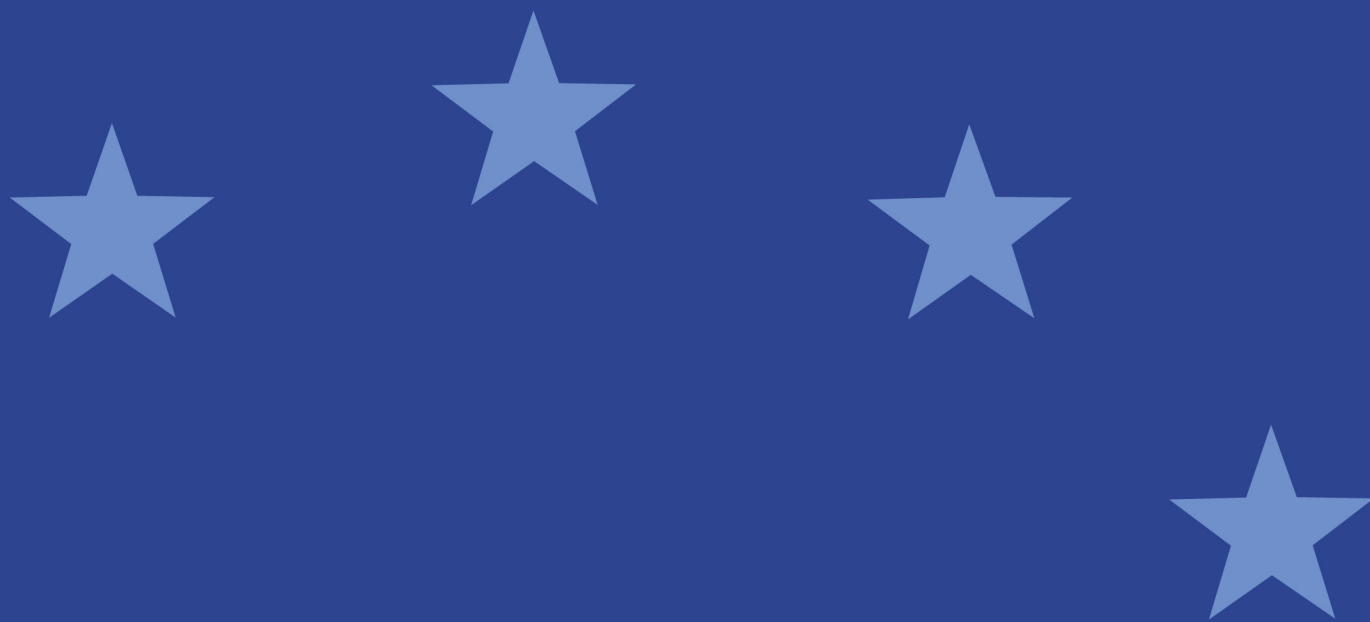


Reply form for the Consultation Paper on MiFID II/ MiFIR review report on the transparency re- gime for non-equity and the trading obligations for derivatives



Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation Paper on the transparency regime for non-equity instruments and the trading obligations for derivatives MiFID II/ MiFIR review report published on the ESMA website.

Instructions

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

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA_QUESTION_CP_MIFID_NQT_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

- if they respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

Naming protocol

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

ESMA_CP_MIFID_NQT_NAMEOFCOMPANY_NAMEOFDOCUMENT.

e.g. if the respondent were ESMA, the name of the reply form would be:

ESMA_CP_MIFID_NQT_ESMA_REPLYFORM or

ESMA_CP_MIFID_NQT_ANNEX1

Deadline

Responses must reach us by **19 April 2020**.

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



Publication of responses

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

Data protection

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

General information about respondent

Name of the company / organisation	Danish Securities Dealers Association (Børsmæglerforeningen), Swedish Securities Dealers Association (Fondhandlareföreningen), Norwegian Securities Dealers Association (Verdipapirforetakenes Forbund)
Activity	Investment Services
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Europe

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CP_MIFID_NQT_1>

The Danish Securities Dealers Association (Børsmæglerforeningen), The Norwegian Securities Dealers Association (Verdipapirforetakenes Forbund) and Swedish Securities Dealers Association (Fondhandlareföreningen), welcome the opportunity to respond to ESMA's consultation regarding Consultation Paper on MiFID II/ MiFIR review report on the transparency regime for non-equity and the trading obligations for derivatives.

Before responding to the specific questions, we would like to make the following general comments.

