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| 10 November 2016 |

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| Reply form for the Consultation Paper on draft RTS on package orders for which there is a liquid market |
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| Date: 10 November 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\_PO\_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\_PO\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

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

ESMA\_MiFID\_PO\_ESMA\_REPLYFORM or

ESMA\_MiFID\_PO\_ESMA\_ANNEX1

***Deadline***

Responses must reach us by **3 January 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’.

# Introduction

Please make your introductory comments below, if any:

< ESMA\_COMMENT\_MIFID\_PO\_0>

As an operator of trading venues offering trading in equity and derivative products we support the overall goal of MiFID II and MiFIR to increase transparency and provide safe and regulated trading and clearing environments for all financial instruments. At the same time, we believe that there should be a consistent application of pre-trade transparency LIS waivers for both individual and packaged transactions. In respect of packages’ trading, there is a clear need for a waiver from pre-trade transparency as today – on our regulated and transparent markets – we already offer a block trading facility (LIS) for equity derivatives strategies. These products are typically comprised of 4 or less legs and can be reported through our block trading facility if they cross the block trade thresholds (similar to the LIS pre-trade waiver under MiFIR). This block trade facility allows these trades to be cleared and settled via the regulated trading venue whilst not impacting the pre-trade order book market prices in a disproportionate manner. We believe this facility meets real market needs (i.e. lowering execution risk management) while not taking away from the general need for pre-trade transparency. Such practices have also been recognized by MiFIR via the provision for pre-trade transparency waivers for large in scale trades.

However, we are concerned that the proposal by ESMA, as presented in the Consultation Paper, would result in a much more restrictive pre-trade transparency regime for Exchange Traded Derivatives (ETDs) package orders than for individual transactions. This is because the approach proposed in the Consultation Paper would result in the vast majority of ETD packages being determined as liquid, meaning the LIS waiver could not be applied to them. From an exchange and ETD point of view, the proposed rules would in effect negate the waiver for package orders in Level 1, as ETDs would automatically fulfil the ‘general criteria’ (given the criteria focused on being admitted to trading or traded on a venue, having standardised contractual terms and being available for clearing), and the majority would also fulfil the ‘asset-specific criteria’, for being considered liquid. This is particularly the case for equity derivatives.

Furthermore, we believe that the proposed regime for package orders is inconsistent with the methodology used for individual transactions: while the pre-trade transparency regime for individual transactions is based on a quantitative methodology, the regime for package orders is based on qualitative criteria only.

We would also like to emphasize that Article 9(6) of MiFIR states:

*“In order to ensure the consistent application of points (i) and (ii) of paragraph (1)(e), ESMA shall develop draft regulatory technical standards to establish a methodology for determining those package orders for which there is a liquid market. When developing such methodology for determining whether there is a liquid market for a package order as a whole, ESMA shall assess whether packages are standardised and frequently traded.”*

However, the methodology proposed by ESMA concentrates on the characteristics of individual components of a package rather than assessing the package as a whole. In this context, it is important to point out that while the individual components of a package may indeed be liquid, this does not automatically translate into the package as a whole being liquid. Furthermore, the proposed rules do not include the *‘frequently traded’* criterion. Therefore, we would recommend that ESMA consider some ***quantitative criteria***, some of which should assess the package order as a whole. In our view, a determination of liquidity for the package as a whole should be dependent on the following cumulative criteria:

* There are three or more investment firms which hold themselves out as market-makers in relation to the specific package order in question;
* Transactions which occur as a result of such a package order account for at least 25% of the total transactions in each component of the package (calculated on an annual basis); and
* The average daily number of total transactions in the package is 10 or more (calculated on an annual basis).

Furthermore, as we outline in our detailed responses, we believe that in situations where **all components are above their individual pre-trade LIS thresholds, an implicit pre-trade transparency waiver for the whole package should be granted.**

< ESMA\_COMMENT\_MIFID\_PO\_0>

1. Do you agree with ESMA’s proposal to apply the SI obligations at the package order level where the investment firm is an SI in at least one component instrument of the package order? If not, please explain why and propose an alternative.

<ESMA\_QUESTION\_MIFID\_PO\_1>

We agree with ESMA’s proposal. SIs should be subject to equivalent rules in order to ensure a level playing field.

<ESMA\_QUESTION\_MIFID\_PO\_1>

1. Do you agree with the proposed methodology based on qualitative criteria? Do you consider an alternative methodology as better suited for identifying liquid package orders as a whole?

