



European Securities and
Markets Authority

Reply form for the Discussion 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 Discussion 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 **21 November 2016**.

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'.



Introduction

Please make your introductory comments below, if any:

< ESMA_COMMENT_MIFID_TO_0 >

Amundi is the leading asset manager in Europe and belongs to the top ten worldwide with assets under management (AUM) exceeding 1050 billion €. A listed company since November 2015 with Crédit Agricole as its majority shareholder, Amundi is the trusted partner of 100 million retail clients, 1,000 institutional clients and 1,000 distributors in more than 30 countries. Amundi designs innovative, high-performing products and services for all these types of clients tailored specifically to their needs and risk profile.

Amundi supports the efforts towards a better regulation of derivative trades. EMIR did introduce transparency through reporting, which, though burdensome, provides evidence on the reality of financial markets. The trend towards mandatory central clearing is another clear achievement that we support, provided proportionality is introduced. In that respect, the proposed delay of implementation for category 3 participants evidences ESMA's attention to difficulties for smaller actors to negotiate access to central clearing through larger clearing members whose own prudential regulation is not clarified yet. Trading obligation (TO) is a complementary measure that is not included in EMIR but MIFIR. Amundi shares the legislator's opinion that TO would help supervising derivative trades. But it is very much a question of standardisation and liquidity in order to develop a central market through RMs, MTFs and OTFs. These criteria, together with access to prices, have been analysed before deciding central clearing obligation. The discussion about standardisation is not modified when it concerns central clearing or TO. Easy access to prices which is required for deciding mandatory clearing will be enhanced if there is a TO. Thus, ESMA is right to focus on liquidity. We do share the view that the criteria for assessing liquidity under TO and under central clearing obligation (CO) may differ.

Before answering the questions of the discussion paper (DP), we would like to introduce the following comments:

1. Amundi agrees when ESMA expresses its intention in §6 not to impose TO on derivative classes or instruments that are not authorised for central clearing. We like the idea that **central clearing implies TO only if some further criteria are met** on liquidity and that **no TO should apply to instrument not subject to CO**. ESMA should, as EMIR allows, ask CCPs to clear a contract which meets criteria for mandatory clearing before suggesting TO on this contract.
2. ESMA is right to point out exemptions or specific considerations on block trades, packaged trades and intra group transactions in different foreign regulations. These cases have to be examined individually when defining the scope of any TO. We believe that **packaged transactions should be exempted from TO**.
3. ESMA should be empowered to **suspend TO when and if needed**. The point is raised in §110 comparing transparency and trade requirements, but it is an issue in itself and flexibility is necessary for authorities to manage exceptional circumstances.
4. Amundi largely agrees with data used (though 6 months is a short period), results shown and approaches suggested by ESMA to define liquidity as a criterion for TO. We think that the scope of transparency is larger than that of TO and urge ESMA to make sure that there is no trade subject to TO without being subject to transparency requirements. **Liquidity for TO purpose is more restrictively defined than for transparency**.
5. We share ESMA's interrogation on the possible **exclusion of FRAs** (and we conclude to exemption). We further agree with ESMA's suggestion to limit TO to Euribor OIS among overnight index swaps. With respect to CDS, we are, based on our experience, more optimistic on the possibilities for index CDS to be considered as liquid. These CDS are highly standardised with a clear methodology and it helps with liquidity.

We now turn to the answers to the questions of the DP. We do not address the questions where we have no clear cut view to express nor any comment to make. |

< ESMA_COMMENT_MIFID_TO_0 >

Q1. Do you agree that the level of granularity for the purpose of the trading obligation should apply at the same level as the one used for calibrating the transparency regime of non-equity instruments? If not, which level of granularity for the TO would you recommend and why? Would that differ by asset class and type of instrument?

<ESMA_QUESTION_MIFID_TO_1>

We dare hope that ESMA will introduce consistency between EMIR and MIFIR when they address the same universe, i.e. derivatives. The granularity defined under EMIR to identify contracts subject to clearing obligation (CO) is referred to in §66 and we support that view, including the concentration of trades with unbroken tenors. In our opinion, consistency with the calibration of the transparency regime is less relevant and should not be focused on.

<ESMA_QUESTION_MIFID_TO_1>

Q2. Do you agree that all derivatives currently subject to or considered for the CO are admitted to trading or traded on at least one trading venue? If not, please explain which classes of derivatives are not available for trading on at least one trading venue.

