



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 >

1. Introduction

FIA EPTA members welcome the opportunity to provide comments on the ESMA Consultation Paper on the trading obligation for derivatives under MiFIR. FIA EPTA is comprised of 29 principal trading firms (PTFs) that deal on own account in a wide range of financial instruments traded on trading venues across the Union and engage in manual, automated and hybrid methods of trading. (For more information on FIA EPTA, please visit www.epta.fia.org).

FIA EPTA members are a critical source of liquidity for trading venues, allowing those who use the capital markets to invest or manage their business risks to buy or sell financial instruments quickly and at low cost. FIA EPTA supports liquid, stable and reliable markets that foster investor confidence and efficiently allocate capital.

FIA EPTA members have consistently supported the leading objective of the 2009 G20 Pittsburgh commitments and the subsequent EU derivatives markets reforms, which aim to ensure that trading in standardised OTC derivatives takes place on exchanges or electronic trading platforms where possible. We therefore welcome ESMA's Discussion Paper on the proposed trading obligation for the select classes of OTC derivatives and we encourage ESMA to complete work on the determination of the trading obligation for derivatives without further delay.

We note that the process for determining the trading obligation under Article 32(1) MiFIR is linked with the clearing obligation under EMIR, therefore automatically defining the scope of contracts subject to the trading obligation as potentially a subset of those being subject to mandatory clearing. However, FIA EPTA members support a broad application of the trading obligation and we encourage its extension to different classes of standardised OTC contracts in the future as appropriate. In this context, we encourage ESMA to conduct regular assessments under Article 5 EMIR of those classes of OTC derivative contracts that can become subject to the clearing obligation. We would also encourage ESMA to use its competence under Article 32(4) MiFIR to initiate the trading obligation procedure independently of the clearing obligation if deemed necessary in the future.

Additionally, FIA EPTA members would like to highlight that ensuring broad and non-discriminatory access to trading venues is crucial to the success of the trading obligation. The interaction of an extensive and diverse community of trading participants is an important precondition to the proper functioning of the trading obligation and to fulfilling the underlying G20 goals.

FIA EPTA members also note that in accordance with Article 28(1) MiFIR, the trading obligation in derivatives can be executed on one of the EU trading venues (Regulated Market, MTF or OTF) or on an equivalent third country trading venue. In this context, we would like to note that it is important that equivalence decisions for third country trading venues proceed in due course. FIA EPTA members recall the significant delay in granting equivalence to major US-based CCPs, which created unnecessary market uncertainty just in advance of entry into force of the first EU clearing obligation for IRS G-4 currency contracts. Equally, we encourage ESMA and the Commission to ensure that Article 33 MiFIR equivalence decisions for the purposes of avoiding duplicative or conflicting rules is adopted before the commencement of the trading obligation. Finally, FIA EPTA members encourage ESMA, to the extent possible, to ensure consistency between the trading obligation that will be applicable in the EU to the similar obligations in other major jurisdictions, notably the US.

2. Assessing liquidity and the scope for the trading obligation

We note that ESMA's approach in this Discussion Paper has a strong focus on the perceived liquidity of specific instruments. However, FIA EPTA is of the opinion that this focus is too narrow, also taking into consideration the lack of reliable data that can support the evidence. We note, for example, that the SDR data that is currently published in the US provides indications of trade activity, but contains inconsistencies and it is difficult to conclude to what extent this data could be extrapolated to the European situation. We

fear that on this basis the application of the TO may be unnecessarily constrained, to the detriment of market efficiency and safety.

FIA EPTA invites ESMA to critically reassess some of the parameters it has proposed in the DP, as we consider these to be inappropriate for effectively calibrating a TO, as set out below:

- **Number of participants:** we consider that setting a threshold for the number of participants would be subjective;
- **Number of trading venues:** we note that using the number of trading venues to determine the level of liquidity will be ineffective for derivatives instruments, as liquidity for these instruments has a strong preference to concentrate rather than fragment. Moreover, in practice we see trading happen on single-dealer platforms that may not meet the strict definition of what constitutes a trading venue under MiFID-II, meaning that functioning trading markets for these instruments may exist even where the number of formal trading venues for them is low.
- **Number of participants with market making obligations:** we note that in contrast to the exchange-traded derivatives (ETD) space, market making obligations barely exist in the OTC derivatives space where market participants generally only stream prices to the market without being subject to formal market making obligations;
- **Contract definitions:** we consider that the scope of a TO should be less granular in terms of contract definitions. Excluding certain tenors and maturities could lead to situations where the TO is only applicable to on-the-run maturities, causing off-the-run instruments to trade solely bilaterally or on restricted platforms with limited transparency. Such a situation already exists in the US Treasury market and would be an undesired outcome for ESMA's proposed reform of the OTC derivatives market. As an alternative we would argue instead for a focus on high-level underlying instruments or benchmarks;
- **Packages:** we note that a significant number of OTC derivatives transactions are part of a package of correlated OTC instruments or listed instruments. We consider that a TO should also apply to a package in case it applies to one of its components;
- **Liquidity test:** FIA EPTA considers that the liquidity test for the trading obligation should be equivalent to the liquidity test for transparency purposes under RTS 2. This is because the test set forth in Article 32(3) is materially similar to the definition of a "liquid market" in Article 2(1)(17)(a). In addition, applying a stricter liquidity test for the trading obligation ultimately undermines the transparency regime. Given the waiver from pre-trade transparency under Article 9(1)(c), instruments that are determined to be liquid for transparency under RTS 2 will still be excluded from transparency requirements if they are not included in the trading obligation. This means that, in effect, any stricter liquidity test applied for the trading obligation will end up being applied for transparency purposes too, overriding the test in RTS 2. In other words, we fear that ESMA's current approach of applying a stricter liquidity test for the trading obligation would result in unnecessarily excluding liquid OTC derivatives.

By way of alternative approach, FIA EPTA wishes to suggest a set of qualitative and quantitative factors for calibrating the TO, taking into account the three elements below:

- i. **Economic utility of the derivatives instrument to market participants:** OTC derivative classes that have a tangible economic usefulness to (buy side) market participants will generally attract a wider variety of counterparties and liquidity. Hence, FIA EPTA believes that the concrete economic utility of derivatives instruments should be an important qualitative variable for assessing the eligibility for the instrument to be subject to the TO. In general, we see three relevant rationales that, when fulfilled, should lead to that derivatives instrument being considered for the TO:
 - o **Hedging utility:** derivatives instruments that are widely used by both corporate and financial market participants to reduce financial risk;
 - o **Portfolio replication utility:** derivatives instruments that are widely used by investors as a capital-efficient alternative for gaining exposure to the relevant underlying financial instruments;

- **Arbitrage utility:** derivatives instruments that are bought or sold according to their fair value in relationship to other financial instruments, thus contributing to market efficiency and to the liquidity of the instruments traded as part of the arbitrage strategy.
- ii. **Level of standardization** of the instrument class, as liquidity will concentrate in instruments that are more standardized.
- iii. **Value-at-Risk (VaR)** expressed as the outstanding value multiplied by a risk parameter may serve as an appropriate factor for measuring potential systemic risk stemming from large losses caused by unusually high volatility. The TO constitutes an effective additional measure to mitigate such systemic risk. Therefore, we consider that derivatives instruments that have a high systemic risk potential as expressed by the VaR should be considered for the TO.

Applying the calibration factors above, in our view, would provide a rationale for at least subjecting the following instruments to both a CO and TO:

- **CDS Index derivatives:** due to the function in hedging credit risk for bond portfolios, the high level of standardization and trade frequency warrant a TO for CDS Index derivatives.
- **Interest rate swaps:** the value-at-risk in G7 IRS is very significant and may pose a material risk for the European financial system and would, therefore, warrant a TO. By contrast, it can be argued that this is not the case for non-G7 IRS.
- **Options:** though currently not in scope for CO or TO, these instruments have highly asymmetric risk pay-outs and should therefore be considered to be subject to at least a CO and potentially a TO as well. Examples include interest rate options (swaptions, caps & floors), CDS Index options and FX options.

3. Date of application

FIA EPTA agrees with ESMA's proposal that the trading obligation should enter into force as soon as practically possible and in line with the proposed correlation with the clearing obligation dates for categories of counterparties. This should apply to certain classes of derivatives that are currently subject to the clearing obligation, i.e. IRS contracts denominated in EUR, GBP, JPY and USD (G-4 currencies) as well as NOK, PL and SEK (EEA-currencies) and the two classes of CDS on European corporate indices.