<ESMA\_QUESTION\_MIFID\_PO\_2>

We refer to our comments in the general section. Specifically, we believe that **adding a quantitative criterion** to the qualitative criteria will allow traders to trade packages under a pre-trade transparency waiver where justified. For equity derivatives we believe that, even though they are deemed to be liquid under MiFIR, the strategies do not generally trade as much as the components.

Our current market offers a block/prof trade facility for reporting packages above a certain size and is tied to the block sizes for the components. This regime is comparable to the structure and purpose of the LIS waiver regime under MiFIR. In our markets today we see that 21% of our volumes are traded in packages. While a significant part of this is not pre-trade transparent (larger block trades), the majority of the 21% trades via the lit order book. In terms of packages being standard, we would like to add that the only standardised package here is the **index futures roll**. Other packages are much more diverse and varied, with no particular package being liquid.

The percentage of packages that trades dark currently meets a proper market need, especially in our equity options market which is a very mature market. In such markets, there is a need for our diverse range of market participants to either hedge their exposure or the need to trade in large blocks, this is best achieved away from a central order book. Trading large blocks pre-trade transparently would have an artificial impact on the price formation process. This is also why MiFIR allows for a LIS waiver. Should this type of waiver not be available for packages, legitimate market practices serving participants’ needs would no longer be available.

Euronext wishes to emphasise the fact that market participants need to be able to continue to use the LIS waiver, either for individual legs of the package order or for the package order as a whole, in order to facilitate large package orders. **In the obvious case where all components are above their individual pre-trade LIS thresholds, an implicit pre-trade transparency waiver for the whole package should be granted.**  Failing to do so would critically damage the ability of liquidity providers to hedge the risk they undertake. Large package orders cannot be put on the order book, which means that in the absence of such as LIS waiver, these packages would disappear from exchanges. In all likelihood, they would be traded OTC which would greatly reduce the liquidity on trading venues, increase liquidity fragmentation, and negatively impact the overall level of transparency compared to current levels.

<ESMA\_QUESTION\_MIFID\_PO\_2>

1. Do you agree with the general criteria for identifying package orders that may be eligible for being liquid as a whole? Do you consider necessary to add further criteria or to remove any of the criteria proposed? Please explain.

<ESMA\_QUESTION\_MIFID\_PO\_3>

Although we support ESMA’s approach under paragraph 51(i) focusing on the standardisation of the package or trading pattern, we believe adding in quantitative criteria will be important for the framework to be efficient for the market. We refer to our answer under the general comments and Question 2.

<ESMA\_QUESTION\_MIFID\_PO\_3>

1. Do you consider it necessary to further specify the first criterion on the standardisation of components? If yes, which characteristics should be considered to specify the standardised components of packages?

<ESMA\_QUESTION\_MIFID\_PO\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_PO\_4>

1. Do you agree with the proposed interest rate derivatives specific criteria? If not, please explain why and present your preferred approach. Do you consider it necessary to add further criteria? If yes, please explain.

<ESMA\_QUESTION\_MIFID\_PO\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_PO\_5>

1. Do you consider that derivative components in other currencies (e.g. other EEA currencies, JPY) should be included? If yes, which ones?

<ESMA\_QUESTION\_MIFID\_PO\_6>

Yes they should. In any case, all EEA currencies should be included as many of them also trade on venues that will be subject to this approach. In addition, we see no reason to exclude non EEA currencies that trade in Europe.

<ESMA\_QUESTION\_MIFID\_PO\_6>

1. Do you agree that only packages with derivative components with the above mentioned benchmark dates should be considered liquid? If not, please explain. Which other or additional benchmark dates do you suggest?

<ESMA\_QUESTION\_MIFID\_PO\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_PO\_7>

1. Do you consider that for certain types of packages derivative components that have broken dates (e.g. invoice spreads) or which are traded on IMM and MAC dates (e.g. rolls) have a liquid market?

<ESMA\_QUESTION\_MIFID\_PO\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_PO\_8>

1. Do you consider it necessary to specify criteria for non-derivative components of packages? If yes, which criteria would you suggest and why?

<ESMA\_QUESTION\_MIFID\_PO\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_PO\_9>

1. Do you agree with the proposed equity derivatives specific criteria? If not, please explain why and present your preferred approach. Do you consider it necessary to add further criteria? If yes, please explain.