<ESMA_QUESTION_MIFID_TO_2>

We do not consider that admission on one trading venue is sufficient to qualify for TO. Investors may have reasons to avoid one trading venue or another and we demand that there be a choice on several. We keep reminding people that choice begins with plurality and that in Greek plural starts at 3, 2 being dual and 1 singular. The same requirement should apply for the number of CCPs when deciding CO and of market venues when imposing TO.

We are not aware of contracts subject to CO that do not trade on at least one trading venue.

Furthermore, we take for granted that TO will include all venues that trade a given instrument and will not be restricted to some of them, say the most active ones. It would otherwise create a highly detrimental disruption on market practices.

<ESMA_QUESTION_MIFID_TO_2>

Q3. How should ESMA determine the total number of market participants trading in a class of derivatives? Do you consider it appropriate to carry out this assessment with TR data or would you recommend other data sources?

<ESMA_QUESTION_MIFID_TO_3>

Yes, ESMA should use TR data.

<ESMA_QUESTION_MIFID_TO_3>

Q4. In your view, what should be the minimum total number of market participants to consider the following classes of derivatives as sufficiently liquid for the purpose of the trading obligation? i) OTC interest rate derivatives denominated in EUR, USD, GBP and JPY; ii) OTC interest rate derivatives denominated in NOK, PLN and SEK; iii) Credit default swaps (CDS) indices? Should you consider that this assessment should be done on a more granular level, please provide your views on the relevant subsets of derivatives specified in 1.-3.

<ESMA_QUESTION_MIFID_TO_4>

Of course 2 is not a sufficient number to consider that there are enough market participants to ensure liquidity. Liquidity requires both number and diversity. Even in local currencies where that number of participants can be lower, we think that a dozen participants is a minimum to gain firm quotes when inter-



ested in trading. CDS are also less largely traded. But for G4 IRS, we tend to think that a minimum figure counts in tens (say 50 as a minimum) of participants of different types, NFC, banks, investors...]
<ESMA_QUESTION_MIFID_TO_4>

Q5. Do you agree with this approach? Do you consider alternative ways to identify the number of trading venues admitting to trading or trading a class of derivatives as more appropriate?

<ESMA_QUESTION_MIFID_TO_5>

[Yes, Amundi agrees that there is a positive correlation between the number of TVs that trade an instrument and its liquidity. Though, the level of correlation varies by instrument, by type of TV and takes into account the decreasing marginal addition of a further participant. Therefore, we believe that there should be a threshold of volume under which the instrument would not be considered as liquid.]

<ESMA_QUESTION_MIFID_TO_5>

Q6. On how many trading venues should a derivative or a class of derivatives be traded in order to be considered subject to the TO?

<ESMA_QUESTION_MIFID_TO_6>

[Three. Please see the definition of plural under Q2 above. Note that a TV that is in silo with a CCP is a different case as it does not offer a real choice to investors: they have to agree to TV and CCP simultaneously.]

<ESMA_QUESTION_MIFID_TO_6>

Q7. What would be in your view the most efficient approach to assess the total number of market makers for a class of derivatives? Where necessary, please distinguish between: i) The phase prior to the application of MiFID II (i.e. before January 2018); ii) The phase after the application of MiFID II (i.e. after January 2018).

<ESMA_QUESTION_MIFID_TO_7>

[We agree that MIFID data will provide a fair source to assess the number of market makers. In the interim period we think like ESMA that TVs will be able to, provide the information.]

<ESMA_QUESTION_MIFID_TO_7>

Q8. How many market makers and other market participants under a binding written agreement or an obligation to provide liquidity should be in place for a derivative or a class of derivatives to be considered subject to the TO?

<ESMA_QUESTION_MIFID_TO_8>

[3 is the absolute minimum if all 3 have pledged to be active continuously and for size.]

<ESMA_QUESTION_MIFID_TO_8>

Q9. Do you agree with the proposed approach or do you consider an alternative approach as more appropriate?

<ESMA_QUESTION_MIFID_TO_9>

[We understand the analysis developed in § 88, but do not draw the same conclusion. For us the two criteria of number of participants and trade volumes are cumulative. In other words we think that if one is not met there is a clear evidence that the instrument is not liquid.]



