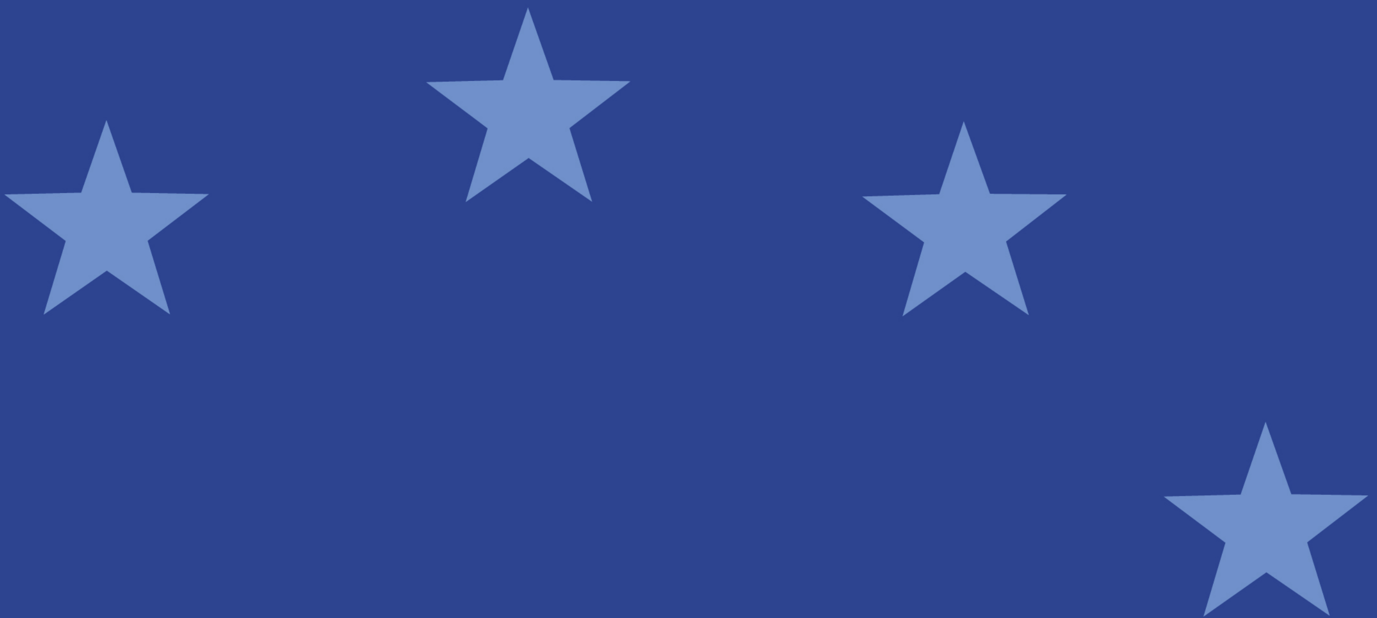
Reply form for the Consultation Paper on MiFID II/ MiFIR review report on the transparency regime for non-equity and the trading obligations for derivatives



10 March 2020

European Securities and Markets Authority

Date: 10 March 2020

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	Swedish Securities Dealers Association
Activity	Investment Services
Are you representing an association?	☒
Country/Region	Europe

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CP_MIFID_NQT_1>
The Swedish Securities Dealers Association (SSDA) welcomes the opportunity to respond to ESMAs consultation regarding transparency for non-equity instrument and the trading obligation for derivatives.

Please note that SSDAs response is based on discussions with members before the full effects of the COVID19 breakout are known and we reserve the right to come back with additional comments. At this stage it is important that EU regulators take a very cautious approach to any regulatory changes which may have a negative impact on the ability for companies/SMEs and Member States to issue bonds and/or hedge their risks.