<ESMA\_QUESTION\_MIFID\_PO\_10>

We agree with the components element as today we cater for no more than 4 components in our systems. We do not agree with only applying qualitative criteria and refer to our suggestion under the general comments to consider some ***quantitative criteria***, some of which should assess the package order as a whole. In our view, a determination of liquidity for the package as a whole should be dependent on the following cumulative criteria:

* There are three or more investment firms which hold themselves out as market-makers in relation to the specific package order in question;
* Transactions which occur as a result of such a package order account for at least 25% of the total transactions in each component of the package (calculated on an annual basis); and
* The average daily number of total transactions in the package is 10 or more (calculated on an annual basis).

Furthermore, as we outline in our detailed responses, we believe that in situations where all components are above their individual pre-trade LIS thresholds, an implicit pre-trade transparency waiver for the whole package should be granted.

<ESMA\_QUESTION\_MIFID\_PO\_10>

1. Do you consider that derivative components in other currencies (e.g. other EEA currencies, JPY) should be included? If yes, which ones?

<ESMA\_QUESTION\_MIFID\_PO\_11>

Yes they should. In any case, all EEA currencies should be included as many of them also trade on venues that will be subject to this approach. In addition we see no reason to exclude non EEA currencies that trade in Europe.

<ESMA\_QUESTION\_MIFID\_PO\_11>

1. Do you consider it necessary to specify that all components of the package order should have the same underlying? If yes, please explain.

<ESMA\_QUESTION\_MIFID\_PO\_12>

No we do not see a need to limit the packages to the same underlying. It is common market practice for market participants to trade across different underlyings. For instance, trading a EUROSTOXX against a FTSE contract is a common trade. We would like, however, to highlight our response to Q2 and 10 and the need to include quantitative criteria in the assessment of a liquid package.

<ESMA\_QUESTION\_MIFID\_PO\_12>

1. Do you agree with the proposed credit derivatives specific criteria? If not, please explain why and present your preferred approach. Do you consider it necessary to add further criteria? If yes, please explain.

<ESMA\_QUESTION\_MIFID\_PO\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_PO\_13>

1. Do you agree that derivative components in USD, EUR or GBP should be considered sufficiently liquid for the purpose of this RTS? Do you consider that derivative components in other currencies (e.g. other EEA currencies, JPY) should be included? If yes, which ones?

<ESMA\_QUESTION\_MIFID\_PO\_14>

Yes they should. In any case, all EEA currencies should be included as many of them also trade on venues that will be subject to this approach. In addition we see no reason to exclude non EEA currencies that trade in Europe.

<ESMA\_QUESTION\_MIFID\_PO\_14>

1. Do you consider it necessary to further specify the indices that are eligible? If yes, please specify which specific indices should be included. Do you consider it necessary to specify the maturity dates of the underlying indices?

<ESMA\_QUESTION\_MIFID\_PO\_15>

We believe that there is no need to further specify underlying indices. This would only artificially limit packages that may be liquid but would not be regarded as such because the underlying index has not been specified. That approach lacks the flexibility that is needed in order for the proposed regime to retain relevance going forward. We would, however, highlight our response to Q2 and 10, specifically the point that quantitative criteria should be included in the assessment of a liquid package.

<ESMA\_QUESTION\_MIFID\_PO\_15>

1. Do you agree with the proposed commodity derivatives specific criteria? If not, please explain why and present your preferred approach. Do you consider it necessary to add further criteria? If yes, please explain.

<ESMA\_QUESTION\_MIFID\_PO\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_PO\_16>

1. Do you consider that derivative components in other currencies (e.g. other EEA currencies, JPY) should be included? If yes, which ones.

<ESMA\_QUESTION\_MIFID\_PO\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_PO\_17>

1. In which types of contracts do package orders in commodity derivatives mostly occur? Do you consider it necessary to provide for asset class specific criteria that take option and future/forward contracts into account? If yes, please explain.

<ESMA\_QUESTION\_MIFID\_PO\_18>

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<ESMA\_QUESTION\_MIFID\_PO\_18>

1. Do you consider it necessary to develop criteria at a more granular level (e.g. energy derivatives, agricultural derivatives) to better reflect the particularities of package orders in the different sub-asset classes? If yes, please explain.