<ESMA_QUESTION_MIFID_TO_9>

Q10. Do you agree that the criterion of average size of spreads, in particular in case of absence of information on spreads, should receive a lower weighting than the other liquidity criteria? If not, please specify your reasons

<ESMA_QUESTION_MIFID_TO_10>

The bid ask spread of a market maker is not a direct measure of liquidity; it first results from internal limits and cost of capital that both relate to prudential regulation; it further includes a measure of the credit risk incurred and an estimate of the capacity to hedge the position. In that respect it indirectly includes a reference to expected future one-way liquidity. When considering the spread accessible for one investor from different competing market makers it is fair to say that the spread between the best bid and the best offer shows something of the appetite for one instrument and gives some hints on its possible immediate liquidity. Thus, we agree that the spread be considered and far less weighted than other liquidity criteria. |

<ESMA_QUESTION_MIFID_TO_10>

Q11. Which sources do you recommend for obtaining information on the average size of spreads by asset class?

<ESMA_QUESTION_MIFID_TO_11>

In the framework of its market supervision, we think that ESMA should collect data on spread size. We think that it is a tool more relevant to assess market tensions than to determine market liquidity. We encourage ESMA to use direct information more than data from vendors and platforms. |

<ESMA_QUESTION_MIFID_TO_11>

Q12. What do you consider as an appropriate proxy in case of lack of information on actual spreads?

<ESMA_QUESTION_MIFID_TO_12>

When there is no indication on spreads, it means that there is no 2 way liquidity. Thus there is no need to search for a further proxy and authorities should take stake of the (temporary) absence of liquidity. |

<ESMA_QUESTION_MIFID_TO_12>

Q13. Do you agree with the suggested approach? If not, what approach would you recommend?

<ESMA_QUESTION_MIFID_TO_13>

The point about end users access to derivative markets relates very much to the prudential regulation of the CIBs acting either as OTC counterparty or as intermediary, market maker and/or clearing member. The arbitrage for an end user who is, for example, hedging a position is between perfect hedging OTC at a higher price and more liquid traded contract with less tailored characteristics, knowing that the security of the transaction may differ whether or not a CCP is involved. We are not sure that the reference to type and number of participants, average frequency and size of transactions, as mentioned in §95, will enable a fair assessment. We suggest to start from the position of an end user and to build a table of pros and cons of the TO before imposing it to category 3 entities. |

<ESMA_QUESTION_MIFID_TO_13>



Q14. Do you agree that trades above the post-trade large in scale threshold should not be subject to the TO? If not, what approach would you suggest? Should transactions above the post-trade LIS threshold meet further conditions in order to be exempted from the TO?

<ESMA_QUESTION_MIFID_TO_14>

|Yes, we agree that larger transactions require direct negotiation and should be exempted from TO. |

<ESMA_QUESTION_MIFID_TO_14>

Q15. How highly should ESMA prioritise the alignment of the TO with transparency? What would be the main consequences for the market if some instruments are covered by transparency and not by the TO or vice versa? If the two are not fully aligned, would a broader scope for the TO or for transparency be preferable, and why? In case of a broader or narrower scope for the TO (compared with transparency), how should the two liquidity thresholds relate to each other?

<ESMA_QUESTION_MIFID_TO_15>

|The will of ESMA to ensure maximum consistency between scopes of transparency and trading obligation should be encouraged, even if the most important articulation is to be made between CO and TO. Anyway, nobody can deliver the impossible. Texts show discrepancies in the 2 sets of criteria and we feel that it should not be a priority for ESMA to align what is not aligned in the texts. It should be noted and worked upon at the time of the revision of MIFID.

In our view it is important to have one category included in the other and to avoid having 4 types of instruments : subject to TO, subject to transparency, subject to both or none. We think it is possible through pure interpretation of the 4 criteria listed in § 102 to build a framework where no trade subject to TO would not be subject to transparency. In effect there are additional criteria to be considered when determining TO and thus an alignment on the first 4 criteria will lead to requirement for transparency obligation being larger than for TO. We agree with the current understanding of ESMA expressed § 105. |

<ESMA_QUESTION_MIFID_TO_15>

Q16. Do you agree with the proposed methodology to eliminate duplicated trades or would you recommend another approach? Do you agree with selecting Option 2?

<ESMA_QUESTION_MIFID_TO_16>

|We see in the discussion under 7.1 the result of the useless and burdensome requirement under EMIR to, report trades twice, once before clearing and a second time after. We have to be consistent. Either it is a necessity and we cannot follow ESMA's doubt when describing option 3 that reporting is not properly made. Or this multiplication of reporting is not necessary and overly burdensome so that it should be clearly recognised and no longer required. This is what we would recommend, and EMIRs revision is the best opportunity to introduce this change. In that case, option 2 is adequate. Otherwise, option 3 is easier to implement and has our preference. |

<ESMA_QUESTION_MIFID_TO_16>

Q17. Do you agree with the approach taken with regard to calculating tenors?