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

1. **General comments**

The SSDA welcomes a review of the transparency rules for non-equity with an aim of increasing the transparency (where appropriate) and making the regime less complex. However, it is important to underline that the over-all aim of the transparency rules in MiFIR is to ensure the well-functioning of the bond- and derivatives markets in EU. After having read the consultation paper, the SSDA is concerned that policy makers put too much focus on achieving an increased transparency per se - without properly analysing the benefits and drawbacks of the amendments in terms of liquidity and efficiency of the markets. In order to assess the impact, it is very important to look at the combined effects of the proposals.[1]

Moreover, it follows from recital 16 MiFIR that the transparency regime shall be calibrated based on the *different types of financial instruments, taking into account the interests of investors, issuers (including government bond issuers) and market liquidity.*[2] According to the SSDA these considerations are still of outmost importance in the context of a MiFID II/MiFIR review.
In particular:

[1] For instance, the effects that changes to article 18 MiFIR will have on the liquidity of EU bond markets will be totally dependent on what changes are proposed to RTS 2 as regards the liquidity assessment and SSTI levels.
[2] Recital 16 MiFIR

1. Equity vs. Non-Equity: Most non-equity markets are characterised by infrequent trading in large sizes by a limited number of professional investors. These characteristics make it difficult to arrange order driven trade. Instead the liquidity is dependent on the ability of market makers/SIs to execute client orders against their own account. In other words, due to the market structure, on venue trading is often not an option for non-equity instruments. That is an important difference compared to equity.

2. SIs sensitivity to transparency: SIs take on market risk which means that they need to be able to handle this risk without showing their positions to the rest of the market. Too extensive transparency requirements will force SIs either to change their business model in order to compensate for the increased risk (e.g. quote smaller sizes or increase the spread) or to withdraw from the market – with negative consequences for the market liquidity as a result.

3. Market Size: Smaller or new bond markets in EU are more dependent on a limited number of SIs than the larger Eurobond market.[3] Moreover, on a smaller market it is typically easier for market participants to figure out which firm is behind an individual trade. That makes SIs active on smaller or new more markets vulnerable to transparency at a transaction-level.[4] (See below comments regarding Sweden)

4. Effects on real economy: The primary market relies on the well-functioning of the secondary market. If the secondary bond market is not liquid (i.e. clients are not able to buy and sell instruments quickly at the volume that they want to without market impact) it will become more difficult for issuers such as Member States and companies/SMEs to use the EU capital markets for their financing, with negative effects on the real economy as a result.

During the MiFID II negotiations, the co-legislators recognised the above-mentioned characteristics of many non-equity markets and wanted to take a cautious approach when implementing new harmonised rules on transparency. Therefore, a number of safeguards were introduced on level 1 and 2. For example: the SSTI-threshold (which is lower than LIS) which intend to protect SIs for undue risk, a 4 year phase-in of the SSTI/LIS and liquidity assessment and a flexible deferral regime which could be adapted to the local markets' needs. Although the SSDA recognises that there may be reason to evaluate the need for some of these safeguards, it is important to recognise that the policy objective remains the same i.e. to avoid that the EU-wide transparency has a negative impact on the liquidity and the real economy in some Member States. In fact, as mentioned above, a careful approach could be even more important today, considering that the full effects of COVID-19 are not yet known and there are also uncertainties in relation to a forthcoming Brexit.

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[3] For example, there are currently five (5) SIs active on the Swedish government bonds (SEK).

[4] Before MiFID II, post trade transparency in Sweden was therefore at an aggregate level in order to protect SIs.

Comments relating to the Swedish transparency regime

In the consultation paper, ESMA refers to Finansinspektionen's study on the transparency regime for bonds[5] which indicated that many market participants in Sweden consider that the transparency has decreased following MiFID II/MiFIR.[6] Considering that ESMA uses this study as a support for some of its proposals, the SSDA finds it appropriate to provide some comments.