<ESMA\_QUESTION\_MIFID\_PO\_19>

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<ESMA\_QUESTION\_MIFID\_PO\_19>

1. Do you consider it necessary to specify that all components of the package order should have the same underlying? If yes, please explain at which level this concept of “same underlying” should apply (e.g. same asset class, same sub-asset class, same sub-class – as per Annex III of RTS 2 – or at or more granular level).

<ESMA\_QUESTION\_MIFID\_PO\_20>

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<ESMA\_QUESTION\_MIFID\_PO\_20>

1. Are there package orders in other derivative asset classes that are in your view standardised and frequently traded and which should be eligible for having a liquid market as a whole? If yes, what asset class specific criteria do you suggest for those?

<ESMA\_QUESTION\_MIFID\_PO\_21>

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<ESMA\_QUESTION\_MIFID\_PO\_21>

1. Do you agree with the approach proposed for FX derivatives or do you consider it necessary to include an asset-class specific approach for FX derivatives?

<ESMA\_QUESTION\_MIFID\_PO\_22>

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<ESMA\_QUESTION\_MIFID\_PO\_22>

1. How should ESMA deal with cross-asset class package orders? Should ESMA develop cross-asset class specific criteria? If yes, please specify those. Alternatively, should cross-asset class package orders be allocated to only one asset class? If yes, how?

<ESMA\_QUESTION\_MIFID\_PO\_23>

We see no reason to treat those any differently from packages with one asset class. The criterion should be whether the package as a whole is liquid. Placing these types of packages out of scope ahead of any assessment of possible liquidity would go against the (goal of) Level 1 text. We would, however, highlight our response to Q2 and 10, specifically the point that quantitative criteria should be included in the assessment of a liquid package.

<ESMA\_QUESTION\_MIFID\_PO\_23>

1. Do you agree that package orders where all components are subject to the trading obligation for derivatives should be considered to have a liquid market as a whole? If not, please explain.

<ESMA\_QUESTION\_MIFID\_PO\_24>

Euronext disagrees with the suggestion to use the trading obligation as a possible criterion without further assessing the liquidity of the whole package based on some quantitative criteria. The trading obligation on the individual components is not a guarantee that any package based on said components is liquid enough to not require a pre-trade transparency waiver. An outcome in which an order on an instrument subject to the trading obligation can be granted a waiver if above the pre-trade LIS when traded individually while a package built on such instruments cannot would appear inconsistent with the policy goals of MiFID II. Moreover, while any liquidity provider is safeguarded in executing its hedge in the first case, in the second case they are not.

<ESMA\_QUESTION\_MIFID\_PO\_24>

1. Do you consider that package orders where at least one component is subject to the trading obligation and all other components are subject to the clearing obligation should be considered to have a liquid market as a whole? If not, please explain.

<ESMA\_QUESTION\_MIFID\_PO\_25>

We recognize, that these types of packages will be different to the ones where all components are subject to the trading obligation. Nonetheless, our view remains the same: we disagree with the suggestion to use the trading obligation (also for one leg) as a possible criterion without further assessing the liquidity of the whole package based on some quantitative criteria. The trading obligation on the individual components is not a guarantee that any package based on said components is liquid enough to not require a pre-trade transparency waiver. An outcome in which an order on an instrument subject to the trading obligation can be granted a waiver if above the pre-trade LIS when traded individually while a package built on such instruments cannot would appear inconsistent with the policy goals of MiFID II. Moreover, while any liquidity provider is safeguarded in executing its hedge in the first case, in the second case they are not.

<ESMA\_QUESTION\_MIFID\_PO\_25>

1. Do you agree that the categories of packages above should be considered as standardised and frequently traded for the purpose of this RTS empowerment? If not, please explain.

<ESMA\_QUESTION\_MIFID\_PO\_26>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_PO\_26>

1. Are there any categories of packages missing in the above asset classes that should be considered for the purpose of this RTS empowerment? Are there in your view categories of packages in other asset classes that ESMA should consider?

