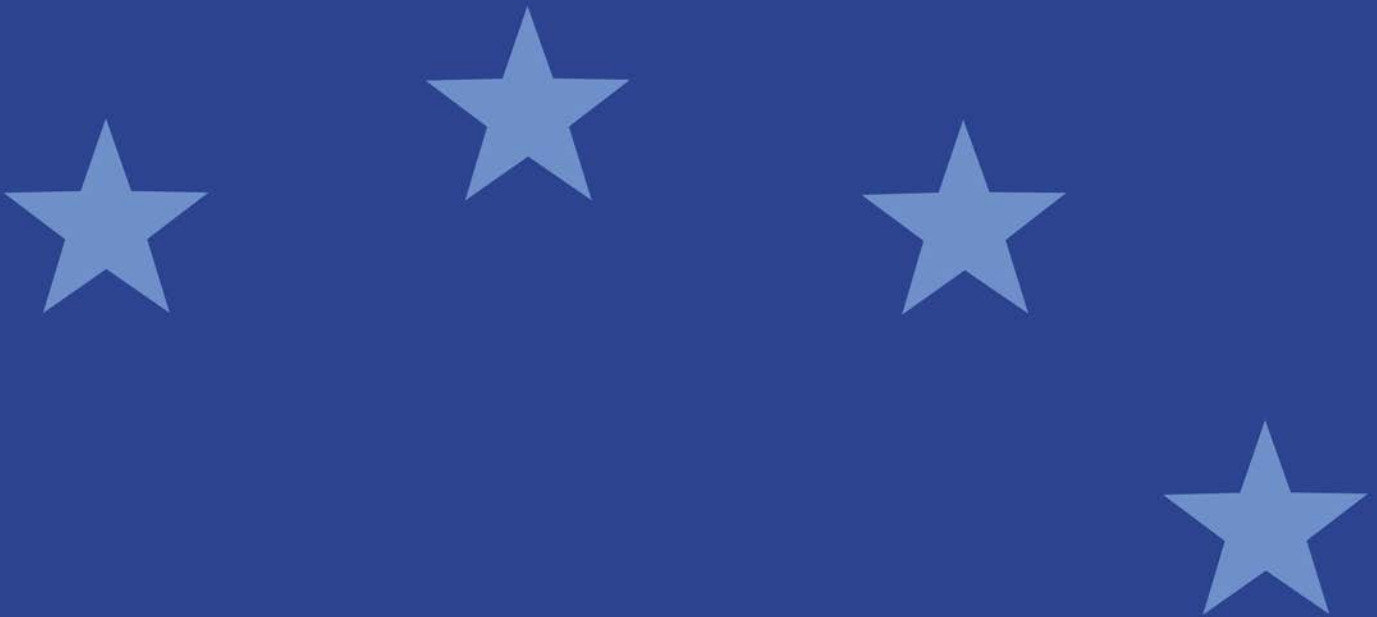




European Securities and  
Markets Authority





## **Reply form for the Consultation Paper on the trading obligation for derivatives under MiFIR**

## Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Consultation Paper on the trading obligation for derivatives under MiFIR, 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\_MIFID\_TO\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

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

### **Naming protocol**

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

ESMA\_MiFID\_TO\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

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

ESMA\_MiFID\_TO\_ESMA\_REPLYFORM or

ESMA\_MiFID\_TO\_ESMA\_ANNEX1

### **Deadline**

Responses must reach us by **31 July 2017**.

All contributions should be submitted online at [www.esma.europa.eu](http://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](http://www.esma.europa.eu) under the headings 'Legal notice' and 'Data protection'.



### General information about respondent

Name of the company / organisation	<a href="#">Click here to enter text.</a>
Activity	Choose an item.
Are you representing an association?	<input type="checkbox"/>
Country/Region	Choose an item.



## Introduction

**Please make your introductory comments below, if any:**

<ESMA\_COMMENT\_MIFID\_TO\_0>

The European Banking Federation (EBF) welcomes the opportunity to comment on ESMA's Consultation Paper (CP) regarding the trading obligation (TO) for certain derivatives under MIFIR.

The EBF appreciates the effort that ESMA has made to improve the data and methodology from the discussion paper to this consultation. For example, we agree to the change to effective date instead of the execution date.