First of all, is important to note that the Swedish transparency regime pre-MiFID II was well adapted to the characteristics of our small market. The Swedish bond market is its own currency area (SEK) where only a limited number of professional investors trade on an infrequent basis and the transactions are very large in size[7]. These characteristics make order book trading on a venue very difficult to organise. Therefore, the market has been organised as an OTC market where 5-6 market makers/SIs have agreements with the National Dept Office to provide quotes in Swedish government bonds and covered bonds and to execute client orders against their own account.[8] Thus, that the well-functioning of our bond market is very dependent on the ability of these 5-6 market makers/SIs to take market risk on their balance sheets and also to handle that risk in a safe way e.g. by entering into derivatives transactions. A very important point to make is that since the number of active market makers is so limited in Sweden, it is easy to figure out who sits on which position and, as a consequence, the risk of front running is therefore higher compared to larger markets where more market participants are active.

The Swedish transparency regime that applied before MiFID II/MiFIR required publication of *aggregated information*[9] no later than 9:00 AM the day following the transaction (T+1). The information was published through NASDAQ. For transactions in corporate bonds, which trade much more infrequent than government bonds and covered bonds, Finansinspektionen allowed a 10 day deferral for transactions over 50 million SEK.[10] In the opinion of SSDA, most market participants in Sweden considered that this transparency regime worked well and that it struck a good balance between the need for transparency (i.e. buy-side received information relatively quickly at T+1) and liquidity (as SIs could handle their market risk without exposing their individual positions).

The MiFIR transparency regime is more extensive than the previous Swedish regime since it includes pre-trade transparency, data on an individual transaction level and includes many more asset classes. From that sense the level of transparency has increased with the harmonised EU regime. However, the system with publication of data though various APAs has made it very difficult for the market participants to get a good picture of the market. Moreover, the lack of standardisation of CFI codes and a so-called

[5] https://www.finansinspektionen.se/contentassets/0174249373f1415bb14bd2bd14a77307/fi-tillsyn-15-transparens-obligationsm-engn.pdf
[6] Page 46 CP
[7] A normal trading size in Swedish government bonds is 100-200 million SEK (10-20 million EUR)
[8] The agreement apply to sovereign bonds and covered bonds. The corporate bond market works essentially the same way although there is no formal agreement with the issuer and the transactions are smaller and trade even more infrequently – often only on a monthly basis.
[9] FFFS 2007:17 Each market maker reported: high, low and average yield during the day and aggregated volume.
[10] Aggregation T+1 makes little sense for instrument only traded once a week or even more infrequent.

golden source for the "ToTV" have made the comparability and usability of the data difficult. Therefore, even though MiFID II gives the market access to much more data it has become more difficult to use this information for price formation or valuation purposes. The divergent national approaches on deferrals has also increased the complexity and SSDA members have been concerned with the fact that Finansinspektionen's approach to deferrals, which differs from that taken in many other countries, apply even when Swedish SIs trade "ToTV" instrument on other EU markets i.e. in competition with SIs who are subject to a more flexible regime. Under MiFID II/MiFIR the applicable deferral regime is decided by the SIs home member state and not where the instruments are listed.

Based on the above, SSDA is not surprised that the market participants that Finaninspektionen interviewed in its report consider that the level of transparency on the Swedish market has decreased compared to the system which we had before and which took the characteristics of our small bond and derivatives market into account. However, this discontent cannot be taken as evidence or support for the changes proposed by ESMA in this consultation paper. **The SSDA wants to underline most of the transparency related problems which we see on the Swedish market are linked to data quality, fragmentation and general complexity of the regime. These issues will not be fixed by removing deferral for illiquid instruments or deleting SSTI thresholds. In fact, if these safeguards are removed, we believe the negative effects that the EU transparency regime have on the markets will increase even further.**

Non price forming trades - conflict between MiFIR and MAR

One issue that the SSDA considers important to address in the context of a MiFID Review relates to the scope of "non-price forming trades". To our understanding, the lists in article 13 of RTS 1 and article 12 of RTS 2 are interpreted as being exhaustive. This creates problems for the market since the number of different types of transactions not contributing to the price discovery process changes over time and local markets may have different needs. In our view, it is important to ensure that all transactions not contributing to price discovery are exempted from transparency requirements as they may mislead the market in terms of price, supply or demand and thereby be in conflict with the market abuse regulation (MAR).

