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| 20 September 2016 | ESMA/2016/1389 |

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| Reply form for the Discussion Paper on the trading obligation for derivatives under MiFIR |
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| Date: 20 September 2016 |

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](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’.

# Introduction

Please make your introductory comments below, if any:

< ESMA\_COMMENT\_MIFID\_TO\_0>

Nasdaq welcomes this opportunity to respond to the discussion paper on the trading obligation for derivatives under MiFIR.

Nasdaq supports the overall goal of reducing systemic risk by introducing a trading obligation in respect of certain classes of OTC derivatives and broadly agrees with ESMA’s analysis of the trading obligation set out in the consultation paper, although we have certain reservation as further explained in this reply to the discussion paper.

As background to our answers we include a brief description of the Swedish fixed income market below.

**Characteristics and functioning of the Swedish fixed income market**

The Swedish Fixed Income market is today characterized to a large extent by a few market making banks intermediating between a limited number of institutional investors and few large issuers of covered- (mortgage), municipal- and government bonds / bills. The investor base is primarily traditional participants in the marketplace, such as insurance companies, banks and fund managers. Most often, these participants have a long-term investment horizon. These are complemented by participants with a shorter investment horizon; buying and selling with higher frequency. The combination is important to secure the functioning of the market.

Market makers have a central role in the market; dedicated functions within the banks’ Capital Markets divisions have the mission to maintain the liquidity in specific instruments on the secondary market (trading between investors). The business model is focused on making money on the spread between buy and sell. Indicative quotes are available through various electronic information systems and firm prices are available on request and can vary, depending on trade size, general market liquidity, the individual market maker’s position etc.

The commitment, where available, means that investors in a specific instrument will have the possibility to sell their position back to a market maker, which creates liquidity in the market. In order to offload the position from its books, the market maker can then sell the position outright, or finance it by doing a repo transaction; exchanging a bond against money for a specific, pre-agreed period.

To be able to manage and tailor the risk profile, derivatives are used - not least the Interest Rate Swaps market. In the Swedish market, this structure has been in place since the late 1980s, even though the number of market makers have more than halved. Today most market makers are Swedish or Danish banks.

Trading is mainly performed OTC, with a limited number of products traded on-exchange. Some of the instruments are exchange listed on Nasdaq, for example government and covered bonds and related futures contracts. However, due to current market convention, trading is limited to specific government bonds and a small fraction of covered bonds. The rest of the market (including, for example, interest rate swaps, repos, futures contracts and a majority of government- and covered bonds) is traded OTC. As the market consists of few and large participants, trading is done in relatively large and infrequent transactions. Because of the infrequency, it can be difficult to match buyer and seller at the same time, which is the case in the order-driven market (typically the equity market), leaving, for example, market makers with positions for a longer or shorter period of time. The transparency regime is covered by pricing and turnover data being published by Nasdaq, according to pre-agreed arrangements.

< ESMA\_COMMENT\_MIFID\_TO\_0>

1. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_1>

1. 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>

Whereas it may be correct that all derivatives currently included in the CO are either admitted to trading or traded on at least one trading venue, we are not convinced this should be deemed sufficient to declare the derivative subject to the TO. The fact that a derivative is admitted to trading or traded on a trading venue does not guarantee that there is sufficient liquidity on the venue. In addition we believe instruments should be traded on at least two separate trading venues to avoid a monopoly situation and secure stable trading over time.  
<ESMA\_QUESTION\_MIFID\_TO\_2>

1. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_3>

1. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_4>

1. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_5>

1. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_6>

1. 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>

1. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_8>

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

<ESMA\_QUESTION\_MIFID\_TO\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_9>

1. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_10>

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

<ESMA\_QUESTION\_MIFID\_TO\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_11>

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

<ESMA\_QUESTION\_MIFID\_TO\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_12>

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

<ESMA\_QUESTION\_MIFID\_TO\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_13>

1. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_14>

1. 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 tresholds relate to each other?

<ESMA\_QUESTION\_MIFID\_TO\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_15>

1. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_16>

1. 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>

1. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_18>

1. 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>

In the case of the Swedish krona IRS instruments, only the 10 year Benchmark tenor meets or exceeds, in the liquidity assessment, Table 7, the three thresholds on average nominal amount per day > EUR 50 mio, days traded > 80% of days and the number of distinct counterparties. It is important to understand that to promote liquidity the market makers will need to be able to trade other benchmark maturities most commonly 2 yr and 5 yr to hedge their positions in an efficient way. The implied risk to liquidity if only one tenor would be under the trading obligation is that hedging would become harder to obtain as the other tenors would trade with different transparency requirements. Therefore Nasdaq’s opinion is that the Swedish krona IRS 10 year tenor, and others, should be exempted unless at least three benchmark tenors are fulfilling the above mentioned criteria for the trading obligation. The alternative, to impose trading obligation on benchmark tenors which are under the stated thresholds could punish liquidity for the whole group of instruments as sufficient market activity does not exist and would be likely to shrink further.

<ESMA\_QUESTION\_MIFID\_TO\_19>

1. 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>

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<ESMA\_QUESTION\_MIFID\_TO\_20>

1. 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_21>

1. 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>

1. 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>

1. 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>

1. 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>

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<ESMA\_QUESTION\_MIFID\_TO\_25>

1. In case you consider FRAs should be considered for the TO, which FRA sub-classes 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>

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

<ESMA\_QUESTION\_MIFID\_TO\_27>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_27>

1. 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>

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<ESMA\_QUESTION\_MIFID\_TO\_28>

1. 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>

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

<ESMA\_QUESTION\_MIFID\_TO\_30>

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<ESMA\_QUESTION\_MIFID\_TO\_30>

1. Do you consider necessary to provide for an additional phase-in for the TO for operational purposed 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>

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<ESMA\_QUESTION\_MIFID\_TO\_31>

1. 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>

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<ESMA\_QUESTION\_MIFID\_TO\_32>

1. 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>

1. 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

<ESMA\_QUESTION\_MIFID\_TO\_34>

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<ESMA\_QUESTION\_MIFID\_TO\_34>

1. 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>

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<ESMA\_QUESTION\_MIFID\_TO\_35>