However, we would like to raise the following key points.

Firstly, as regards day data and methodology issues:

- With reference to the day count factors, point 131 in the consultation paper. The day count factor on standard swaps admitted to trading on venues are most typically standard, with the fixed leg on a 30/360 basis and the floating leg on an ACT/360 basis. The consultation paper suggests that the TO should also apply on IRSs where the fixed leg is discounted on an ACT/360. The EBF would consider this a completely different instrument and it surprising that an ACT/360-ACT/360 swap would pass the required liquidity test to qualify for the TO. The EBF respectfully asks ESMA to clarify this point, i.e. only 30/360 fixed leg swaps are covered.
- In reference to the data exclusions covered in point 122. The EBF would like to highlight a potential error with "cleared" transactions being excluded, given that a test for the TO is that a product is cleared. The EBF asks ESMA to please clarify which if any cleared transactions are excluded.

The EBF would like to request further clarification on the treatment of packages. In the CP ESMA notes that it does not have the legal power to address packages in the context of TO. Our understanding is that the whole package could be subject to the trading obligation even if just one component is subject to the TO. That is in EBF's view not a desired outcome.

As stated in our reply to the DP, the EBF takes the view that transactions above LIS should be exempt from the trading obligation. This is important in order to align the rules with the US regime on block trades.

For the sake of legal certainty and clarity, we also request that ESMA confirm that transactions that are negotiated off venue but reported onto a venue in accordance with the venue's rules and subject to a pre trade waiver are considered as executed "on venue" for the purposes of the TO (see recital 7 MiFIR and ESMA Q & A).

The EBF would like to underline that entering into force of the trading obligation for category 1 and 2 by 3 January 2018 deadline would be extremely tight, especially given the final standards will not be available for some time and most likely venues not authorised until very close to the deadline. This leaves very little time for completing essential technical and operational deliverables in time for 3 January 2018. Moreover, it is important that amendments to EMIR in COM (2017) 208 are taken into account e.g. that the very small financial counterparties will not be subject to the clearing obligation.

Finally, the EBF is pleased to note in point 102 that ESMA shares our view on the importance of some sort of emergency solution for the TO. However we would like to stress that such solution is not only important in case the liquidity drops but also if there is no longer a CCP or trading venue available for that derivative or if the derivative is suspended from the clearing obligation. <ESMA\_COMMENT\_MIFID\_TO\_0>



**Q1. Do you agree with ESMA's assessment and proposed way forward for the criteria assessing the number and types of active market participants? If not, please explain your position and how you would integrate these elements into the liquidity test.**

<ESMA\_QUESTION\_MIFID\_TO\_1>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_TO\_1>

**Q2. Do you agree with the revised proposal not to exempt post-trade LIS transactions? If not, please explain and present your proposal.**

<ESMA\_QUESTION\_MIFID\_TO\_2>  
No, the EBF does not agree. In our opinion, post trade LIS transactions should be exempt from the TO since it would make the EU regime more aligned with the block trade exemption in the US. This would also help to mitigate the risks of unintended consequences which the TO may have on some professional markets (i.e. interbank)

Moreover, it should be clarified by ESMA in the feed-back statement that transactions that are negotiated off venue but reported onto a venue in accordance with its rules and subject to a pre-trade waiver are considered as executed "on venue" for the purposes of the TO (see Recital 7 MiFIR and ESMA Q & A Transparency, Question 3 (c) dated 31/01/2017). <ESMA\_QUESTION\_MIFID\_TO\_2>

**Q3. Do you agree with this proposal? If not, please explain why and provide an alternative proposal for ESMA to populate and maintain the register.**

<ESMA\_QUESTION\_MIFID\_TO\_3>  
For the sake of clarity we would suggest that ESMA clearly state that only products with fixed notionals should be subject to the trading obligation.  
<ESMA\_QUESTION\_MIFID\_TO\_3>

**Q4. Do you agree with this proposal? Would you add other parameters e.g. day count convention of the floating leg, notional type (constant vs. variable), fixed rate type (MAC vs. MAC)? If yes, please explain why and provide the parameters.**

<ESMA\_QUESTION\_MIFID\_TO\_4>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_TO\_4>