4. Packages

Package transactions in cleared OTC derivatives, particularly interest rate swaps, make up a significant portion of the market.¹ Examples of such transactions include curves (two interest rate swaps with different maturities), butterflies (three interest rate swaps with different maturities), spread overs (US Treasury and an interest rate swap), and invoice spreads (an interest rate swap and a future). Many of these packages are highly liquid and already traded on formal trading venues such as MTFs and consequently, FIA EPTA believes that these packages should be subject to the MiFIR trading obligation. As long as one component is subject to the trading obligation, the package should be subject to the trading obligation (which should occur in practice without further action by ESMA given that market participants wish to execute all of the components simultaneously). It is important to note that the MiFIR trading obligation does not require the use of specific trading protocols, and therefore it should be relatively straightforward for packages to be listed and executed on regulated venues.

We appreciate ESMA's consideration of our responses to the Discussion Paper, which we would be happy to further clarify bilaterally, if desired. Please do not hesitate to contact us through pteeboom@fia.org should you have further questions or require additional input. < ESMA_COMMENT_MIFID_TO_0>

¹ See September 2016 Swaps Review, Clarus Financial Technology (Oct. 12, 2016), available at: <https://www.clarusft.com/september-2016-swaps-review/>.

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>

No, the level of granularity for the TO does not need to be the same as that used to calibrate the transparency regime. FIA EPTA believes that granularity should be limited to the underlying benchmark and currency, and should not include tenors and maturities. |

<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>

FIA EPTA is of the opinion that what is considered a trading venue for this purpose should be broader than what could be considered an OTF. Plain vanilla IRS subject to the CO in major currencies (EUR, USD, JPY, GBP, CHF, SEK, AUD and CAD) are traded on at least one venue. Other European currencies (e.g. NOK, PLN, HUF) may not be as available on trading venues. The same can be said for OIS and basis swaps. CDS Index derivatives are available on one or more trading venues. |

<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>

FIA EPTA recommends that ESMA request from CCPs the relevant data regarding the number of market participants. The major trading venues and inter-dealer brokers should also be able to give an indication on the number of trading participants per derivatives class. |

<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>

FIA EPTA believes that to determine sufficient liquidity, the appropriate focus should be on outstanding value rather than on an arbitrary minimum number of market participants. We note that any derivatives class with significant outstanding value and risk will have a reasonable number of trading participants:

- i) Major IRS are sufficiently liquid, both from an outstanding value perspective and the number of trades per day.

ii) OTC interest rate derivatives denominated SEK are more liquid than NOK or PLN, but these products are not expected to be impactful, and therefore this class of derivatives should not be regarded as “sufficiently liquid” to warrant a TO.

iii) The following CDS indices are already “sufficiently liquid”:

- CDX North America Investment Grade
- CDX North America High Yield
- Itraxx Europe
- Itraxx Europe Crossover
- Itraxx Europe Senior Financial
- Itraxx Europe Subordinate Financial
- CDX Emerging Markets

<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>

FIA EPTA agrees on using trade frequency to identify the number of trading venues, but not on the other data. We feel that data on the number of market makers with obligations is not relevant and similarly for the average spreads, as no reliable data on this is available as the prices are usually indicative and not firm.

<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>

FIA EPTA wishes to stress that the liquidity of instruments is not correlated to the number of venues on which it is traded. Highly liquid instruments can be traded on just a few venues, as liquidity tends to concentrate rather than fragment.

We advise ESMA to concentrate on a combination of the following parameters when considering a TO:

- **Utility:** the economic function of the instrument. OTC derivatives that are designed for hedging or portfolio replication are the most important to bring in scope for a trading obligation, as these are likely to be used by the widest variety of end-users. Examples are interest rate swaps and credit derivatives.
- **Standardisation:** widely accepted contract standards allow liquidity to concentrate, making it more suitable to be traded on a trading venue in an all-to-all trading model. We advise focusing on underlying instruments or benchmarks rather than tenors and maturities, as the latter are low-level variables of the same contract class and should be taken as a whole.
- **Trade Frequency:** the number of transactions in a given period of time is relatively easy to quantify and gives a good indication of which instruments perform a relevant function in the financial markets. Again, we would advise ESMA to focus on underlying instruments or benchmarks rather than on tenors and maturities, as the latter are low-level variables of the same contract class and should be taken as a whole.
- **Value-at-Risk:** over the years a number of market shocks has led to large losses on derivatives positions of financial institutions (e.g., JP Morgan’s ‘whale’ CDS trade), non-financial end-users (e.g. SNB’s EUR/CHF peg removal) or public finances (public bailouts during the financial crisis). We strongly believe that those instruments where the outstanding value is large enough to cause systemic risk should be not only in scope for a CO but also for a TO, in order to ensure better price discovery and liquidity, especially at times of stress. On this consideration, we believe the main benchmark OTC derivative classes that are used on a global level should be in scope. In



addition, derivatives with highly asymmetric risks, such as options and credit derivatives should be considered as well. |

