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| 10 March 2020 |

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| Reply form for the Consultation Paper on MiFID II/ MiFIR review report on the transparency regime for non-equity and the trading obligations for derivatives |
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| Date: 10 March 2020 |

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation Paper on the transparency regime for non-equity instruments and the trading obligations for derivatives MiFID II/ MiFIR review report 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\_CP\_MIFID\_NQT\_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;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

**Naming protocol**

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

ESMA\_CP\_MIFID\_NQT\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

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

ESMA\_CP\_MIFID\_NQT\_ESMA\_REPLYFORM or

ESMA\_CP\_MIFID\_NQT\_ANNEX1

***Deadline***

Responses must reach us by **19 April 2020.**

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

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

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_CP\_MIFID\_NQT\_1>

We appreciate the opportunity to provide feedback on this consultation on the transparency regime for non-equity instruments and the trading obligation for derivatives.

Overall we think the objectives of MIFID II, namely increasing investor protection and transparency, were the right ones and they are still appropriate today. There are a number of key challenges however that are preventing MIFID II from reaching its full potential so we welcome the consultations which ESMA has been conducting across a whole range of issues as it aims to improve the operation of the framework.

<ESMA\_COMMENT\_CP\_MIFID\_NQT\_1>

1. What benefits or impacts would you see in increased pre-trade transparency in the different non-equity markets? How could the benefits/impacts of such pre-trade transparency be achieved/be mitigated via changes of the Level 1 text?.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_1>

There has been a debate about the benefit of pre trade transparency for investors in non-equity markets, and it seems that equity market concepts have often been inappropriately extrapolated across to non-equity markets. On the other hand there is no question around the benefits of post trade transparency. It is very valuable to market participants and investors. Unfortunately, MIFID II attempted to address pre and post-trade transparency simultaneously and had underwhelming results. The focus should, therefore, be on improving the functioning of post-trade transparency in non-equity markets as a first step.

Any changes to increase pre-trade transparency should be implemented equally across trading venues and SIs, to ensure a level playing field.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_1>

1. What proposals do you have for improving the level of pre-trade transparency available? Do you believe that the simplification of the regime for pre-trade transparency waivers would contribute to the improvement of the level of pre-trade transparency available?

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_2>

We refer to our response to Q1.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_2>

1. Are you supportive of ESMA’s proposal to delete the pre-trade SSTI-waiver? Would you compensate for this by lowering the pre-trade LIS-thresholds across all asset classes or only for selected asset classes? What would be the appropriate level for such adjusted LIS-thresholds? If you do not support ESMA’s proposal to delete the pre-trade SSTI-waiver, what should be the way forward on the SSTI-waiver in your view?

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_3>

Article 9 (1)(b) of MIFIR waives the obligation for AIOIs in RFQ and voice trading systems that are above SSTI so as not to "expose liquidity providers to undue risk". As this consultation paper (CP) acknowledges in paragraph 18, this waiver is aimed at accommodating and incentivising the move from OTC to on-venue trading. Conversely, we believe that the removal of the SSTI waiver for trading venues will incentivise OTC trading, which would not be a desirable outcome.

The arguments that this CP put forward for abolishing the SSTI are broadly due to the added complexity the SSTI waiver presents, and that it is not widely used outside of the EU. Further, the CP stipulates that SSTI waivers are granted inconsistently and the waivers are burdensome to process. We would not agree that SSTI is more complex than any other waiver or burdensome to process. The transparency and waiver system will not be substantially simplified by the removal of the SSTI waiver. With respect to it not being widely used, this is due to the low level of trading on-venue compared to OTC. Removing SSTI would not assist in the promotion of on-venue trading.

Further, we consider that as liquidity thresholds are adjusted, leading to fewer instruments enjoying the illiquid market waiver, the SSTI waiver will be increasingly important prevent exposure of liquidity providers to undue risk. It would be premature to remove it at this stage.