**Q5. For each Case, specify if you agree with the proposal of qualifying the sub-classes as liquid for the purpose of the trading obligation and if not, please explain why and provide an alternative proposal**

<ESMA\_QUESTION\_MIFID\_TO\_5>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_TO\_5>

**Q6. Would you also consider any of these possible sub-classes as liquid? Which other combinations of fixed leg payment frequency and floating leg reset frequency specifically would you consider to be sufficiently liquid?**

<ESMA\_QUESTION\_MIFID\_TO\_6>



TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_TO\_6>

**Q7. For each Case, specify if you agree with the proposal of qualifying the sub-classes as liquid for the purpose of the trading obligation and if not, please explain why and provide an alternative proposal.**

<ESMA\_QUESTION\_MIFID\_TO\_7>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_TO\_7>

**Q8. Would you also consider any of these possible sub-classes as liquid? Which other combinations of fixed leg payment frequency and floating leg reset frequency specifically would you consider to be sufficiently liquid?**

<ESMA\_QUESTION\_MIFID\_TO\_8>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_TO\_8>

**Q9. For each case, specify if you agree with the proposal of qualifying the sub-classes as liquid for the purpose of the trading obligation and if not, please explain why and provide an alternative proposal.**

<ESMA\_QUESTION\_MIFID\_TO\_9>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_TO\_9>

**Q10. Would you also consider the possible sub-classes here below as liquid? Which other combinations of fixed leg payment frequency and floating leg reset frequency specifically would you consider to be sufficiently liquid?**

<ESMA\_QUESTION\_MIFID\_TO\_10>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_TO\_10>

**Q11. Do you agree with this proposal? If not, please explain why and provide an alternative proposal.**

<ESMA\_QUESTION\_MIFID\_TO\_11>  
The EBF strongly support the proposal that three benchmark tenors must qualify as liquid. We agree that fixed to float IRS denominated in SEK or JPY are excluded from the TO.  
<ESMA\_QUESTION\_MIFID\_TO\_11>

**Q12. Do you agree with this proposal? If not, please explain why and provide an alternative proposal**





<ESMA\_QUESTION\_MIFID\_TO\_12>  
 TYPE YOUR TEXT HERE  
 <ESMA\_QUESTION\_MIFID\_TO\_12>

**Q13. Do you agree to the proposed timeline? If not, please explain why and present your proposal.**

<ESMA\_QUESTION\_MIFID\_TO\_13>  
 The EBF would like to underline that entering into force of the trading obligation for category 1 and 2 by 3 January 2018 deadline would be extremely tight, especially given the final standards will not be available for some time and most likely venues not authorised until very close to the deadline. This leaves very little time for completing essential technical and operational deliverables in time for 3 January 2018. In this respect, we would ask for an extension to the deadline, or for the possibility to comply with these requirements on a best efforts basis for a period of time following their introduction. Moreover, it is important that amendments to EMIR in COM (2017) 208 are taken into account e.g. that the very small financial counterparties will not be subject to the clearing obligation.  
 <ESMA\_QUESTION\_MIFID\_TO\_13>

**CBA QUESTIONS**

**Q14. This first question aims at identifying the category of firm/entity you belong to. Please provide the total notional amount traded in derivatives (trading venues + OTC) in 2016 in thousands euros and the related total number of trades in the relevant boxes**

<ESMA\_QUESTION\_MIFID\_TO\_14>

Category	Number of employees	Total Notional traded 2016 (in thousands euros)	Total number of trades 2016
<b>EMIR Category 1</b>	[1-50]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[51-250]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[251-1000]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	>1000	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
<b>EMIR Category 2</b>	[1-50]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[51-250]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[251-1000]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	>1000	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

<b>EMIR Category 3</b>	[1-50]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[51-250]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[251-1000]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
		TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
<b>EMIR Category 4</b>	[1-50]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[51-250]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[251-1000]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	>1000	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
<b>Trading Venue</b>	[1-50]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[51-250]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[251-1000]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	>1000	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_14>

**Q15. Based on the draft RTS, which percentage of your derivative trading (notional amount and number of trades) do you expect to be captured by the TO? Please provide the data for derivatives globally, and then for interest rate derivatives and for credit default swaps, using 2016 trading data?**