<ESMA_QUESTION_MIFID_TO_17>

|Yes. |

<ESMA_QUESTION_MIFID_TO_17>

Q18. Do you agree with the reasons mentioned above or is there another explanation for the significant number of trades outside of benchmark dates?

<ESMA_QUESTION_MIFID_TO_18>

We see as a good sign the lower concentration of trades on specific dates. In terms of financial stability, it is better to know that investors carefully hedge their positions. We can testify that the manager of a MMF will match the exact maturity of an instrument to get OIS instead of fixed rate for the total duration of the instrument, thus reducing global price volatility. We do not believe that wrong reporting could explain the diversity of dates and durations of swaps. |

<ESMA_QUESTION_MIFID_TO_18>

Q19. Does this result reflect your assessment of liquidity in fixed-float IRS? If not, please explain on which subclasses you disagree and why.

<ESMA_QUESTION_MIFID_TO_19>

Yes. |

<ESMA_QUESTION_MIFID_TO_19>

Q20. What thresholds would you propose as the liquidity criteria? What minimum number of counterparties would you consider appropriate for introducing the TO?

<ESMA_QUESTION_MIFID_TO_20>

We are satisfied with the methodology and results that ESMA is suggesting. When looking at the number of different counterparties we see how the legal threshold of 2 is meaningless. 20 is an absolute minimum and 50 shows the possibility for an active market. |

<ESMA_QUESTION_MIFID_TO_20>

Q21. What further specifications (e.g. payment frequency, reset frequency, day count convention, trade start type) would you consider necessary for specifying the trading obligation for fixed-float IRS? How would you determine these additional specifications?

<ESMA_QUESTION_MIFID_TO_21>

Standardisation is needed to trade on a market. There are references for day count and they appear to be standardised for each type of contract with exceptions being not eligible to a central market. Payment and reset frequency should not, as far as possible, be part of the characteristics of a contract to be traded on a TV. Otherwise, there might be too many possibilities to circumvent TO. |

<ESMA_QUESTION_MIFID_TO_21>

Q22. Does this result reflect your assessment of liquidity in OIS? If not, please explain on which subclasses you disagree and why.

<ESMA_QUESTION_MIFID_TO_22>

Yes. We know that with the confirmation of its accommodative policy, ECB has given signs that interest rates would not go higher for some time. As a result OIS swaps as a hedge against a surge in short term rates has lost appeal. We expected figures to show a decline in 2015 and to underestimate the global activity on OIS. |

<ESMA_QUESTION_MIFID_TO_22>

Q23. What thresholds would you propose for the liquidity criteria? What minimum number of counterparties would you consider appropriate for introducing the TO?

<ESMA_QUESTION_MIFID_TO_23>

[There are less participants on this market. 20 would be the absolute minimum to maintain liquidity.]

<ESMA_QUESTION_MIFID_TO_23>

Q24. What further specifications (e.g. payment frequency, reset frequency, day count convention, trade start type) would you consider necessary for specifying the trading obligation for OIS? How would you determine these additional specifications?

<ESMA_QUESTION_MIFID_TO_24>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_MIFID_TO_24>

Q25. Do you agree that due to the specificities of the FRA-market, FRAs should not be considered for the TO? Do you agree that the majority of FRAs transactions serve post-trade risk reduction purposes rather than actual trades.

<ESMA_QUESTION_MIFID_TO_25>

[FRAs are typically bilaterally negotiated products since listed contracts like Euribor offer standard solutions for 3 month FRAs. Large size is the standard as well for this type of trades. Is it sufficient to exempt them from TO? As a matter of fact the liquidity test was not easy to meet when it was assessed under EMIR before introducing mandatory central clearing. For trading purpose the liquidity is limited to given maturity dates and the days around it. If there is no concentration on some dates, there is no possibility to centralise trading. There is no evidence of continuous liquidity that would justify TO. However, we do not understand the fact that ESMA differentiate between so called "actual trades" and post trade risk reduction trades. Trades are trades all the same.]

<ESMA_QUESTION_MIFID_TO_25>

Q26. In case you consider FRAs should be considered for the TO, which FRA subclasses are in your view sufficiently liquid and based on which criteria? How should a TO for FRAs best be expressed? Should it be based on the first (effective date) or the second period (reference date)? Apart from the tenor, which elements do you consider necessary for specifying the TO for FRAs and why?