<ESMA\_QUESTION\_MIFID\_PO\_27>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_PO\_27>

1. Do you agree with the draft RTS in annex IV? If not, please explain.

<ESMA\_QUESTION\_MIFID\_PO\_28>

As an operator of trading venues offering trading in equity and derivative products we support the overall goal of MiFID II and MiFIR to increase transparency and provide safe and regulated trading and clearing environments for all financial instruments. At the same time, we believe that there should be a consistent application of pre-trade transparency LIS waivers for both individual and packaged transactions. In respect of packages’ trading, there is a clear need for a waiver from pre-trade transparency as today – on our regulated and transparent markets – we already offer a block trading facility (LIS) for equity derivatives strategies. These products are typically comprised of 4 or less legs and can be reported through our block trading facility if they cross the block trade thresholds (similar to the LIS pre-trade waiver under MiFIR). This block trade facility allows these trades to be cleared and settled via the regulated trading venue whilst not impacting the pre-trade order book market prices in a disproportionate manner. We believe this facility meets real market needs (i.e. lowering execution risk management) while not taking away from the general need for pre-trade transparency. Such practices have also been recognized by MiFIR via the provision for pre-trade transparency waivers for large in scale trades.

However, we are concerned that the proposal by ESMA, as presented in the Consultation Paper, would result in a much more restrictive pre-trade transparency regime for Exchange Traded Derivatives (ETDs) package orders than for individual transactions. This is because the approach proposed in the Consultation Paper would result in the vast majority of ETD packages being determined as liquid, meaning the LIS waiver could not be applied to them. From an exchange and ETD point of view, the proposed rules would in effect negate the waiver for package orders in Level 1, as ETDs would automatically fulfil the ‘general criteria’ (given the criteria focused on being admitted to trading or traded on a venue, having standardised contractual terms and being available for clearing), and the majority would also fulfil the ‘asset-specific criteria’, for being considered liquid. This is particularly the case for equity derivatives.

Furthermore, we believe that the proposed regime for package orders is inconsistent with the methodology used for individual transactions: while the pre-trade transparency regime for individual transactions is based on a quantitative methodology, the regime for package orders is based on qualitative criteria only.

We would also like to emphasize that Article 9(6) of MiFIR states:

*“In order to ensure the consistent application of points (i) and (ii) of paragraph (1)(e), ESMA shall develop draft regulatory technical standards to establish a methodology for determining those package orders for which there is a liquid market. When developing such methodology for determining whether there is a liquid market for a package order as a whole, ESMA shall assess whether packages are standardised and frequently traded.”*

However, the methodology proposed by ESMA concentrates on the characteristics of individual components of a package rather than assessing the package as a whole. In this context, it is important to point out that while the individual components of a package may indeed be liquid, this does not automatically translate into the package as a whole being liquid. Furthermore, the proposed rules do not include the *‘frequently traded’* criterion. Therefore, we would recommend that ESMA consider some ***quantitative criteria***, some of which should assess the package order as a whole. In our view, a determination of liquidity for the package as a whole should be dependent on the following cumulative criteria:

* There are three or more investment firms which hold themselves out as market-makers in relation to the specific package order in question;
* Transactions which occur as a result of such a package order account for at least 25% of the total transactions in each component of the package (calculated on an annual basis); and
* The average daily number of total transactions in the package is 10 or more (calculated on an annual basis).

Furthermore, as we outline in our detailed responses, we believe that in situations **where all components are above their individual pre-trade LIS thresholds, an implicit pre-trade transparency waiver for the whole package should be granted.**

<ESMA\_QUESTION\_MIFID\_PO\_28>

1. CBAQ1: Please identify, per asset class and per currency, the total nominal amount traded (including packages). Please also identify what % of this total trading is executed i) through packages (incl. EFPs) and ii) through packages (with only financial instruments as components), on trading venues and OTC. Reference period: September 2015–September 2016. If you are a trading venue, please fill in the trading venue columns only. If you are an investment firm, please fill in the trading venue and OTC columns as appropriate.

<ESMA\_QUESTION\_MIFID\_PO\_29>

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Total Nominal amount traded, including packages (in euros)**  Sept 2015-Sept 2016 | | **% of packages (including EFPs)** | | **% of packages (with only financial instruments as components)** | |
| Trading venues | OTC | Trading venues | OTC | Trading venues | OTC |
| **Interest rate derivatives** |  |  |  |  |  |  |
| Euro |  |  |  |  |  |  |
| USD |  |  |  |  |  |  |
| GBP |  |  |  |  |  |  |
| Other currencies (please specify) |  |  |  |  |  |  |
| **Equity derivatives** |  |  |  |  |  |  |
| Euro |  |  | 21%. While a significant part of this is not pre-trade transparent (larger block trades), the majority of the 21% trades via the lit order book. We refer to our general comments on the actual need for a certain type of trades to trade dark as they could not fit in the order book. In terms of packages being standard, we would like to add that the only standardised package here is the **index futures roll**. Other packages are much more diverse and varied, with no particular package being liquid. |  |  |  |
| USD |  |  |  |  |  |  |
| GBP |  |  |  |  |  |  |
| Other currencies (please specify) |  |  |  |  |  |  |
| **Credit derivatives** |  |  |  |  |  |  |
| Euro |  |  |  |  |  |  |
| USD |  |  |  |  |  |  |
| GBP |  |  |  |  |  |  |
| Other currencies (please specify) |  |  |  |  |  |  |
| **Commodity derivatives** |  |  |  |  |  |  |
| Euro |  |  |  |  |  |  |
| USD |  |  |  |  |  |  |
| GBP |  |  |  |  |  |  |
| Other currencies (please specify) |  |  |  |  |  |  |