Consequently, we would recommend observing changes in usage of the SSTI waiver over time as and when a greater proportion of instruments as deemed liquid. We also do not believe that because SSTI is not a concept known in other jurisdictions it should be a reason to remove it.

We believe that SSTI contributes to the 'level-playing' field and we would not support making this change and creating less of an incentive to trade on-venue.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_3>

1. What are your views on the use of the SSTI for the SI-quoting obligations. Should it remain (Option 1) or be replaced by linking the quoting obligation to another threshold (e.g. a certain percentage of the LIS-threshold) (Option 2)? Please explain.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_4>

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<ESMA\_QUESTION\_CP\_MIFID\_NQT\_4>

1. Would you support turning the hedging exemption into a limited negotiated trade waiver? If so, would you support Option 1 or Option 2? If not, please explain why.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_5>

1. Do you agree with ESMA’s observations on the emergence of new trading systems and the proposed way forward requiring a Level 1 change and ESMA to issue an Opinion for each new trading system defining its characteristics and the transparency requirements? Would you have suggestions for the timeline and process of such Opinions? Please explain.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_6>

We do not agree with this proposal.

Efficiency and innovation:

The approach considered by ESMA seems to contradict one of the fundamental objectives of MiFIDII/ MiFIR: creating more efficient markets. We believe the proposed approach would more likely stifle, rather than promote, innovation in the capital markets, and undermine the EU's CMU initiative at a time when the European Commission is aiming to relaunch the project.

Operators of trading systems (as defined by RTS2, Annex 1) (“Trading Systems”) continuously seek to enhance the execution experience of their participants by helping them find deeper liquidity at better prices. When developing Trading Systems, such Operators need a predictable regulatory framework. In doing so, these Operators may refine an element of a Trading System. Before embarking on innovation, it is vital that the operators have reasonable certainty of both the regulatory and business impact prior to going to the effort and expense of making those changes. ESMA’s proposal would mean that, subject to an Opinion offered by ESMA, the Operator may need to further implement new transparency reporting processes which differ from those that it has already implemented. Implementing transparency reporting processes is an expensive endeavour for the Operator of a Trading System. Having uncertainty as to the applicable transparency requirements and their commercial ramifications would likely discourage Operators from attempting to refine and improve their Trading Systems.

Changing ESMA's role to a business consultant of Operators:

We would argue that the approach being proposed goes beyond the perimeter of the supervisory responsibilities of ESMA. For this proposal to be effective, Operators would need to be actively engaged with ESMA throughout the process of protocol development and deployment. We do not consider that ESMA’s role should change to that of a business consultant to the Operators as they seek to innovate their Trading Systems.

Discussions concerning new or adapted Trading Systems will by their nature be complex. In times of market stress, there is the added constraint of needing to adapt trading protocols quickly in order to maintain fair and efficient markets. This structure would introduce the potential for misunderstanding and unnecessarily drawn out discussions.

Streamlined process, respecting the role of NCAs:

The proposed approach could effectively render, partially, ESMA the direct supervisor of trading venues, overlapping with the role of their NCAs. In developing a new Trading System, if an Operator were to be subject to ESMA’s Opinion on its viability, there would be significant uncertainty for such Operators, both in terms of their primary regulatory relationship and of outcome. Operators are authorised and supervised by their NCAs, however they would potentially be required to work alongside ESMA in developing new Trading Systems. ESMA’s proposed approach is likely to result in uncertainty of the applicable regulatory process and is likely to significantly complicate and slow down the pace of EU trading venues’ innovation. Together with a lack of predictability of outcome, this may dissuade Operators from refining and innovating their Trading Systems. Any new process must therefore not be unduly complicated, ideally respecting the primary role of NCAs (given their supervisory proximity to Operators) and enable Trading System innovation to be performed with regulatory certainty, including with regard to how transparency must be rendered.