One current example from the Swedish market relates to the situation where a retail client wants to move his/her securities in or out of an insurance (*Sw:kapitalförsäkring*). Although it is the insurance company that formally owns the financial instruments, such "move" does not lead to a real change in ownership and the transaction should therefore not be made public. The problem is that a literal reading of the transparency rules in MiFIR seems to suggest that the information must be published post trade since there is no exemption in RTS 1 or 2 that explicitly covers this situation. Considering "the counterparty" is not an eligible or professional client, it is also uncertain if the exemption from the trading obligation in article 23.1 b MiFIR apply. At the same time, if published it could mean a breach of the rules on market manipulation in MAR (wash trade). Thus, in this case there is a "conflict" between MiFID II and MAR which puts investment firms and their clients in a very difficult situation.

The SSDA therefore proposes that RTS 1 and 2 are amended and/or a new recital is included that clearly allow firms to rely on the exemption for non price forming trades in all situations where there is no real exchange of ownership and the market therefore has little value of the information and could even be misleading or in conflict with MAR if the information came out. If necessary, such rule could be made subject to the prior approval of competent authority.

<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>
First, it is important to underline that "non-equity" covers a very wide category of instruments including bonds, ETC, ETN, derivatives, structured finance products and emission allowances. The benefits and drawbacks of increased pre trade transparency of these types instruments could vary, depending on the market structure. Also, it should be noted that there can be significant differences between products of the same asset class. Standardised equity derivatives are very different compared to bespoke OTC interest rate derivatives. Italian retail bonds traded on a venue are very different from transactions in SEK government bonds which are only traded by 5 market makers/SI. As mentioned under General Comments, it is therefore very important to look at the market structure when evaluating the appropriate level of transparency for an asset class.

The SSDA assumes that the main goal with increased pre-trade transparency is to improve the efficiency of price formation and valuation of products.[11] However, although the SSDA can see the merits in simplifying the regime we are not convinced that more stringent pre-trade transparency rules at this stage will actually be to the benefit of the market (i.e. the investors, issuers and intermediaries). Only two years have passed since the implementation of MiFIR and we think that the focus should be on improving the data quality so that the full effects of the current rules can be seen rather than amending the rules.

Moreover, as mentioned under General Comments, we fear that there could be significant drawbacks if the pre-trade transparency is increased for liquidity providers and SIs. In theory the pre-trade requirement for SIs lead to transparency as SIs are required to trade with other clients at the price they have provided to one client. However, on one hand the ability to limit the quotes to one transaction (as mentioned by ESMA in its Q&A on transparency) and other factors such as client specific prices in derivatives, runs the quotes meaningless from a transparency perspective. On the other hand, increasing the requirements (in effect forcing firms to take on more risk than would make sense from a business perspective) will likely deter firms from quoting in the first place, quote smaller sizes or increase the spreads). In particular considering the unknown effects of the COVID-19 breakout we think that it is wise to take a very cautious approach at this stage.

The SSDA agrees with ESMA that the effects of the level 1 changes will in practice be determined by level 2, and in particular the liquidity assessment and the SSTI/LIS thresholds. Thus, it is very important that the co-legislators take the combined effects of the proposals on level 1 and 2 into account.

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[11] Recital 15 MiFIR

Finally, in order to make the information more valuable to clients, additional work needs to be carried out in order to improve the data quality and ensure the usability and comparability of the information. One measure that could help would be to increase the level of standardization of the CFI codes so that a specific ISIN would be classified as the same asset by all types of venues. Moreover, it is not reasonable that a new ISIN is created each day for some derivatives. We also support that ESMAs database should be used as a “golden source” for the “ToTV”.
<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>
According to MiFID, the main goal with increased pre-trade transparency is to improve the efficiency of price formation and valuation of products.[12] The SSDA questions if this objective is achieved by the current regime and would support an abolishment of pre trade transparency requirements in MiFIR.