- We think it is important to take a cautious approach to any amendments to MiFIR which could have a negative effect on the ability of systemic internalisers (SIs) to provide liquidity to bonds – and derivatives market in EU, in particular considering that the full effects of the COVID-19 crisis is not known.
- In a review, it should be a priority to ensure that the scope of pre – and post trade transparency requirements in MiFIR is appropriate and that the data becomes more meaningful and accessible to clients. In this connection, it is important to consider that the “non-equity” category includes very different types of instruments. For instance, liquid equity derivatives have other characteristics and are traded in a very different way compared to bonds.
- Our members see little value of the pre- trade transparency rules for SI in article 18 MiFIR and would support if these rules were abolished. If kept, we believe that a number of targeted amendments should be made in order to make the rules less complex and fit for purpose. In particular, we support proposals to delete the obligations for illiquid instruments in article 18.2 as well as the obligations 18.5- 18.7. The SI-obligations should only be required for liquid instrument traded in retail sizes, up to SSTI.
- We do not support deletion of the SSTI concept which is important in order to limit pre trade transparency to retail segment of the market and to protect SIs and market makers against undue risk when trading against own account in large transactions. However, in order to make the SSTI threshold less complex, the Commission could consider turning the SSTI threshold into a fixed threshold.

- We support a full harmonisation of the deferral regime for non-equity provided that the new regime is structured in a way so that it also works for smaller markets such as in the Nordics which are characterised by a limited number of very large transactions and few market participants. In order to avoid front-running on smaller markets, it is not enough with volume omission but also price needs to be masked during the deferral period T+2. For large transactions and transactions in very illiquid instruments at least 2-week volume omission is needed in order for SIs to be able to unwind their risk.
- In order to improve the data quality, we support increased standardisation and take the view that FIRDS should be a golden source for “ToTV”. Furthermore, SIs trading with each other should be able to agree on which firm should report.

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<ESMA_COMMENT_CP_MIFID_NQT_1>

Q1. What benefits or impacts would you see in increased pre-trade transparency in the different non-equity markets? How could the benefits/impacts of such pre-trade transparency be achieved/be mitigated via changes of the Level 1 text?.

<ESMA_QUESTION_CP_MIFID_NQT_1>

Our members see little value of the pre-trade transparency rules for SI in article 18 MiFIR and would support if the rules were abolished. In particular professional clients have very little use of this information because they use other data sources for trading. We therefore believe that instead of putting efforts into increasing pre trade transparency, regulators should focus on improving the post trade transparency and the data quality.

If pre-trade transparency requirements are kept, we believe that a number of targeted amendments should be made in order to make the rules less complex and fit for purpose. In particular, we support proposals to delete the obligations for illiquid instruments in article 18.2 as well as the obligations 18.5-18.7. As originally intended, the SI-obligations should only be required for liquid instrument traded in retail sizes.

Please note that the SSTI threshold needs to be kept in order to protect SIs against undue risk. Increased pre-trade transparency for large transactions or trading in illiquid instrument could have a very negative effect on the liquidity of EU bond markets.

<ESMA_QUESTION_CP_MIFID_NQT_1>

Q2. What proposals do you have for improving the level of pre-trade transparency available? Do you believe that the simplification of the regime for pre-trade transparency waivers would contribute to the improvement of the level of pre-trade transparency available?

<ESMA_QUESTION_CP_MIFID_NQT_2>

If pre-trade transparency requirements are kept, we believe that a number of targeted amendments should be made in order to make the rules less complex and fit for purpose. In particular, we support proposals to delete the obligations for illiquid instruments in article 18.2 as well as the obligations 18.6 to execute transactions at the same price. If article 18.6 is deleted, also the requirements in 18.5 and 18.7 should be removed as well as the obligation for SIs to disclose their identity. Those amendments would also have the benefit of creating a level playing field with trading on venue.

As originally intended, the SI-obligations should only be required for liquid instrument traded in retail sizes. The SSTI waiver therefore needs to be kept in article 9, 18 and the post trade regime in order to protect liquidity providers/SIs against undue risk.

In order to simplify the rules, a fixed SSTI threshold could be considered but it would still need to be significantly lower than LIS in order to reflect the retail segment.

<ESMA_QUESTION_CP_MIFID_NQT_2>

Q3. Are you supportive of ESMA's proposal to delete the pre-trade SSTI-waiver? Would you compensate for this by lowering the pre-trade LIS-thresholds across all asset classes or only for selected asset classes? What would be the appropriate level for

such adjusted LIS-thresholds? If you do not support ESMA's proposal to delete the pre-trade SSTI-waiver, what should be the way forward on the SSTI-waiver in your view?

