



European Securities and
Markets Authority





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

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Consultation Paper on the trading obligation for derivatives under MiFIR, published on the ESMA website.

Instructions

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA_QUESTION_MIFID_TO_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text "TYPE YOUR TEXT HERE" between the tags.

Responses are most helpful:

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

Naming protocol

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

ESMA_MiFID_TO_NAMEOFCOMPANY_NAMEOFDOCUMENT.

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

ESMA_MiFID_TO_ESMA_REPLYFORM or

ESMA_MiFID_TO_ESMA_ANNEX1

Deadline

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

All contributions should be submitted online at www.esma.europa.eu 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'.



General information about respondent

Name of the company / organisation	Click here to enter text. <i>National Association of German Cooperative Banks</i>
Activity	Choose an item. <i>Banking sector</i>
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Choose an item. <i>Germany</i>



Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_MIFID_TO_0>

The National Association of German Cooperative Banks (Bundesverband der Volksbanken und Raiffeisenbanken, BVR, representing more than 900 banks) is grateful to be given the opportunity to comment on ESMA's consultation paper on the trading obligation for derivatives under MiFIR.

As the German Banking Industry Committee (GBIC, die Deutsche Kreditwirtschaft, representing more than 1,700 banks) already stated in its response to the discussion paper, we would like to point out that as the clearing obligation is not yet fully applicable, we would strongly recommend deferring the implementation of the trading obligation. This would enable ESMA as well as the market to better assess the implications the clearing obligation has for the market and, thus, ensure a better and smoother phase-in of the clearing obligation. In particular, the questions relating to how many market participants, market makers and trading venues should be available could be assessed by relying on a broader data base.

With respect to package transactions we would like to point out that the trading obligation should only apply to categories of package transactions that are itself considered liquid. Even if a package transaction consists only of components which fall as such under the trading obligation, such package transaction is not liquid enough and not tradeable at a trading venue. Only trades which exactly match the terms of products tradeable at trading venues should fall under the trading obligation, similar to the approach for analysing/determining product classes subject to the clearing obligation.

If any leg is not subject to trading obligation, then the whole package should not be subject to the trading obligation. The same applies for any deferrals or waivers. As such packages are typically designed based on client needs, irrespective of whether they contain components which fall under the trading obligation, the trading obligation should not apply for package transactions as they are not liquid enough and as such are not able to be traded at a trading venue.

Regarding the overview of package transaction relief granted by CFTC (number 117, table 1) we would like to note that even though ESMA is not empowered to exempt components of package transactions from the trading obligation, ESMA is also not empowered to introduce a trading obligation for components that are not subject to the clearing obligation just because they are part of a package that contains a component subject to the trading obligation.

<ESMA_COMMENT_MIFID_TO_0>



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

<ESMA_QUESTION_MIFID_TO_1>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_TO_1>

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

<ESMA_QUESTION_MIFID_TO_2>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_TO_2>

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

<ESMA_QUESTION_MIFID_TO_3>
We understand that under MiFIR, ESMA has not been granted the same informative right as under EMIR. Therefore, the proposal seems the only reasonable way forward. However, we would suggest amending MiFIR accordingly in order to establish a parallelism with EMIR in this respect. ESMA could be granted the right to use data being obtained through the reporting obligation for reference data under Article 27 MiFIR. This is a fundamental point sinea database which is built on a best effort approach cannot be the foundation for the implementation of trading obligation processes in financial institutions. Financial institutions need legal certainty in order to make the best decisions for implementing the trading obligation.<ESMA_QUESTION_MIFID_TO_3>

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

<ESMA_QUESTION_MIFID_TO_4>
In numbers 125 to 128 ESMA admits not having received a lot of data in order to assess which contracts should be subject to the trading obligation.
Therefore, BVR – representing more than 900 banking institutions in Germany - would strongly recommend deferring the implementation of the trading obligation. This would enable ESMA as well as the market to better assess the implications the clearing obligation has for the market and, thus, ensure a better and smoother phase-in of the clearing obligation. In particular, the questions relating to how many market participants, market makers and trading venues should be available could be assessed by relying on a broader data base.

Furthermore we would like to add that each data field presented in number 113 would provide more clarity on which derivative contract is subject to the trading obligation. However, at least the same data fields that are being used for the purpose of the clearing obligation (see RTS 2015/2205 and RTS 2016/1178) should be considered for the trading obligation. For example, fixed-to-float interest rate swaps denominated in EUR with a constant and a variable notional (notional type) are subject to the clearing obligation. Not considering the notional type for the purpose of the clearing obligation, creates uncertainty on whether the notional type is a factor for the trading obligation.

<ESMA_QUESTION_MIFID_TO_4>

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

<ESMA_QUESTION_MIFID_TO_5>

As well as ESMA we did not obtain any evidence for including the fixed leg day count ACT/360 to the trading obligation. Hence, we recommend excluding this sub-class from the scope of the trading obligation. Regarding ESMA's concerns that this might create a circumvention of the trading obligation we would like to point out that ESMA nevertheless will monitor liquidity for any OTC-derivative-sub-class and therefore still has the opportunity to implement the trading obligation for some sub-classes at a later stage. This view as well goes along with our above statement regarding a deferred application of the trading obligation.

<ESMA_QUESTION_MIFID_TO_5>

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

<ESMA_QUESTION_MIFID_TO_6>

We do not consider Case A3 and Case A4 as sufficiently liquid.

Where the sub-class-criterion floating reference rate with term differs from floating leg reset frequency, such products are from our point of view illiquid. We therefore do not recommend adding any further sub-classes to the scope of the trading obligation.