If the rules are kept, we think the level of transparency should remain unchanged. To introduce more stringent pre-trade transparency rules at this stage will not be to the benefit of investors, issuers and intermediaries. In fact, only two years have passed since the implementation of MiFIR and we think that the co-legislators focus should not be on changing rules but on improving the data quality so that some positive effects of the current rules can be seen.

Moreover, we fear that changing the pre trade transparency rules at this point would bring unnecessary burden and uncertainty to the market which is already under a lot of stress considering the COVID-19 breakout. In particular, the SSDA strongly questions if this is the right time to remove the illiquidity criteria and introduce new calculations of liquidity and SSTI/LIS since these measures will make it more difficult for SIs to provide liquidity to the market.

Instead, we support that the following measures:
- Improvement of the data quality and standardisations (see Q 9).
- The hedging exemption in article 8 should be turned into a waiver. (see Q 5)
- Introduction of fixed SSTI thresholds for pre- and post trade transparency and SI obligations, provided that they are set at an appropriate level which protects SIs from undue risk. (see Q 3, 4, 11)
- Abolish the obligation for SIs to execute transactions with other clients in article 18 (6) and 18 (7) MiFIR. As a consequence, it could also be considered to delete 18 (5) and to allow SIs to trade on an anonymous basis.

[12] Recital 15 MiFIR

<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 SSDA does support the proposal to delete the pre trade SSTI waiver. We believe that the SSTI waiver fills an important purpose and do not think that the benefits of deleting this waiver outweigh the negative effects or costs involved.

The SSTI threshold was introduced by the co-legislators as a recognition of the fact that liquidity providers/SIs unlike trading venues take risk when trading on own account and therefore need to be protected from transparency requirements when trading in large sizes, in particular since the quoting is not anonymous. If the SSTI threshold was to be removed from MiFIR and replaced by a pre trade "adjusted LIS" such "adjusted LIS" must therefore be set a level to ensure that liquidity providers do not withdraw from the market.[13] In practice that would mean that the "adjusted LIS" would need to be significantly lower than the current LIS (for example, the SSTI level for Swedish 10 year Government Bond is approximately 16 % of LIS) and there would also need to be some sort of review-mechanism of the %. The question is what you then will have gained from a simplicity or transparency perspective. (Please note that we assume that the scope of this "adjusted LIS" is intended to cover only liquidity providers and not all on-venue trading covered by article 9.[14])

Moreover, the SSDA thinks it dangerous to base an analysis on the benefits of a SSTI pre-trade waiver only on the current usage. In our view, the main explanation why only 6 % use this waiver today is because other waivers are available, such as the illiquidity waiver. If more bonds and derivatives will become liquid in the future, which will happen after the phase-in, the SSTI threshold will become more important in order to protect liquidity providers against undue risk.

Moreover, many IT systems have been built based on the assumption that there is an SSTI threshold. Therefore, the removal of the SSTI and replacement with an "adjusted LIS" could lead to significant IT costs both for investment firms and their clients. Considering that we see no real benefits from this proposal, we do not think that those costs (which ultimately are born by the end-investor) are justified.

However, the SSDA does support that further analysis is carried out as regards amending the SSTI into a fixed level rather than a variable level. As is the case with "adjusted

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[13] Point 76 CP
[14] If the "adjusted LIS" would cover all trading in article 9, it could in fact have the effect of decreasing transparency.

LIS" such fixes SSTI level would need to be determined so that it protects SIs from undue risk and must include a review mechanism.

<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>
The SSDA wants to keep the SSTI threshold for the SI-obligations in article 18 MiFIR (option 1). This threshold serves an important purpose in limiting the scope of the pre trade obligations for SIs to retail markets. For wholesale markets where SIs are expected to take on significant market risk on their balance sheets, it would be extremely harmful to impose SI obligations such as publication of firm quotes and requirement to execute transactions with other clients. Under the current rules, SI trading is not anonymous!

