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| Response Form to the Consultation Paper |
| Alignment of MiFIR with the changes introduced by EMIR Refit |

**Responding to this paper**

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex III. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **22 November 2019.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

**Instructions**

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_AMER\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_AMER\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_AMER\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open consultations” 🡪 “Consultation on Position limits and position management in commodities derivatives”).

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. 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 not to disclose the response 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 heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should read this paper**

This document is of interest mainly to financial and non-financial counterparties which are subject to the trading obligation under MiFIR and/or to the clearing obligation under EMIR.

**General information about respondent**

|  |  |
| --- | --- |
| Name of the company / organisation | Citadel |
| Activity | Other Financial service providers |
| Are you representing an association? |  |
| Country/Region | International |

**Introduction**

***Please make your introductory comments below, if any***

<ESMA\_COMMENT\_AMER\_1>

TYPE YOUR TEXT HERE

<ESMA\_COMMENT\_AMER\_1>

**Questions**

1. : Do you have any comment on the analysis of the amendments in relation to financial counterparties?

<ESMA\_QUESTION\_AMER\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_AMER\_1>

1. Do you have any comment on the analysis of the amendments in relation to non-financial counterparties?

<ESMA\_QUESTION\_AMER\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_AMER\_2>

1. : What is your view on the possible development of on-venue trading for contracts not cleared with a CCP? What are the challenges for the trading venues? What are the challenges for the counterparties exempted from the CO and subject to the DTO?

<ESMA\_QUESTION\_AMER\_3>

We note that most MTFs and OTFs already support the trading of uncleared OTC derivatives and material volumes of uncleared OTC derivatives are already executed on MTFs and OTFs, both in the dealer-to-customer and dealer-to-dealer segments of the market.

The disclosed, bilateral nature of the Request-for-Quote process typically used on the main dealer-to-customer venues allows counterparties to ensure they have the appropriate bilateral documentation in place to execute an uncleared OTC derivative. In turn, voice brokers assist with this process on pre-trade anonymous dealer-to-dealer venues.

From a client’s perspective, executing an uncleared OTC derivative on a trading venue may provide greater transparency and price competition compared to bilateral off-venue trading, as prices from multiple liquidity providers can be accessed and compared at the same time.

<ESMA\_QUESTION\_AMER\_3>

1. : What is your view on the arguments exposed above, supporting the status quo i.e. a misalignment between the scope of counterparties subject to the CO and the DTO (G20 objectives, compliance with the DTO less burdensome than with the CO)? Can you identify other arguments?

<ESMA\_QUESTION\_AMER\_4>

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<ESMA\_QUESTION\_AMER\_4>

1. : What is your view on the arguments exposed above, supporting the alignment between the scope of counterparties subject to the CO and the DTO (initial policy intention, potential de-facto clearing obligation, limitation of operation burden)? Can you identify other arguments?

<ESMA\_QUESTION\_AMER\_5>

While we do not disagree with aligning the scope of counterparties subject to the CO and the DTO, it is important that accurate data be used to support this policy decision.

In the consultation document, it is suggested that aligning the counterparty scope “should have a limited impact on the volumes traded on venues” (see paragraph 46). This argument is supported by referring to the data provided in ESMA’s consultation on the CO for financial counterparties with a limited volume of activity.[[1]](#footnote-2) However, this 2016 consultation only attempted to estimate Category 3 counterparty market share using “stock” data reflecting outstanding notional amounts at a given point in time. “Stock” measures suffer from several drawbacks, such as (i) including legacy positions that were entered into before both EMIR and MiFID II/MiFIR went into effect, and (ii) failing to account for the ongoing multilateral netting and compression activities that significantly reduce outstanding notional amounts, particularly for cleared trades.

In order to accurately evaluate the impact on trading venue volumes, it is necessary to analyse transaction-by-transaction “flow” data to calculate the number of newly executed trades that will not be required to be executed on an RM, MTF, or OTF as a result of this proposed change to the MiFIR text.

Academic research using “flow” data suggests that Category 3 counterparties account for a significant portion of overall market trading activity in OTC derivatives. In particular, one study found that the clearing rate for new interest rate derivatives remained under 50% in the EU even after the clearing obligation was implemented for both Category 1 and Category 2 counterparties, suggesting that Category 3 counterparties account for a significant percentage of market trading activity.[[2]](#footnote-3)

Therefore, in connection with providing a recommendation regarding aligning the scope of counterparties subject to the CO and the DTO, we recommend that ESMA perform its own calculation of the impact on trading venue volumes using “flow” data provided under MiFID II. ESMA should be able to determine the market share of Category 3 counterparties in new trading activity in derivatives that are subject to the DTO, and then estimate, based on the notices provided under EMIR Refit, what percentage of these Category 3 counterparties are below the new thresholds established for “small financial counterparties.”

<ESMA\_QUESTION\_AMER\_5>

1. : What is your view on ESMA’s proposal to suggest an alignment in the scope of counterparties between the clearing and trading obligations?

<ESMA\_QUESTION\_AMER\_6>

As part of aligning counterparty scope, we would suggest conducting a regular review of the EMIR clearing thresholds to ensure they remain appropriately calibrated for both the CO and the DTO. This review should leverage “flow” data to calculate overall trading volume by financial counterparties in (i) the OTC derivatives subject to the CO, and (ii) the OTC derivatives subject to the DTO. For each, ESMA should calculate what percentage of this overall volume is executed by financial counterparties that fall below the relevant EMIR thresholds for “small financial counterparties.” To the extent too much volume is exempted, the thresholds may need to be recalibrated, as is permitted in EMIR.

<ESMA\_QUESTION\_AMER\_6>

1. : What is your view on the necessity to introduce a standalone suspension of the DTO in MiFIR? If you consider it is appropriate, do you have views on how it should be framed?

<ESMA\_QUESTION\_AMER\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_AMER\_7>

1. : Have you identified other aspects of the DTO under MiFIR that should be aligned with amendments introduced by EMIR Refit? If so, please explain the amendments to MiFIR that could be introduced.

<ESMA\_QUESTION\_AMER\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_AMER\_8>

1. <https://www.esma.europa.eu/press-news/consultations/consultation-clearing-obligation-financial-counterparties-limited-volume> [↑](#footnote-ref-2)
2. Fiedor, P., “Clearinghouse-Five: determinants of voluntary clearing in European derivatives markets,” ESRB Working Paper No. 72 (March 2018) at Figures 1 and 2 (pages 11-12), available at: <https://www.esrb.europa.eu/pub/pdf/wp/esrb.wp72.en.pdf?87d519a1fd278d359b6d5a33499d0e26>. [↑](#footnote-ref-3)