<ESMA\_QUESTION\_MIFID\_TO\_15>

<b>% of trading captured by the TO</b>	<b>Year 2016</b>
% of total notional amount traded in derivatives captured by the TO	TYPE YOUR TEXT HERE
% of total number of transaction in derivatives captured by the TO	TYPE YOUR TEXT HERE



% of total notional amount traded in interest rate derivatives captured by the TO	TYPE YOUR TEXT HERE
% of total number of transactions in interest rate derivatives captured by the TO	TYPE YOUR TEXT HERE
% of total notional amount traded in credit default swaps captured by the TO	TYPE YOUR TEXT HERE
% of total number of transactions in credit default swaps captured by the TO	TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_15>

CBA Questions 16 and 17 are to be answered by investment firms and significant non-financial counterparties

**Q16. Out of the trading activity expected to be captured by the TO, as identified under Q2, which % is already traded on an EU regulated market, an EU Multilateral Trading Facility (MTF), a US Swap Execution Facility (SEF) or another third-country trading venue?**

<ESMA\_QUESTION\_MIFID\_TO\_16>

Trading activity expected to be captured by the TO	Traded on a regulated market	Traded on an EU MTF	Traded on a US SEF	Traded on another 3 <sup>rd</sup> country venue
% of total trading volume captured by the TO already traded on an EU trading venue, a US SEF or another third-country venue	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
% of total number of transactions captured by the TO already traded on an EU trading venue, a US SEF or another third-country venue	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_16>

**Q17. Compliance with the TO may require some further trading arrangements. Which of the following statement would you consider relevant regarding the steps you might be taking to that end? Please add any comment as appropriate.**

<ESMA\_QUESTION\_MIFID\_TO\_17>

Arrangements contemplated to comply with the TO	Yes	No	Comments
1. Current membership/Direct Electronic Access (DEA) arrangements are sufficient to comply with the TO	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

2. I intend to become a member/ participant/client of one (or multiple) EU trading venues for the first time	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
3. I intend to become a member/participant/client of additional EU trading venues	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
4. I intend to seek access to EU trading venues through Direct Electronic Access (DEA)	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
5. I intend to combine membership (2.or 3) with DEA (4.)	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
6. I am considering other arrangements; Please explain those arrangements in the Comments section	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_17>

**CBA Question 18 is to be answered by trading venues**

**Q18. Question 5: Which of the derivatives subject to the TO, based on the draft RTS, are currently available for trading on your trading venue? Do you consider extending trading on your venue to other derivatives subject to the TO?**

<ESMA\_QUESTION\_MIFID\_TO\_18>

<b>Derivatives potentially subject to the TO currently available for trading on your venue</b>	<b>Derivatives potentially subject to the TO that may become available for trading on your venue</b>
TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_18>

**CBA Questions 19 to 22 are to be answered by all respondents**

**Q19. Based on the draft RTS, which impacts do you expect from the TO in the short and medium term? Please elaborate as appropriate under Positive or Negative impact.**

<ESMA\_QUESTION\_MIFID\_TO\_19>

TO Impact	Positive Impact	Negative impact
Impact on your business model/ organisation/ client relationship	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Impact on your revenues	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Impact on market structure (e.g. principal vs. agency trading etc).	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Impact on market liquidity and execution costs.	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Other impacts. Please elaborate	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_19>

**Q20. Is there any specific provision in the draft RTS that you would expect to be a source of significant cost? If so, please elaborate.**

<ESMA\_QUESTION\_MIFID\_TO\_20>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_20>

**Q21. Please provide an indication, even a rough one, of compliance costs (in thousands of euros).**

<ESMA\_QUESTION\_MIFID\_TO\_21>

Draft RTS on the TO	a. IT costs	b. Training costs	c. Staff costs	d. Other costs (please identify)	Total costs ( if a., b, c or d. are not available separately)
One-off costs	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Recurring costs (on an annual basis)	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_21>

**Q22. Taking into account the size of your firm, would you qualify overall compliance costs with the draft RTS as low, medium or high?**

<ESMA\_QUESTION\_MIFID\_TO\_22>

Please enter here "Low", "Medium" or "High"



TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_22>