The need to protect liquidity providers against undue risk is in our view basically the same for a market maker acting on a venue and a SI providing quotes on request in the OTC market since they trade on own account. We therefore find is difficult to motivate why there should be different rules in article 9 and article 18 MiFIR as regards SSTI. Moreover, as mentioned under Q 3, the SSDA takes the view that the benefits of replacing the SSTI level for pre- trade transparency and SI obligations with a certain percentage of LIS is limited. In order to fulfil the policy objective, the % - threshold would still need to be set a low level. We are therefore not convinced that this amendment would simplify the regime and we are concerned with IT costs. However, we do see that there could be reasons to further analyse the benefits of turning the variable SSTI into a fixed threshold, provided that it still protects SIs against undue risk and there is a review mechanism.

Finally, please note that the SSDA strongly supports other amendments to article 18 MiFIR, such as abolishing the obligation for SIs to execute transactions with other clients in article 18 (6) and 18 (7) MiFIR. As a consequence, it could also be considered to delete 18(5) and to allow SIs to trade on an anonymous basis. (See response to ESMA CP on systemic internaliser)

<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, the SSDA supports turning the hedging exemption into a limited negotiated trade waiver. We agree with ESMA that the hedging exemption has been very complicated to apply.

From a practical perspective we think that it is important to clarify that investment firms can rely on the information that they get from clients regarding the hedging activity (i.e. that the transaction results in reducing risks relating to commercial activity or treasury financing activity).

The SSDA considers that the waiver could be useful to mitigate negative market impact when using FX derivatives for hedging (in particular since ESMA suggests that FX derivatives in the future could be deemed liquid) as well as interest rate derivatives. Therefore, we would advise ESMA not to restrict the waiver to commodity derivatives only.

The SSDA notes that the current hedging exemption only covers non-financial counterparties. It should be clarified if this concept is the same as in EMIR. Moreover, the SSDA thinks that there could be reasons to also allow financial counterparties to use this new 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>
The SSDA has no objections to opening up for new trading systems but thinks that it would be preferable to introduce such changes in an RTS which is subject to consultation with stakeholders.
<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>
The SSDA has no comment.

<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>
The SSDA understands that there could be reasons to have the same rule for SIs and Trading Venues relating to the making data available free of charge after 15 minutes.

However, there is a difference between SIs active on the equity market and the non-equity market. SIs on the equities market are under an obligation to publish quotes on a continuous basis. On the non-equity market, SIs provide quotes on request (RFQ). Thus, the quoting information that is available after 15 minutes would be old and not very interesting?

One additional issue which the SSDA strongly suggests that ESMA and the Commission address in an upcoming MiFID review relates to the fact that SI data (the published prices) are considered by the trading venues to be "unlawful" derived data (from the trading venues own published prices) infringing on the trading venues industrial property rights to those prices. At present, many venues do not allow SIs to publish this information on the SIs' web-pages or through an APA unless they pay the venues for the data, i.e. SIs need to pay venues for complying with their legal requirements as SIs under MiFID/MiFIR. In practice, this has forced SIs not only to restrict the access to the information on their webpages to a limited number of logged in clients but also to pay unjust fees for the SIs' compliance with MiFIR. This system is in our opinion not fair and is not in the interest of clients nor the policy objectives of MiFIR regarding the price formations process or otherwise.[15]

The SSDA therefore suggests that in the in an upcoming MiFID review that ESMA and the Commission clarify that the SIs do not infringe on any industrial property rights of trading venues when SIs are making public their prices according to MiFIR and that the trading venues are prohibited from contractually limiting or charging the SIs for the SIs' publication of their quotes.
<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>
The SSDA is generally in favour of standardisation but wants to underline that all changes related to publication of data requires changes to IT systems etc. which must be able to be justified from a cost/benefit perspective.