Alternative proposal:

We feel that a more proportionate response would be for ESMA to publicly consult on a change to Annex I RTS2 if it wishes to re-state any of the pre-trade transparency requirements that specific new types of Trading System should apply. This would allow Operators to contribute their input and describe why a protocol should be assigned to a specific system categorisation. It would also allow ESMA to provide a feedback statement on the consultation and set out the rationale for its policy decision and the cost-benefit analysis it is based on. The outcome would provide greater legal and business certainty and also allow the Commission and co-legislators to exercise the democratic oversight they are entitled to.

There is no reason why the RTS process cannot be completed in a timely fashion with an efficient consultation and endorsement process. Moreover, ESMA still has the ability to use existing supervisory convergence tools until an RTS amendment can be implemented.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_6>

1. Do you agree with the proposal for the definition of hybrid system? Are there in your view trading systems currently not or not appropriately covered in RTS 2 on which ESMA should provide further guidance? Please explain.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_7>

Paragraph 95 is unclearly drafted. ESMA appears to be proposing to amend the definition of hybrid systems, to require any such hybrid system straddling two of more rows of Annex I RTS 2, to meet the pre trade transparency obligations that apply to each relevant row or component part of the overall system.

Indeed, we would like to remind ESMA that in its Discussion Paper on MiFIR (ESMA/2014/548 Para. 18, p. 152), ESMA explicitly stipulated that the category of “Hybrid Systems” was created to ensure that innovation is not stifled in the future: “*Given the complexity of the non-equity markets and their possible evolution in the years to come, ESMA is minded to maintain the flexibility offered by the Table above in the form of allowing hybrid trading systems or trading systems where the price determination process is of a different nature than that applicable to the other systems to operate under the new transparency regime provided that adequate pre-trade information is disclosed to the public*.”

The proposals herein, on the contrary, will be a hindrance to trading venue operators’ flexibility and appetite for innovation, as new or hybrid systems would be subject to needlessly onerous transparency requirements. A more proportionate solution would be for ESMA to retain the current definition, and per our response to Q6, it should propose an amendment to Annex I RTS2 if it feels that it is necessary to further stipulate the transparency that a new or hybrid system should be applying.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_7>

1. Do you agree with ESMA’s proposal to require SIs to make available data free of charge 15 minutes after publication? Please explain.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_8>

Yes – there should be a level playing field between SIs and trading venues.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_8>

1. Would you see value in further standardising the pre-trade transparency information to increase the usability and comparability of the information? Please explain.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_9>

Please see our response to Q1. We think as a first step, the focus should be on improving post-trade transparency, as that would be much more valuable for market participants.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_9>

1. Do you agree with ESMA’s assessment of the level of post-trade transparency and with the need of a more streamlined and uniform post-trade regime which does not include options at the discretion of the different jurisdictions? If not, please explain why and, where available, support your assessment with data.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_10>

Yes, there is too much divergence across jurisdictions at present which is inconsistent with the aim of supervisory convergence. Greater harmonisation is required.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_10>

1. Do you agree with this proposal? What would be the appropriate level of such a revised LIS-threshold in your view?

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_11>

As long as it is employed in the same way across trading venues (and SIs) then we have no concerns.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_11>

1. In your view, should the real time publication of volume masking transactions apply to transactions in illiquid instruments and above LIS waiver (Option 1) or to transactions above LIS only (Option 2 and Option 3). Please elaborate. If you support another alternative, please explain which one and why.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_12>

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<ESMA\_QUESTION\_CP\_MIFID\_NQT\_12>

1. Do you agree with the publication of the price and volume of all transactions after a certain period of time, such as two calendar weeks (Option 1 and 2) or do you support the two-steps approach for LIS transactions (Option 3)? Please explain why and provide any alternative you would support. Which is the optimal option in case a consolidated tape would emerge in the future?