<ESMA_QUESTION_CP_MIFID_NQT_3>

No. The SSTI threshold needs to be kept both in article 9, 18 and the post trade regime in order to protect liquidity providers/SIs against undue risk. The SSTI reflects the transaction level where transparency is of most use whilst at the same time not exposing SIs to undue risk.

In order to simplify the rules, a fixed SSTI threshold could be considered but it would still need to be significantly lower than LIS.

<ESMA_QUESTION_CP_MIFID_NQT_3>

Q4. What are your views on the use of the SSTI for the SI-quoting obligations. Should it remain (Option 1) or be replaced by linking the quoting obligation to another threshold (e.g. a certain percentage of the LIS-threshold) (Option 2)? Please explain.

<ESMA_QUESTION_CP_MIFID_NQT_4>

Option 1. The SSTI threshold needs to be kept both in article 9, 18 and the post trade regime in order to protect liquidity providers/SIs against undue risk. As originally intended, the SI-obligations should only be required for liquid instrument traded in retail sizes, i.e. up to SSTI.

<ESMA_QUESTION_CP_MIFID_NQT_4>

Q5. Would you support turning the hedging exemption into a limited negotiated trade waiver? If so, would you support Option 1 or Option 2? If not, please explain why.

<ESMA_QUESTION_CP_MIFID_NQT_5>

Yes, we support this proposal. The hedging exemption is too complicated to apply. The waiver should apply to all derivatives and not be restricted to commodity derivatives. It could also be considered to allow financial counterparties to use this waiver for their hedging activities.

<ESMA_QUESTION_CP_MIFID_NQT_5>

Q6. Do you agree with ESMA's observations on the emergence of new trading systems and the proposed way forward requiring a Level 1 change and ESMA to issue an Opinion for each new trading system defining its characteristics and the transparency requirements? Would you have suggestions for the timeline and process of such Opinions? Please explain.

<ESMA_QUESTION_CP_MIFID_NQT_6>

No comment at this stage.

<ESMA_QUESTION_CP_MIFID_NQT_6>

Q7. Do you agree with the proposal for the definition of hybrid system? Are there in your view trading systems currently not or not appropriately covered in RTS 2 on which ESMA should provide further guidance? Please explain.

<ESMA_QUESTION_CP_MIFID_NQT_7>

No comment at this stage.

<ESMA_QUESTION_CP_MIFID_NQT_7>

Q8. Do you agree with ESMA's proposal to require SIs to make available data free of charge 15 minutes after publication? Please explain.

<ESMA_QUESTION_CP_MIFID_NQT_8>

Yes, but it is important to ensure that the trading venues do not charge SIs for providing and publishing quotes. See responses by SSSA and Finance Denmark to ESMA CP on market data.

<ESMA_QUESTION_CP_MIFID_NQT_8>

Q9. Would you see value in further standardising the pre-trade transparency information to increase the usability and comparability of the information? Please explain.

<ESMA_QUESTION_CP_MIFID_NQT_9>

Yes, the we support increased standardisation of pre trade data.

<ESMA_QUESTION_CP_MIFID_NQT_9>

Q10. Do you agree with ESMA's assessment of the level of post-trade transparency and with the need of a more streamlined and uniform post-trade regime which does not include options at the discretion of the different jurisdictions? If not, please explain why and, where available, support your assessment with data.

<ESMA_QUESTION_CP_MIFID_NQT_10>

We generally support a harmonised post trade deferral regime, provided that the regime can also work for smaller markets which are dependent on the ability of a limited number of SIs to provide liquidity. On smaller markets, also the price information is very sensitive and therefore it is not sufficient with a harmonised deferral regime that only allow volume omission. For large transactions and the illiquid segment of the market a longer deferral is needed in order for SIs to be able to handle their market risk.

<ESMA_QUESTION_CP_MIFID_NQT_10>

Q11. Do you agree with this proposal? What would be the appropriate level of such a revised LIS-threshold in your view?

<ESMA_QUESTION_CP_MIFID_NQT_11>

We are concerned with the proposal to delete the SSTI and replace it with an “adjusted LIS” since it may increase the risks for SIs and therefore have a negative effect on their ability to provide liquidity.

<ESMA_QUESTION_CP_MIFID_NQT_11>

Q12. In your view, should the real time publication of volume masking transactions apply to transactions in illiquid instruments and above LIS waiver (Option 1) or to transactions above LIS only (Option 2 and Option 3). Please elaborate. If you support another alternative, please explain which one and why.

<ESMA_QUESTION_CP_MIFID_NQT_12>

A harmonised post trade deferral regime must work also for smaller markets which are dependent on the ability of a limited number of SIs to provide liquidity. On smaller markets, also the price information is very sensitive and therefore it is not sufficient with a harmonised deferral regime that only allow volume omission.

