

# 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](#).

## **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	Nasdaq
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	<input type="checkbox"/>
Country/Region	Europe

## Introduction

*Please make your introductory comments below, if any*

<ESMA\_COMMENT\_AMER\_1>

TYPE YOUR TEXT HERE

<ESMA\_COMMENT\_AMER\_1>

## Questions

**Q1** : 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>

**Q2** 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>

**Q3** : 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 agree that it needs to be clear what the objective of forcing the execution of a contract on a trading venue is while allowing for the contract not to be cleared by a CCP. It would be unfortunate if derivatives concluded on a multilateral trading facility (MTF) or an organised trading facility (OTF) always would have to be cleared by a CCP. The example we have in mind is securitised derivatives.

For securities derivatives, applying the clearing obligation will not add any value nor reduce risk, since these are bilateral cash settled product (just as cash equities). Securitised derivatives represent limited invested amounts, traded by retailer investors, taking a counterparty risk on only the issuer primarily. Many of the securitised derivatives are traded in small quantities and hence the netting benefits of CCP clearing are not achieved. Retail customers would suffer from higher costs to trade these instruments. The clearing effort would be both disproportional and irrelevant.

The risk with applying the clearing obligation is that participants would rather withdraw from the market in order to avoid the disproportionate costs.

<ESMA\_QUESTION\_AMER\_3>

**Q4** : 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>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_AMER\_4>

**Q5** : 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>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_AMER\_5>

**Q6** : 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>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_AMER\_6>

**Q7** : 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>

**Q8** : 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>