<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>

[TYPE YOUR TEXT HERE |]

<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>

FIA EPTA does not support setting a subjective threshold for the number of market makers. In the OTC market, liquidity providers are often not under a binding written agreement to provide liquidity and therefore ESMA must also consider the number of liquidity providers actively streaming prices to clients.

Instead, as per our answer to Question 6, we advise ESMA to focus on a combination of factors rather than setting thresholds in isolation. In our opinion, the following are the most important:

- **Utility:** the economic function of the instrument. OTC derivatives that are designed for hedging or portfolio replication are the most important to bring in scope for a trading obligation, as these are likely to be used by the widest variety of end-users. Examples are interest rate swaps and credit derivatives.
- **Standardisation:** widely accepted contract standards allow liquidity to concentrate, making it more suitable to be traded on a trading venue in an all-to-all trading model. We advise focusing on underlying instruments or benchmarks rather than tenors and maturities, as the latter are low-level variables of the same contract class and should be taken as a whole.
- **Trade Frequency:** the number of transactions in a given period of time is relatively easy to quantify and gives a good indication of which instruments perform a relevant function in the financial markets. Again, we would advise ESMA to focus on underlying instruments or benchmarks rather than on tenors and maturities, as the latter are low-level variables of the same contract class and should be taken as a whole.
- **Value-at-Risk:** over the years a number of market shocks has led to large losses on derivatives positions of financial institutions (e.g., JP Morgan's 'whale' CDS trade), non-financial end-users (e.g. SNB's EUR/CHF peg removal) or public finances (public bailouts during the financial crisis). We strongly believe that those instruments where the outstanding value is large enough to cause systemic risk should be not only in scope for a CO but also for a TO, in order to ensure better price discovery and liquidity, especially at times of stress. On this consideration, we believe the main benchmark OTC derivative classes that are used on a global level should be in scope. In addition, derivatives with highly asymmetric risks, such as options and credit derivatives should be considered as well. |

<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>

FIA EPTA urges ESMA to be cautious when considering data on the number of market participants, the average size of trades, and the average frequency of trades in isolation. Instead, we advise to focus on a combination of factors rather than setting thresholds in isolation. In our opinion, and as stated above under Questions 6 and 8, the following are the most important:

- **Utility:** the economic function of the instrument. OTC derivatives that are designed for hedging or portfolio replication are the most important to bring in scope for a trading obligation, as these are likely to be used by the widest variety of end-users. Examples are interest rate swaps and credit derivatives.
- **Standardisation:** widely accepted contract standards allow liquidity to concentrate, making it more suitable to be traded on a trading venue in an all-to-all trading model. We advise focusing on underlying instruments or benchmarks rather than tenors and maturities, as the latter are low-level variables of the same contract class and should be taken as a whole.
- **Trade Frequency:** the number of transactions in a given period of time is relatively easy to quantify and gives a good indication of which instruments perform a relevant function in the financial markets. Again, we would advise ESMA to focus on underlying instruments or benchmarks rather than on tenors and maturities, as the latter are low-level variables of the same contract class and should be taken as a whole.
- **Value-at-Risk:** over the years a number of market shocks has led to large losses on derivatives positions of financial institutions (e.g., JP Morgan's 'whale' CDS trade), non-financial end-users (e.g. SNB's EUR/CHF peg removal) or public finances (public bailouts during the financial crisis). We strongly believe that those instruments where the outstanding value is large enough to cause systemic risk should be not only in scope for a CO but also for a TO, in order to ensure better price discovery and liquidity, especially at times of stress. On this consideration, we believe the main benchmark OTC derivative classes that are used on a global level should be in scope. In addition, derivatives with highly asymmetric risks, such as options and credit derivatives should be considered as well. |

<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>

FIA EPTA believes that information on the average size of spreads should be given less weight than other criteria, or even be disregarded, as quotes are not firm and are context dependent. We consider that the average spread should be taken in relation to the volatility, if taken into account at all. |

