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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**

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| --- | --- |
| Name of the company / organisation | Gesamtverband der Deutschen Versicherungswirtschaft e.V. |
| Activity | Insurance and Pension |
| Are you representing an association? |[x]
| Country/Region | Germany |

**Introduction**

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

<ESMA\_COMMENT\_AMER\_1>

* Insurance and reinsurance companies are amongst the largest institutional investor groups. The German insurance association GDV therefore welcomes the opportunity to respond to the consultation paper regarding the alignment of MiFIR with the changes introduced by EMIR Refit.
* Insurers as investors act with a long-term perspective. They
* supply consumers with long-term guarantees,
* have predictable cash flows and, thus, have no or little risk of forced asset sales,
* hold assets over the long run and invest in illiquid assets,
* provide stable long-term financing for the real economy and reduce financial market volatility.
* For insurance and reinsurance companies derivatives and derivative instruments are appropriate and convenient instruments to ensure the fulfilment of given commitments to their clients. Therefore, the use of such instruments should only be subject to additional operational requirements if this is deemed necessary toensure overarching goals such as market integrity or market stability.
* Especially for small and medium sized insurance and reinsurance companies the trading obligation may hinder the appropriate use of derivatives. Thus, the proper fulfilment of their obligations to their clients may be jeopardised or at least hampered.
* We are of the opinion that the alignment of the trading obligation with the clearing obligation is the proper way to ensure the reasonable use of derivatives in the interest of insurers’ clients. This is especially true for small and medium sized insurance and reinsurance companies.

<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>

No.

<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>

No.

<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>

n/a

<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>

The GDV recognises that compliance with the DTO is less burdensome than compliance with the CO. Nevertheless compliance with DTO remains costly and may restrict the access for small and medium sized insurance and reinsurance companies to derivatives. Furthermore compliance with DTO creates additional expenditures for companies that would possibly increase the prize for insurance products.

<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>

GDV supports the given arguments.

<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>

GDV strongly supports the proposal due to the reasons expressed in question 4 of the response form.

<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>

GDV is neutral on this topic although we consider the arguments raised by ESMA as relevant.

<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>

No.

<ESMA\_QUESTION\_AMER\_8>