Based on these concerns, we cannot fully support either of the options.

A revised Option 1 would be workable - provided that the deferral period T+2 is completely dark, i.e. both price and volume must be masked. We agree that the supplementary four week deferral period could be replaced by a two week volume omission.

<ESMA_QUESTION_CP_MIFID_NQT_12>

Q13. Do you agree with the publication of the price and volume of all transactions after a certain period of time, such as two calendar weeks (Option 1 and 2) or do you support the two-steps approach for LIS transactions (Option 3)? Please explain why and provide any alternative you would support. Which is the optimal option in case a consolidated tape would emerge in the future?

<ESMA_QUESTION_CP_MIFID_NQT_13>

A harmonised post trade deferral regime must work also for smaller markets which are dependent on the ability of a limited number of SIs to provide liquidity. On smaller markets, also the price information is very sensitive and therefore it is not sufficient with a harmonised deferral regime that only allow volume omission.

Based on these concerns, we cannot fully support either of the options.

A revised Option 1 would be workable - provided that the deferral period T+2 is completely dark, i.e. both price and volume must be masked. We agree that the supplementary four week deferral period could be replaced by a two week volume omission

We are not in favour of the introduction of a consolidated tape for non-equity since we believe that it will increase market data costs and be of little value. If introduced, we propose that the CT is limited to post trade data only and do not include mandatory consumption. In our view, it would be too complex to create a CT for derivative and therefore, if introduced, it should be limited to bonds only. See NSA response to the Commissions Consultation on MiFID Review.



<ESMA_QUESTION_CP_MIFID_NQT_13>

Q14. Do you agree with ESMA’s proposed way forward to issue further guidance and put a stronger focus on enforcement to improve the quality of post-trade data? Are there any other measures necessary at the legislative level to improve the quality of post-trade data? What changes to the transparency regime in Level 1 could lead to a substantial improvement of data quality?

<ESMA_QUESTION_CP_MIFID_NQT_14>

Yes. In order to improve data quality, we support increased standardisation and takes the view that FIRDS should be a golden source for “ToTV”. Furthermore, SIs trading with each other should be able to agree on which firm should report. We do not support increased scope for derivatives.

<ESMA_QUESTION_CP_MIFID_NQT_14>

Q15. What would be the optimal transparency regime to help with the potential creation of a CTP?

<ESMA_QUESTION_CP_MIFID_NQT_15>

We are not in favour of the introduction of a consolidated tape for non-equity since we believe that it will increase market data costs and be of little value. If introduced, we propose that the CT is limited to post trade data only and do not include mandatory consumption. In our view, it would be too complex to create a CT for derivative and therefore, if introduced, it should be limited to bonds only. See NSA response to the Commissions Consultation on MiFID Review.

<ESMA_QUESTION_CP_MIFID_NQT_15>

Q16. Do you agree with ESMA’s above assessment? If not, please explain.

<ESMA_QUESTION_CP_MIFID_NQT_16>

We are concerned with poor data quality.

<ESMA_QUESTION_CP_MIFID_NQT_16>

Q17. Are you of the view that the interpretation of TOTV should remained aligned for both transparency and transaction reporting? If not, please explain why.

<ESMA_QUESTION_CP_MIFID_NQT_17>

Yes, the interpretations should be aligned.

<ESMA_QUESTION_CP_MIFID_NQT_17>

Q18. Which of the three options proposed, would you recommend (Option 1, Option 2 or Option 3)? In case you recommend an alternative way forward, please explain.

<ESMA_QUESTION_CP_MIFID_NQT_18>

We support Option 1. The number of OTC derivatives for which transparency has a value is significantly less than the number of instruments covered by the current “ToTV” regime. Moreover, ESMA’s FIRDS should be a “golden source” for which instruments that are “ToTV”.

<ESMA_QUESTION_CP_MIFID_NQT_18>

Q19. What is your view on the proposal to delete the possibility for temporarily suspending the transparency provisions? Please explain.

<ESMA_QUESTION_CP_MIFID_NQT_19>

We do not support deleting the possibility of temporary suspension which we consider to be a safeguard.

<ESMA_QUESTION_CP_MIFID_NQT_19>

Q20. Do you have any remarks on the assessment of Article 28 of MiFIR? Please explain.

<ESMA_QUESTION_CP_MIFID_NQT_20>

No.