<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>

As set out in our answer to Question 11, FIA EPTA does not consider the average size of spreads relevant for the liquidity assessment. Moreover, we note that it would involve a highly data-intensive process to quantify. |

<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>

As set out in our answer to Question 11, FIA EPTA does not consider the average size of spreads relevant for the liquidity assessment. Moreover, it involve be a highly data-intensive process to quantify

<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>

FIA EPTA believes that both non-financial and financial end users should be protected from being unduly exposed to excessive risk positions. However, flexibility regarding collateral and risk-offsets are important to prevent an unnecessary burden on non-financial end users.

Nonetheless, FIA EPTA is also of the view that increased transparency and competition resulting from a TO can benefit non-financial end users by reducing the cost of price discovery and trade cost analysis. We note that this has also been the market experience with the trading obligation in the US.

<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>

Since trading venues are allowed to have private negotiation trading protocols under MiFIR, FIA EPTA does not believe an exemption is necessary for large-in-scale trades. These trades can be executed privately between two parties on a venue without information leakage. We note, moreover, that large-in-scale trades will separately benefit from waivers and deferrals from MiFIR transparency requirements.

<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>

FIA EPTA believes that the liquidity test for the trading obligation should be equivalent to the liquidity test for transparency purposes under RTS 2. This is because the test set forth in Article 32(3) MIFIR is materially similar to the definition of a "liquid market" for non-equities under Article 2(1)(17)(a). In addition, FIA EPTA is concerned that applying a stricter liquidity test for the trading obligation will ultimately undermine the transparency regime. Given the waiver from pre-trade transparency under Article 9(1)(c) MIFIR, instruments that are determined to be liquid for transparency under RTS 2 will still be excluded from transparency requirements if they are not included in the trading obligation. This means that, in



effect, any stricter liquidity test applied for the trading obligation will end up being applied for transparency purposes too, overriding the test in RTS 2.

ESMA's current approach of applying a stricter liquidity test for the trading obligation results in the exclusion of liquid OTC derivatives. For example, additional benchmark tenors in USD and GBP are liquid.

In order to make the liquidity test for the trading obligation more equivalent to the test used for transparency purposes, ESMA must reduce the trades-per-day threshold by the same percentage that the data set used in RTS 2 has been reduced. This means reducing the trades-per-day threshold to no more than 5 trades-per-day.]

<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>

FIA EPTA is concerned that ESMA is eliminating too many records from the data set. In attempting to remove duplicate trade reports, ESMA has proposed to exclude all transactions from the data set where one of the counterparties is a CCP or a clearing member. However, if market participants do not report the original bilateral trade and only report the cleared trade, this approach will result in cleared OTC derivatives not being counted at all. We urge ESMA to cross-reference this data with data from CCPs regarding the number of trades cleared during the relevant period in order to ensure too many trades are not being eliminated.]<ESMA_QUESTION_MIFID_TO_16>

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

<ESMA_QUESTION_MIFID_TO_17>

[TYPE YOUR TEXT HERE]

<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>

There are a number of reasons for trades outside the benchmark dates. Some of these instruments that appear outside the benchmark dates are also liquid and should be subject to the TO. These include IMM and MAC interest rate swaps and forward-starting swaps that are part of an invoice spread package. In FIA EPTA's opinion, FRA's based on the benchmark interbank interest rate are as liquid as vanilla swaps and can be treated as fungible instruments.]

<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>

No, ESMA's assessment of liquidity in fixed float IRS is not reflective of our own. Additional tenors in GBP and USD are liquid. Also, IMM and MAC interest rate swaps are liquid. The utility of IMM, MAC and FRA swaps is equal to vanilla swaps, and are closely linked to liquid listed instruments such as short-term interest rate futures. Therefore, FIA EPTA believes these should be subject to the TO.



We note that in order to accurately assess liquidity, ESMA should be looking at all of the trading activity in the market. FIA EPTA urges ESMA to ensure it includes trading activity on MTFs, which it appears to have excluded. Additionally, we encourage ESMA to leverage other data sources, such as trading venues and CCPs. |

<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>

As detailed in our answer to Q15, FIA EPTA is of the view that the threshold on trades-per-day should be reduced by at least 50% to reflect that the data set used to assess the TO is less than 50% of the data set used to assess transparency.