<ESMA_QUESTION_MIFID_TO_6>

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

<ESMA_QUESTION_MIFID_TO_7>

With regard to the fixed leg day count criterion we refer to our response to question 5. For example, an IMM interest rate swap with a benchmark tenor of 6 years is not made tradeable in the United States but the 7 year-swap is. Hence, we vote for introducing the trading obligation for the 7 year benchmark tenor instead of the 6 year benchmark tenor. Generally, derivatives subject to the EU-trading obligation should be tradeable in the US.

<ESMA_QUESTION_MIFID_TO_7>

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

<ESMA_QUESTION_MIFID_TO_8>

Please see our response to question 6.

<ESMA_QUESTION_MIFID_TO_8>

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



<ESMA_QUESTION_MIFID_TO_9>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_TO_9>

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

<ESMA_QUESTION_MIFID_TO_10>
Please see our response to question 6.
<ESMA_QUESTION_MIFID_TO_10>

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

<ESMA_QUESTION_MIFID_TO_11>
Yes, we agree with this proposal.
<ESMA_QUESTION_MIFID_TO_11>

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

<ESMA_QUESTION_MIFID_TO_12>
We would like to note that ESMA does not provide granular liquidity data for credit default swaps. Hence, we are not able to assess liquidity properly. The time component regarding the index rolling date would have been of interest to assess whether the off-the-run-series is applicable for the trading obligation.
<ESMA_QUESTION_MIFID_TO_12>

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

<ESMA_QUESTION_MIFID_TO_13>
We, the BVR – representing more than 900 banks in Germany -, do not agree with the proposal regarding Categories 1 and 2. While the timeline for establishing the relevant connectivity with the trading venues seems to be achievable under high efforts in this short period of time, the implementation of internal processes regarding the trading obligation (such as internal control systems) does not seem to be achievable in that short period of time. Uncertainty arises as well from the fact that it is not clarified yet which trading venue will be categorised as regulated market, multilateral trading facility or organised trading facility. Financial institutions may have to amend their processes depending on which type of trading venue they use.

Furthermore, ESMA should, as already pointed out above, gather more information on liquidity for respective derivative classes. The current assessment does not seem to be based on sufficient liquidity information.

<ESMA_QUESTION_MIFID_TO_13>

CBA QUESTIONS

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

<ESMA_QUESTION_MIFID_TO_14>

Category	Number of employees	Total Notional traded 2016 (in thousands euros)	Total number of trades 2016
EMIR Category 1	[1-50]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[51-250]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[251-1000]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	>1000	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
EMIR Category 2	[1-50]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[51-250]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[251-1000]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	>1000	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
EMIR Category 3	[1-50]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[51-250]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[251-1000]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
		TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
EMIR Category 4	[1-50]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[51-250]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[251-1000]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

	>1000	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Trading Venue	[1-50]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[51-250]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[251-1000]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	>1000	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

<ESMA_QUESTION_MIFID_TO_14>

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

<ESMA_QUESTION_MIFID_TO_15>

% of trading captured by the TO	Year 2016
% of total notional amount traded in derivatives captured by the TO	TYPE YOUR TEXT HERE
% of total number of transaction in derivatives captured by the TO	TYPE YOUR TEXT HERE
% of total notional amount traded in interest rate derivatives captured by the TO	TYPE YOUR TEXT HERE
% of total number of transactions in interest rate derivatives captured by the TO	TYPE YOUR TEXT HERE
% of total notional amount traded in credit default swaps captured by the TO	TYPE YOUR TEXT HERE
% of total number of transactions in credit default swaps captured by the TO	TYPE YOUR TEXT HERE

<ESMA_QUESTION_MIFID_TO_15>

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

Q16. Out of the trading activity expected to be captured by the TO, as identified under Q2, which % is already traded on an EU regulated market, an EU Multilateral Trading



Facility (MTF), a US Swap Execution Facility (SEF) or another third-country trading venue?

<ESMA_QUESTION_MIFID_TO_16>

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

<ESMA_QUESTION_MIFID_TO_16>

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

<ESMA_QUESTION_MIFID_TO_17>

Arrangements contemplated to comply with the TO	Yes	No	Comments
1. Current membership/Direct Electronic Access (DEA) arrangements are sufficient to comply with the TO	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
2. I intend to become a member/ participant/client of one (or multiple) EU trading venues for the first time	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
3. I intend to become a member/participant/client of additional EU trading venues	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
4. I intend to seek access to EU trading venues through Direct Electronic Access (DEA)	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
5. I intend to combine membership (2.or 3) with DEA (4.)	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE



6. I am considering other arrangements; Please explain those arrangements in the Comments section	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
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<ESMA_QUESTION_MIFID_TO_17>

CBA Question 18 is to be answered by trading venues

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

<ESMA_QUESTION_MIFID_TO_18>

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

<ESMA_QUESTION_MIFID_TO_18>

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

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

<ESMA_QUESTION_MIFID_TO_19>

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

<ESMA_QUESTION_MIFID_TO_19>



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

<ESMA_QUESTION_MIFID_TO_20>
 TYPE YOUR TEXT HERE
 <ESMA_QUESTION_MIFID_TO_20>

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

<ESMA_QUESTION_MIFID_TO_21>

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

<ESMA_QUESTION_MIFID_TO_21>

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

<ESMA_QUESTION_MIFID_TO_22>

Please enter here "Low", "Medium" or "High"
 TYPE YOUR TEXT HERE

<ESMA_QUESTION_MIFID_TO_22>