<ESMA_QUESTION_CP_MIFID_NQT_20>

Q21. Do you have any views on the above-mentioned criteria and whether the criteria are sufficient and appropriate for assessing the liquidity of derivatives? Do you consider it necessary to include further criteria (e.g. currency)? Do you consider that ESMA should make use of the provision in Article 32(4) for asset classes currently not subject to the trading obligations? Please explain.

<ESMA_QUESTION_CP_MIFID_NQT_21>

We do not see a need to change the derivative trading obligation (DTO) and include new criteria or new asset classes.

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<ESMA_QUESTION_CP_MIFID_NQT_21>

Q22. Do you agree that a procedure for the swift suspension of the trading obligation for derivatives is needed? Do you agree with the proposed procedure? Please explain.

<ESMA_QUESTION_CP_MIFID_NQT_22>

We agree.

<ESMA_QUESTION_CP_MIFID_NQT_22>

Q23. Do you have a view on this or any other issues related to the application of the DTO?

<ESMA_QUESTION_CP_MIFID_NQT_23>



Equivalence decisions will be important following Brexit.
<ESMA_QUESTION_CP_MIFID_NQT_23>

Q24. Do you have any views on the functioning of the register? Please explain.

<ESMA_QUESTION_CP_MIFID_NQT_24>
No comments. Focus should be on improving data quality. TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_NQT_24>

Q25. Do you agree that the current quarterly liquidity calculation for bonds is appropriate or would you be of the view that the liquidity determination of bonds should be simplified and provide for more stable results? Please explain.

<ESMA_QUESTION_CP_MIFID_NQT_25>
Yes, considering trading patterns of bonds we think that quarterly liquidity calculation is still appropriate. Focus on the data quality.
<ESMA_QUESTION_CP_MIFID_NQT_25>

Q26. Do you agree with ESMA proposal to move to stage 2 for the determination of the liquidity assessment of bonds? Please explain.

<ESMA_QUESTION_CP_MIFID_NQT_26>
From a general perspective, we do not object to a move to stage 2 for the liquidity assessment. However, considering that the full effects of COVID-19 are not yet known and that there are also additional uncertainties linked to the forthcoming Brexit, we believe in a cautious approach to all regulatory measures which could have an impact on the liquidity of the market. Focus on data quality at this stage.
<ESMA_QUESTION_CP_MIFID_NQT_26>

Q27. Do you agree with ESMA proposal not to move to stage 2 for the determination of the pre-trade SSTI thresholds for all non-equity instruments except bonds? Please explain.

<ESMA_QUESTION_CP_MIFID_NQT_27>
Yes.
<ESMA_QUESTION_CP_MIFID_NQT_27>

Q28. Do you agree with ESMA proposal to move to stage 2 for the determination of the pre-trade SSTI thresholds for bonds (except ETCs and ETNs)? Please explain.

<ESMA_QUESTION_CP_MIFID_NQT_28>

From a general perspective, we do not object to a move to stage 2 for the liquidity assessment. However, considering that the full effects of COVID-19 are not yet known and that there are also additional uncertainties linked to the forthcoming Brexit, we believe in a cautious approach to all regulatory measures which could have an impact on the liquidity of the market. Focus on data quality at this stage. Also, it could be considered to changing the SSTI into a fixed threshold, provided that it is set a level so that it still protects SIs against undue risk.

<ESMA_QUESTION_CP_MIFID_NQT_28>

Q29. What is your view on the current calibration of the ADNA and ADNT for commodity derivatives? Are there specific sub-asset classes for which the current calibration is problematic? Please justify your views and proposals with quantitative elements where available.

<ESMA_QUESTION_CP_MIFID_NQT_29>

No comments at this stage.

<ESMA_QUESTION_CP_MIFID_NQT_29>

Q30. In relation to the segmentation criteria used for commodity derivatives: what is your view on the segmentation criteria currently used? Do you have suggestions to amend them? What is your view on ESMA's proposals SC1 to SC3? In your view, for which sub-asset classes the "delivery/cash settlement location" parameter is relevant.

<ESMA_QUESTION_CP_MIFID_NQT_30>

No comments at this stage

<ESMA_QUESTION_CP_MIFID_NQT_30>

Q31. What is your view on the analysis and proposals related to the pre-trade LIS thresholds for commodity derivatives? Which proposal to mitigate the counterintuitive effect of the current percentile approach do you prefer (i.e. keep the current methodology but modify its parameters, or change the methodology e.g. using a different metric for the liquidity criteria)? Please justify your views and proposals with quantitative elements where available.

<ESMA_QUESTION_CP_MIFID_NQT_31>

No comments at this stage

<ESMA_QUESTION_CP_MIFID_NQT_31>