|  |
| --- |
| 19 June 2017 | ESMA70-156-166 |

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

|  |
| --- |
| Date: 19 June 2017 |

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](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’.

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | Click here to enter text. |
| Activity | Choose an item. |
| Are you representing an association? |  |
| Country/Region | Choose an item. |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_MIFID\_TO\_0>

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 28 principal trading firms (PTFs) which deal on own account in a wide range of financial instruments traded on trading venues across Europe. PTFs play a key role in the modern financial ecosystem, bridging gaps in supply and demand between market participants and facilitating price discovery, especially at times when markets are volatile. FIA EPTA members engage in manual, automated and hybrid methods of trading. Collectively, FIA EPTA members are an important source of liquidity for trading venues and end-investors, allowing those who use the capital markets (whether to invest or to manage their business risks), to buy or sell financial instruments efficiently and at low cost. FIA EPTA’s mission is to support transparent, robust and safe markets with a level playing field for all market participants. We strongly believe access to markets should be open to all and non-discriminatory in order to minimise barriers to entry and increase competition and efficiency.

FIA EPTA members have consistently supported the leading objectives of the 2009 G20 Pittsburgh commitments and the subsequent EU derivatives markets reforms, which aim, i.a., to ensure that trading in standardised OTC derivatives takes place on exchanges or electronic trading platforms. We therefore welcome ESMA’s Consultation Paper, which we believe makes significant improvements to ESMA’s suggested approach compared to the earlier Discussion Paper (to which FIA EPTA has also provided comments). We encourage ESMA to complete work on the determination of the trading obligation for derivatives swiftly.

In particular, FIA EPTA members are supportive of ESMA’s proposed approach proposed for package transactions. We note that under Article 28(1) MiFIR, once a derivative is determined to be subject to the trading obligation, all transactions in such derivatives must be concluded on a regulated trading venue unless an exemption applies. As such, we believe it is appropriate not to exclude components of package transactions.

We would also like to reiterate the importance of ensuring that all transactions in derivatives subject to the trading obligation are executed on a trading venue. In this regard, we support ESMA’s proposal not to exclude trades above a certain size threshold from the obligation. In addition, pre-arranged trading in instruments subject to the trading obligation should not be permitted, as that undermines the aim of Article 28 MiFIR to transition activity from the bilateral OTC space onto transparent and competitive trading venues.

<ESMA\_COMMENT\_MIFID\_TO\_0>

1. 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>

Yes. We do not support setting subjective thresholds for any of the liquidity criteria. We agree with ESMA’s approach of looking at all of the factors on a holistic basis.

<ESMA\_QUESTION\_MIFID\_TO\_1>

1. 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>

Yes. We agree with ESMA’s assessment. Trades above the post-trade LIS threshold benefit from pre-trade transparency waivers and post-trade transparency deferrals and so there is no need to also exempt such transactions from the trading obligation. We also note that trading venues are able to offer trading protocols specifically to facilitate larger-size trades.

<ESMA\_QUESTION\_MIFID\_TO\_2>

1. 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>

Yes. In order to provide a useful resource to market participants the public register should be as comprehensive as possible.

<ESMA\_QUESTION\_MIFID\_TO\_3>

1. 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>

We believe the parameters included are sufficient in order to identify the most frequently traded interest rate swaps (IRS). Including any additional parameters, such as business day convention, would be too granular from a liquidity assessment perspective, as these terms are not material to the price of the derivative.

We note that certain forward-starting IRS are commonly traded as part of an invoice spread package with a sovereign bond future. Given the liquidity in the future and the package, ESMA should also consider these forward-starting IRS as liquid.

<ESMA\_QUESTION\_MIFID\_TO\_4>

1. 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>

Yes. We agree that all of the identified EUR IRS are liquid. Notably, these sub-classes are also subject to the trading obligation in the US.

<ESMA\_QUESTION\_MIFID\_TO\_5>

1. 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>

Yes. We consider all of the additional sub-classes of EUR IRS to be liquid. These are also covered by the scope of the U.S. trading obligation. In addition, we would also urge ESMA to identify EUR IMMs and MACs as liquid.

<ESMA\_QUESTION\_MIFID\_TO\_6>

1. 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>

Yes. We agree that all of the identified USD IRS are liquid. Notably, they are all also covered by the scope of the U.S. trading obligation.

<ESMA\_QUESTION\_MIFID\_TO\_7>

1. 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>

Yes. We consider all of the additional sub-classes of USD IRS to be liquid. They are also covered by the scope of the U..S trading obligation.

We would also encourage ESMA look at whether streaming prices from liquidity providers are available for 6, 12, 15, 20 and year tenors of USD IRS as there is significant trading in these instruments.

In addition, we consider that other tenors of USD IMM and MAC swaps are also liquid and should be considered by ESMA.

<ESMA\_QUESTION\_MIFID\_TO\_8>

1. 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>

Yes. We agree that all of the identified GBP IRS are liquid. Notably, they are all also covered by the scope of the U.S. trading obligation.

<ESMA\_QUESTION\_MIFID\_TO\_9>

1. 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>

Yes. We agree that all of the additional sub-classes of GBP IRS are liquid. They are also covered by the scope of the U.S. trading obligation.

<ESMA\_QUESTION\_MIFID\_TO\_10>

1. 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 ESMA’s assessment and see value in initially taking a cautious approach to IRS denominated in other currencies.

<ESMA\_QUESTION\_MIFID\_TO\_11>

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

<ESMA\_QUESTION\_MIFID\_TO\_12>

Yes. We agree with ESMA’s proposal. Both the on-the-run and first off-the-run series of the relevant index credit default swaps should be subject to the trading obligation. This would also replicate the approach taken in the US.

<ESMA\_QUESTION\_MIFID\_TO\_12>

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

<ESMA\_QUESTION\_MIFID\_TO\_13>

Yes. We do not foresee any difficulties for market participants to meeting this timeline. Category 1 and Category 2 counterparties are already connected to trading venues and should be ready to comply with the trading obligation on the date of application of the RTS.

<ESMA\_QUESTION\_MIFID\_TO\_13>

**CBA QUESTIONS**

1. 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>

1. 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

1. 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 3rd 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>

1. 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 |

<ESMA\_QUESTION\_MIFID\_TO\_17>

**CBA Question 18 is to be answered by trading venues**

1. 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**

1. 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>

1. 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>

1. 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>

1. 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>