In order to make the pre-trade information more valuable to clients, additional work needs to be carried out in order to improve the data quality and ensure the usability and comparability of the information. One measure that could help would be to increase the level of standardization of the CFI codes so that a specific ISIN would be classified as

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[15] The trading venues disregard the fact that SIs are obligated to make public prices that reflects prevailing market conditions (art 14:3 and 18:9). According to art 10 in RTS 1 prices reflect prevailing market conditions where they are, i.a., close in price, at the time of publication, to quotes of equivalent sizes for the same financial instrument on the most relevant market in terms of liquidity for that financial instrument. The trading venues claim that the SIs is in breach of the market data agreements in place and will cut off all information feeds to the SIs unless the SIs either (i) pay the fees for an unrestricted disseminating of the "trading venues' data" to an unlimited number of potential recipients worldwide or (ii) restrict the access and pay the trading venues fees for those clients accessing the data.

the same asset by all types of venues. Furthermore, it is not reasonable that a new ISIN is created each day for some derivatives.

<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>
As mentioned under General Comments, the SSDA supports full harmonization of national deferral regimes only if it can be ascertained that the regime still protects liquidity providers/SIs and their clients against undue risk. In particular for smaller or new markets which are dependent on a limited number of SIs also the price information is very sensitive for an SI. It is therefore not sufficient to only defer the volume since the price information is enough for the market will know who sits on the risk which means that competitors can act on this information. Therefore, **the SSDA does not support replacing current deferral regime with volume omission only. During T+2 both price and volume must be masked.** Moreover, for large transactions and transactions in truly illiquid instruments (i.e. which do not even trade on a daily or weekly basis), it is important to **keep a supplementary longer deferral regime** in the harmonized regime to protect SIs against undue risk. It could however be further analyzed if the four week deferral could be shortened to two weeks volume omission.

<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>
No, the SSDA does not support deleting the SSTI threshold as a ground for post trade deferral. The reasons are largely the same as described in Q 3, i.e. there is a need to protect SIs against undue risk when dealing in very large transactions on the wholesale market and that the benefits from deleting SSTI does not outweigh the potential negative consequences. If the SSTI threshold was to be removed from MiFIR and replaced by a post trade "adjusted LIS" such "adjusted LIS" must therefore be set a level to ensure that SIs do not withdraw from the market.[16] In practice that would mean that the "adjusted LIS" would need to be significantly lower than the current LIS (for example, the SSTI level for Swedish 10 year Government Bond is approximately 40 % of LIS) and there would also need to be some sort of review-mechanism of the %. The question is what

[16] Point 76 CP

you then will have gained from a simplicity or transparency perspective. If more bonds and derivatives will become liquid in the future, which will happen after the phase-in, the SSTI threshold will become even more important.

Moreover, many IT systems have been built based on the assumption that there is an SSTI threshold. Therefore, the removal of the SSTI and replacement with an “adjusted LIS” could lead to significant IT costs both for investment firms and their clients. Considering that we see no real benefits from this proposal, we do not think that those costs (which ultimately are born by the end-investor) are justified.

However, the SSDA does support that further analysis is carried out as regards amending the SSTI into a fixed level rather than a variable level. As is the case with “adjusted LIS” such fixed SSTI level would need to be determined so that it protects SIs from undue risk and must include a review mechanism.

<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>
The SSDA cannot fully accept Option 1 – 3.

We do not support a deferral regime with only volume omission (Option 1-3). In particular on a smaller market also the price carries sensitive information, i.e. it is sufficient to see the price to figure out who is sitting with the risk. Thus, for large transactions and transactions in illiquid instruments, **the deferral period T+2 needs to be completely dark,** i.e. both price and volume must be masked. This is very important in order to ensure that a fully harmonized deferral regime work also for the smaller or new markets in EU - not only the larger ones. Volume omission only does not provide sufficient protection. The supplementary four week deferral period could however be replaced by a two week volume omission.