Per our answer to Q4 above, FIA EPTA does not support a subjective requirement of a minimum number of counterparties. We believe that ESMA should gather data on all counterparties active in an instrument and assess this along with all other relevant liquidity criteria. |

<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>

FIA EPTA considers that payment frequency, reset frequency and day count convention are important specifications for IRS. For example, the parameters for the most liquid IBOR-type swaps (spot, FRA, IMM and MAC) are:

	Benchmark rate	Reset	Cpn Freq	Convention
EUR	Euribor 3M / Euribor 6M	Quarterly / S/A	Semi- Annual / Annual	ACT/360 30/360
USD	LIBOR 3M / LIBOR 6M	Quarterly / S/A	S/A / Annual	ACT/360 30/360
GBP	LIBOR 3M / LIBOR 6M	Quarterly / S/A	S/A / Annual	ACT/365
JPY	LIBOR 6M	Quarterly / S/A	Quarterly/ S/A	ACT/360
CHF	LIBOR 6M	Quarterly / S/A	S/A / Annual	ACT/360

And for OIS:

	Benchmark OIS	Reference	Convention
EUR	EONIA	Overnight	ACT/360
USD	Fed Funds	Overnight	ACT/360
GBP	SONIA	Overnight	ACT/365
JPY	TONAR	Overnight	ACT/365
CHF	TOIS	Tom Next	ACT/360

<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>
[TYPE YOUR TEXT HERE]
<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>
[TYPE YOUR TEXT HERE]
<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>
[TYPE YOUR TEXT HERE]
<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 HERE]
<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>

Yes, FIA EPTA considers these index CDS to be sufficiently liquid, but we identify seven liquid index CDS:

- CDX North America Investment Grade
- CDX North America High Yield
- Itraxx Europe
- Itraxx Europe Crossover
- Itraxx Europe Senior Financial
- Itraxx Europe Subordinate Financial
- CDX Emerging Markets

<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>

Yes, FIA EPTA agrees that the TO for CDS should cover both the on-the-run series and the first off-the-run series. Many transactions involve counterparties rolling positions between these two series and therefore the trading obligation should not be limited to just the first 30 working days of the most recent off-the-run series.

<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>

Yes, FIA EPTA agrees with ESMA's proposal to align the effective date of the trading obligation with that of the clearing obligation, and including the proposed phase-in periods for the four categories of counterparties identified for the respective derivative class.

<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>

No, FIA EPTA considers the proposed phase-in periods to be sufficient. With advance notice, market participants will have sufficient time to connect to the necessary trading venues, therefore an additional phase-in period would be unnecessary.

<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>

Package transactions in cleared OTC derivatives, particularly interest rate swaps, make up a significant portion of the market. Examples of such transactions include:

- Curves (two interest rate swaps with different maturities)
- Butterflies (three interest rate swaps with different maturities)
- Spread overs (US Treasury and an interest rate swap)
- Invoice spreads (an interest rate swap and a future)

Each of these packages is standardised, liquid, and traded on regulated trading venues today. |

<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>

Yes, IRS curves, butterflies and index CDS rolls are comprised of components of classes of derivatives that are assessed for the purpose of the TO. As noted above in Question 33, all of these packages are standardised, liquid, and traded on regulated trading venues today. |

<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>

Yes, FIA EPTA believes that if all components of a package are subject to the TO, then the package should be subject to the TO. Please note that these packages are also subject to the US trading obligation.

However, the application of the TO to these packages does not need to align precisely with the application of pre-trade transparency requirements which are intended to accomplish different objectives. |

<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>

Many packages with only one component that is independently subject to the TO are also sufficiently liquid to be subject to the TO. These include:

- IRS curves and butterflies where all the other instruments are subject to the clearing obligation. These packages are also subject to the TO in the US.
- Spreadovers (an interest rate swap and a US Treasury). These packages are also subject to the TO in the US.
- Invoice spreads with an IRS and a future on a sovereign bond. These packages are frequently traded in the European market.

As long as one component is subject to the trading obligation, the package should be subject to the trading obligation (which should occur in practice without further action by ESMA given that market participants wish to execute all of the components simultaneously). It is important to note that the MiFIR trading obligation does not require the use of specific trading protocols, and therefore it should be relatively straightforward for packages to be listed and executed on regulated venues |

<ESMA_QUESTION_MIFID_TO_35>