public in January but in Q2. If ESMA requires the report to be made public the month following the relevant quarter, not only would it create operational difficulties, but market makers would be more exposed to undue risk in the positions they take on as part of their role of facilitating liquidity in the market at the end of the quarter than the beginning of the quarter (e.g. a Q4 report in January would contain SI exposure information from the last week of December).

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?

ICMA does not think that the post trade regime should be extended to provision of the systematic internaliser's identity.

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

We support ESMA mandating the use of trade flags. We believe they serve a number of purposes and are essential to ensuring good quality and meaningful post trade information. To ensure that trade flags serve their purposes, it is vital for ESMA to clarify how the flags should be used so as to seek to ensure that the published data is of reasonable quality.

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.

We support ESMA mandating the use of trade flags but we do not think that flags are needed to identify which reason justifies a deferral. This imposes an additional process before publication which is not required for the operation of the market.

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.

ICMA does not believe flags related to coupon (ex/cum) payments are necessary. In fixed income, the market convention is to quote and publish prices 'clean' of accrued interest so the issue does not arise.

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.

ICMA believes that 'give-up' trades should not be published, as their economic terms are essentially the same as the original trade and they do not contribute to price formation.

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

The European Repo Council (ERC) and ICMA firmly believe that securities financing transactions should be exempted from the post-trade transparency regime and AFME agrees.

That is not to say that information on these markets should not be available to regulators and other interested parties and work is in hand with relevant authorities at both global and regional level.

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.

ICMA believes that the requirement for trading venue operators and firms to make public price, volume, and time of transactions is, broadly, new to fixed income markets. The application of the requirement to publish information as close to real time as technically possible will need to take account of the fact that, unlike equity markets, fixed income markets are not highly automated, and that typically large orders will need to be worked over a period of time before the transaction can be completed. The avoidance of duplicate reporting of transactions can be partially achieved with a convention that the seller reports, but there are a number of scenarios involving chains of transactions that will need further thought.

We agree with AFME that fifteen minutes should be allowed for trade publication. This is regarded by the market as technically practicable and allows for the information to be checked and validated before publication. It also has the advantage of consistency with the US regime.

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

We strongly oppose the ESMA proposed deferrals. We believe that they are inappropriate for the fixed income market and believe they are too short to serve the purpose for which they are intended – to mitigate undue risk to liquidity providers (i.e. market makers).

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

ICMA agrees with AFME that the proposal for intra-day deferral carries significant risks to the market. MiFIR Articles 11 and 21 provide that all the details of the trade may be deferred in circumstances

where there is a large in scale trade, a trade in an illiquid instrument or a trade above a size specific to the instrument.

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.

ICMA, like AFME, does not agree with ESMA's proposal. We refer to our response to Question 142 for reasons and our alternative proposal.

ICMA agrees with AFME that the proposal for intra-day deferral carries significant risks to the market. MiFIR Articles 11 and 21 provide that all the details of the trade may be deferred in circumstances where there is a large in scale trade, a trade in an illiquid instrument or a trade above a size specific to the instrument.

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.

ICMA's position is very similar to AFME. We would like to see a broad category of 'bonds' including sovereign and corporate bonds. We believe that the issue size is a reasonable proxy for the factors to be taken into account.

We note the economic importance of the sovereign and corporate bond markets; and emphasise our belief that the markets could be significantly damaged by an inappropriate regime.

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.

ICMA believes a longer period is desirable.

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.

For the reasons set out in our answer to Question 144, ICMA believes that a broad categorisation by instrument type is appropriate, at least for bond markets.

ICMA's position is very similar to AFME. We would like to see a broad category of 'bonds' including sovereign and corporate bonds. We believe that the issue size is a reasonable proxy for the factors to be taken into account.

We note the economic importance of the sovereign and corporate bond markets; and emphasise our belief that the markets could be significantly damaged by an inappropriate regime.

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.

We set out ICMA's proposals for ease of reference here.

ICMA's proposed transparency deferrals for illiquid instruments are:

For instruments with an issue size >5bn

Size of transaction	Deferral period	Details to be published after the deferral period
Size is below the threshold for size specific to the instrument and large in scale	N/A	Publication of all details as close to real time as is technically possible and no later than 15

		minutes
Size is equal or above size specific to the instrument	Price: T+3 Volume extended delay: 18 months	Price to be published after the delay with an indication that the volume is LIS Volume to be published after the extended delay

For instruments with an issue size 500mm-5bn

Size of transaction	Deferral period	Details to be published after the deferral period
Size is below the threshold for size specific to the instrument and large in scale	N/A	Publication of all details as close to real time as is technically possible and no later than 15 minutes
Size is equal or above size specific to the instrument	Price: T+7 Volume extended delay: 18 months	Price to be published after the delay with an indication that the volume is LIS Volume to be published after the extended delay

For instruments with an issue size <500mm

Size of transaction	Deferral period	Details to be published after the deferral period
Illiquid instruments (We expect all instruments in this category to be regarded as 'illiquid' for MiFID trade publication purposes).	Price: T+7 Volume extended delay: 18 months	Price to be published after the delay with an indication that the volume is LIS Volume to be published after the extended delay

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.

ICMA agrees with AFME; the AFME response is set out for ease of reference below.

AFME Response:

We agree with ESMA's approach that only a member of the ESCB is in a position to clarify whether a trade is for monetary, FX or FSB policy operations.

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?

ICMA and AFME agree on the response below.

Unfortunately, we do not believe that the test proposed by ESMA is workable in practice. In order for the exemption to be workable, the clarification must be provided prior to or at the point of execution. This is because the investment firm/venue must know whether to apply the transparency requirements prior to execution (the transparency requirements need to be complied with prior to execution and after execution but before settlement). However, legal documents are exchanged on the settlement date (i.e. two days or more after execution of the trade). Therefore, a clarification would occur after the transparency requirements would need to be met.

Therefore, we propose that either (i) the member of the ESCB provides a clarification when requesting a quote, which would require operational builds (special flags) and raises transparency compliance concerns for investment firms/venues (i.e. how would they demonstrate that the ESCB has provided the clarification and thereby complied with the transparency requirements), or (ii) the request for the quote by the member of the ESCB should be taken as prima facie evidence that the trade is for monetary, FX or FSB policy operations. We recommend the second option.