The SSDA is also in favour of **keeping the deferral for illiquid instruments**. Since illiquid instruments do not trade very often it is important to give SIs longer time to handle the market risk i.e. by entering into a new transaction or hedging its position. If an SIs is required to disclose its position to the market without being able to handle its risk, it will no longer be able to provide liquidity to the market.

Thus, of the three options, the SSDA prefers Option 1 with the adjustment that the deferral period T+2 must be dark, i.e. exclude information both on price and volume. After the deferral period has lapsed, the SI can publish price information on the individual transaction. The four week supplementary deferral period could be shortened to two weeks 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>
The SSDA cannot fully accept either Option 1 – 3.

The SSDA is in favour of keeping the possibilities to apply for a **supplementary deferral,** which is important when SIs trade large transactions in illiquid instruments that do not trade on a daily or weekly basis. However, it could be further analysed whether the extended deferral could be shortened to two weeks volume omission. Moreover, for the reasons described under Q 12, we take the view that the **deferral period T+2 must be completely dark**. Only after the deferral period has lapsed, should the SI be required to publish price information on the individual transaction.

<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>
In order to make the information more valuable to clients, additional work needs to be carried out in order to improve the data quality and ensure the usability and comparability. One measure that could help would be to increase the level of standardization of the CFI codes so that a specific ISIN would be classified as the same asset by all types of venues. Moreover, it is not reasonable that a new ISIN is created each day for some derivatives. We also support that ESMAs database should be used as a "golden source" for the "ToTV".

<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>
As mentioned in our response to the Commissions MiFID Review CP, the SSDA is not in favour of a CT which we believe to be of little benefit and can lead to great costs. If a decision on establishing a CT taken, we support post trade CT only which is phased-in (equity and bonds only) and free of charge.

If the Commission nevertheless proceeds with the establishment of a CT, the SSDA agrees that it requires full harmonization of the deferral rules. However, in order not to harm the liquidity of EU bond and derivatives markets, the deferral would still need to be dark T + 2 and long enough to protect SIs against undue risk.

<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>
The SSDA agrees that the "ToTV" concept is complex and should be included in a review. It is not reasonable that a new ISIN is created each day for certain derivatives. Moreover, we think that ESMAs FIRDS database should be a "golden source" to determine which instruments that are "ToTV". Additional work should also be done on standardisation, e.g. CFI codes.

<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>
The SSDA agrees.

<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>
The SSDA supports 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, ESMAs 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>
The SSDA sees no benefits by deleting the possibility of temporary suspension. We do not consider the fact that it has not been used during the two years that MiFID II has been applied as sufficient reason to delete this 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>
The SSDA supports the alignment between MiFIR and EMIR Refit as regards financial counterparties.
<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>
The SSDA does not see any need to change the derivative trading obligation (DTO) and include new criteria or new asset classes.

<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>
No comments at this point.

<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>
In needs to be ensured that there will be no conflict between EU and UK derivative trading obligations following Brexit.

The SSDA is in favour of allowing also SIs to be accepted execution venues for the derivatives trading obligation.

<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>
The SSDA has no objection towards keeping this register. It could be considered to merge the register with FIRDS so that all data is gathered in the same place.

<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.

<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, the SSDA does 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. In addition, during this period the markets have been stressed and the data may therefore not be representative. Against this background, we prefer if the move to stage 2 was postponed until 2021 and made subject to a new consultation.

<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>
The SSDA agrees with ESMA not to move to stage 2 for other non-equity instruments.

<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, the SSDA does not object to a move to stage 2. However, considering that the full effects of COVID-19 are not yet known and that there are also additional uncertainties linked to a forthcoming Brexit, we believe in a cautious approach to all measures which could negatively affect the liquidity of the market. In addition, during this period the markets have been stressed and the data may therefore not be representative. Against this background, we prefer if the move to stage 2 is postponed one year until 2021 and that the decision is made subject to a new consultation.
<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.

<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.

<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.

<ESMA_QUESTION_CP_MIFID_NQT_31>