<ESMA\_QUESTION\_MIFID\_PO\_29>

1. CBAQ2: Based on ESMA draft RTS, out of the package orders (comprised only of financial instruments) that you trade, which percentage of the volume traded do you expect to be considered as having a liquid market as a whole? Please confirm which category the package orders you trade fall under:

1= less than 10% of the volume of package orders traded;

2= from 10% to 25% of the volume of package orders traded;

3= from 25% to 50% of the volume of package orders traded;

4= from 50% to 75% of the volume of package orders traded; or,

5= more than 75% of the of the volume of package orders traded.

<ESMA\_QUESTION\_MIFID\_PO\_30>

5. As explained in this response, the current proposal would lead to all equity derivatives packages on Euronext being deemed liquid and needing to be pre-trade transparent. This will have a negative impact on the investment community.

<ESMA\_QUESTION\_MIFID\_PO\_30>

1. CBAQ3: In which area do you anticipate the costs of complying with ESMA’ draft RTS to stem from (e.g. IT, training)?

<ESMA\_QUESTION\_MIFID\_PO\_31>

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<ESMA\_QUESTION\_MIFID\_PO\_31>

1. CBAQ4: Could you provide an indication of the expected implementation costs of ESMA’ draft RTS (in euros) differentiating between (i) one-off costs and (ii) recurring costs (on an annual basis)?

<ESMA\_QUESTION\_MIFID\_PO\_32>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_PO\_32>

1. CBAQ5: In relation to the size of your business, do you expect those costs to be:

very low;

low;

medium; or,

high.

<ESMA\_QUESTION\_MIFID\_PO\_33>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_PO\_33>

1. CBAQ6: Do you expect any impact from ESMA’s draft RTS on your business model/activity? If so, please explain the drivers and the expected changes to your business model/activity.

<ESMA\_QUESTION\_MIFID\_PO

<ESMA\_QUESTION\_MIFID\_PO\_34>

Having all packages liquid would impact the usability of the market by participants with very large sizes needing to be traded on an order book and no possibility for an LIS waiver. We would expect a significant amount of our package orders in products such as equity options to become more expensive to trade. Clients are used to rules that include an LIS waiver that is based on the LIS for the components and is seen as practical by participants. We could expect more packages to be traded as outright components to use the LIS waiver, thought this would likely cost the end clients more to execute from crossing the spread on each component. Euronext have functionality to capture smaller size package transactions in an order book but we do not think this could cope with the influx should the proposal not be adapted.

<ESMA\_QUESTION\_MIFID\_PO\_34>

1. CBAQ7: Do you expect you expect broader market changes from the draft RTS in the short or medium term TO?

<ESMA\_QUESTION\_MIFID\_PO\_35>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_PO\_35>

1. CBAQ8: If so, please explain

<ESMA\_QUESTION\_MIFID\_PO\_36>

|  |  |  |  |
| --- | --- | --- | --- |
| **Expected Impact on** | **Yes/No/NA** | **Positive Impact** | **Negative impact** |
| **Market structure (changes in trading models, in trading strategies…)** |  |  |  |
| **Liquidity**  **(please explain how you measure liquidity)** |  |  |  |
| **End users** |  |  |  |
| **Other (specify)** |  |  |  |

<ESMA\_QUESTION\_MIFID\_PO\_36>

1. CBAQ9: Are their specific concerns regarding ESMA’s draft RTS you would wish to highlight? Please be as specific as possible in your answer.