<ESMA_QUESTION_MIFID_TO_26>

[TYPE YOUR TEXT]

<ESMA_QUESTION_MIFID_TO_26>

Q27. Would you consider the two index CDS as sufficiently liquid for being covered by the TO?

<ESMA_QUESTION_MIFID_TO_27>

[The number of active participants on CDS markets is limited. To date, and it might change with Basel regulation amendments, CIBs are by far the most active counterparties. Asset managers and large institutions are also trading some CSDs, and especially iTraxx Main and crossover indices. The advantage of these indices as opposed to single names is that there is a far better regularity in volumes traded when on



single names there often are runs to hedge a name at the time when a rumour comes to the market. Nevertheless concentration of counterparties on a small number of names is a reality. It should be assessed through a direct contact with main CIBs to confirm that TR global data on CDS apply to index CDS. We suspect that the liquidity test would be met today. |
<ESMA_QUESTION_MIFID_TO_27>

Q28. Do you agree that the TO for CDS should cover the on-the-run series as well as the first thirty working days of the most recent off-the run-series? If not, please explain why and propose an alternative approach.

<ESMA_QUESTION_MIFID_TO_28>
|TYPE YOUR TEXT HERE |
<ESMA_QUESTION_MIFID_TO_28>

Q29. Apart from the tenor, which elements do you consider indispensable for specifying the TO for CDSs and why?

<ESMA_QUESTION_MIFID_TO_29>
|TYPE YOUR TEXT HERE |
<ESMA_QUESTION_MIFID_TO_29>

Q30. Do you agree with the proposed application dates? If not, please provide an alternative and explain your reasoning.

<ESMA_QUESTION_MIFID_TO_30>
|Amundi would like a complete alignment with CO to be introduced. That leads to the mention of the current discussions about a 2 year delay for the implementation of CO for category 3 entities. We would like that possibility to be mentioned and the DP to mention that if the delay would be recognised for EMIR, the change of dates would automatically apply to TO under MIFID. |
<ESMA_QUESTION_MIFID_TO_30>

Q31. Do you consider necessary to provide for an additional phase-in for the TO for operational purposes and to avoid bottlenecks? If yes, please provide a proposal on the appropriate length of such a phase-in for the different categories of counterparties and explain your reasoning.

<ESMA_QUESTION_MIFID_TO_31>
|Trading obligation implies changes in the procedures and habits of the trading desk and a redefinition of the role of intermediaries. Being active on a TV may imply implementation of connections and definition of formats to work efficiently together and that may need some IT involvement. The bulk of the work will be on intermediaries, who would most likely need further delay for adjustment, and not on end clients. Provided that the extension of delay applies to category 3 entities, most asset managers will be satisfied. |
<ESMA_QUESTION_MIFID_TO_31>

Q32. Which types of package transactions are carried out comprising components of classes of derivatives that are assessed for the purpose of the TO, i.e. IRD and/or

CDS? Please describe the package and its components as well as your view on the liquidity of those packages.

<ESMA_QUESTION_MIFID_TO_32>

[Amundi's view is that packaged transactions are sufficiently difficult to conduct to be exempted from TO. It would ruin them if there were a requirement to trade on a TV.]

<ESMA_QUESTION_MIFID_TO_32>

Q33. Are there packages that only comprise components of classes of derivatives that are assessed for the purpose of the TO? Do you consider those package transactions to be standardised and sufficiently liquid?

<ESMA_QUESTION_MIFID_TO_33>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_MIFID_TO_33>

Q34. Do you agree that package transactions that are comprised only of components subject to the TO should also be covered by the TO or should the TO only apply to categories of package transactions that are considered liquid? If not, please explain.

<ESMA_QUESTION_MIFID_TO_34>

[No, the essence of a package does not depend on the nature of its components, but on the necessity to trade simultaneously and/or on a contingent basis. Therefore, we do not see rationale in suggesting to impose TO on packaged trades comprising only components subject to TO. A specific assessment should be made of the liquidity of the package itself. We do not think that there are many packages that actively trade as an individual contract and could be subject to TO.]

<ESMA_QUESTION_MIFID_TO_34>

Q35. How should the TO apply for package transactions that include some components subject to the TO, whereas other components are not subject to the TO?

<ESMA_QUESTION_MIFID_TO_35>

[No, it is a misconception to analyse packaged transactions as the addition of individual trades. They include clauses of contingency and simultaneity that change the analysis. TO should not apply to packaged transactions, except for those that actively trade as an individual instrument.]

<ESMA_QUESTION_MIFID_TO_35>