<ESMA\_QUESTION\_MIFID\_PO\_37>

As an operator of trading venues offering trading in equity and derivative products we support the overall goal of MiFID II and MiFIR to increase transparency and provide safe and regulated trading and clearing environments for all financial instruments. At the same time, we believe that there should be a consistent application of pre-trade transparency LIS waivers for both individual and packaged transactions. In respect of packages’ trading, there is a clear need for a waiver from pre-trade transparency as today – on our regulated and transparent markets – we already offer a block trading facility (LIS) for equity derivatives strategies. These products are typically comprised of 4 or less legs and can be reported through our block trading facility if they cross the block trade thresholds (similar to the LIS pre-trade waiver under MiFIR). This block trade facility allows these trades to be cleared and settled via the regulated trading venue whilst not impacting the pre-trade order book market prices in a disproportionate manner. We believe this facility meets real market needs (i.e. lowering execution risk management) while not taking away from the general need for pre-trade transparency. Such practices have also been recognized by MiFIR via the provision for pre-trade transparency waivers for large in scale trades.

However, we are concerned that the proposal by ESMA, as presented in the Consultation Paper, would result in a much more restrictive pre-trade transparency regime for Exchange Traded Derivatives (ETDs) package orders than for individual transactions. This is because the approach proposed in the Consultation Paper would result in the vast majority of ETD packages being determined as liquid, meaning the LIS waiver could not be applied to them. From an exchange and ETD point of view, the proposed rules would in effect negate the waiver for package orders in Level 1, as ETDs would automatically fulfil the ‘general criteria’ (given the criteria focused on being admitted to trading or traded on a venue, having standardised contractual terms and being available for clearing), and the majority would also fulfil the ‘asset-specific criteria’, for being considered liquid. This is particularly the case for equity derivatives.

Furthermore, we believe that the proposed regime for package orders is inconsistent with the methodology used for individual transactions: while the pre-trade transparency regime for individual transactions is based on a quantitative methodology, the regime for package orders is based on qualitative criteria only.

We would also like to emphasize that Article 9(6) of MiFIR states:

*“In order to ensure the consistent application of points (i) and (ii) of paragraph (1)(e), ESMA shall develop draft regulatory technical standards to establish a methodology for determining those package orders for which there is a liquid market. When developing such methodology for determining whether there is a liquid market for a package order as a whole, ESMA shall assess whether packages are standardised and frequently traded.”*

However, the methodology proposed by ESMA concentrates on the characteristics of individual components of a package rather than assessing the package as a whole. In this context, it is important to point out that while the individual components of a package may indeed be liquid, this does not automatically translate into the package as a whole being liquid. Furthermore, the proposed rules do not include the *‘frequently traded’* criterion. Therefore, we would recommend that ESMA consider some ***quantitative criteria***, some of which should assess the package order as a whole. In our view, a determination of liquidity for the package as a whole should be dependent on the following cumulative criteria:

* There are three or more investment firms which hold themselves out as market-makers in relation to the specific package order in question;
* Transactions which occur as a result of such a package order account for at least 25% of the total transactions in each component of the package (calculated on an annual basis); and
* The average daily number of total transactions in the package is 10 or more (calculated on an annual basis).

Furthermore, as we outline in our detailed responses, we believe that in situations **where all components are above their individual pre-trade LIS thresholds, an implicit pre-trade transparency waiver for the whole package should be granted.**

<ESMA\_QUESTION\_MIFID\_PO\_37>

1. CBAQ10; Are there specific benefits arising from ESMA’s draft RTS you would wish to mention?

<ESMA\_QUESTION\_MIFID\_PO\_38>

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**For trading venues only**

1. CBAQ11: Do you offer trading in packages?

<ESMA\_QUESTION\_MIFID\_PO\_39>

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1. CBAQ12: If so, please describe, per asset class, the categories of packages for which pre-trade transparency is currently provided. Please also state whether you consider those packages as liquid and the criteria taken into consideration (e.g. spreads, volume traded, number of transactions, number of market participants). If no sufficient space is available to respond, please provide the information in an annex.

<ESMA\_QUESTION\_MIFID\_PO\_40>

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| **Package Categories with pre-trade transparency** | **Currency** | **Tenor** | **Reference index** | **Other characteristics (please identify)** | **Liquidity assessment (Y/N) and underlying criteria** |
| **Interest rate derivatives** |  |  |  |  |  |
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| **Equity derivatives** |  |  |  |  |  |
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| **Credit derivatives** |  |  |  |  |  |
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| **Commodity derivatives** |  |  |  |  |  |
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| **Others (please specify)** |  |  |  |  |  |
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