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_13>

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<ESMA\_QUESTION\_CP\_MIFID\_NQT\_13>

1. Do you agree with ESMA’s proposed way forward to issue further guidance and put a stronger focus on enforcement to improve the quality of post-trade data? Are there any other measures necessary at the legislative level to improve the quality of post-trade data? What changes to the transparency regime in Level 1 could lead to a substantial improvement of data quality?

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_14>

Yes, we agree.

Many of the greatest challenges encountered in the implementation and operation of MIFID II relate to data. While recognizing the huge efforts being made by ESMA and the regular and helpful guidance it gives to users who submit questions, multiple problems continue to affect the reference data systems on which the whole transparency regime hinges. This is not conducive to ensuring standardised use of the data and, by extension, uniform disclosure. An overview of some of key reference data challenges which we have observed is provided below, entitled ‘Reference Data Challenges.’

With regards to identifiers, it was a mistake to require ISIN as the sole instrument identifier for MIFID II reporting despite no level 1 mandate and without approving, as other jurisdictions have, additional identifiers from being used. ISINs are not fit for purpose for OTC instruments, especially derivatives, and the governance and supervision of the issuing authority ANNA-DSB and the level of fees they charge continue to be a concern.

A key lesson from MiFID I was that better guidance was needed for transaction reporting, which is why ESMA published extensive guidance on Transaction Reporting, Order Record Keeping and Clock Synchronisation in the lead up to MIFID II go-live. While the Q&A process is helpful and it has provided some useful guidance, much more is needed. Therefore, the kind of guidance which was developed for transaction reporting, record keeping and clock synchronisation should be extended to post-trade transparency requirements. There is still considerable confusion on when and how to apply these requirements, and in our opinion, the underlying root cause is often a lack of understanding of the legal structure applicable to different trading scenarios.

Reference Data Challenges:

Challenge 1: Disruption Caused by Exceptions to ESMA’s Guidelines

First and foremost, it is important to recognise that many market participants consume FIRDS and FITRS files programmatically (i.e. automated acquisition and processing of the files). In the simplest terms, when firms acquire and process the files in this way, extensive business rules must be put in place to tell computer systems how to process and interpret the records. The guidelines provided by ESMA for use of FIRDS and FITRS (for example, the [FIRDS Transparency System](https://www.esma.europa.eu/sites/default/files/library/esma65-8-5240_firds_download_and_use_of_full_and_delta_transparency_results_files.pdf) instructions) form the basis for these logics.

In order for the automated acquisition and processing of the files to work smoothly, it is critical that the instructions for the use of ESMA’s systems and files are absolute (i.e. all scenarios are covered in the instructions), unchanging, and are adhered to by ESMA (unless there has been prior warning and due time to prepare). Divergence from these rules, particularly for the use of FITRS, undermines the ability of firms to consume the files programmatically in an accurate and efficient manner, giving rise to potential compliance issues.

Unfortunately, since MiFID II go-live we have observed many unexpected behaviours which have caused disruption to processes. Some of these cases have related to equity, which is beyond the scope of this consultation paper. From a non-equity perspective, however, a recent example is the inclusion of semi-annual non-equity transparency records in FITRS. [ESMA’s instructions for the use of FITRS files](https://www.esma.europa.eu/sites/default/files/library/esma65-8-5240_firds_download_and_use_of_full_and_delta_transparency_results_files.pdf) make no reference to such records, nor has there been any announcement to explain their publication.

Challenge 2: Deficiencies in FIRDS Files

Since MiFID II go-live, we have observed the following issues with FIRDS files:

1. **FIRDS user interface (UI) out of sync with FIRDS file**We have observed mismatches between the data that we receive in the FIRDS files and that which is displayed in the FIRDS UI on the ESMA website, with the files being the more up-to-date source.
2. **Erroneous admission to trading dates**  
   We have observed frequent cases of erroneous ‘admission to trading’ dates for instruments (Field 11, Table 3, Annex to RTS 23) , and particularly cases where the admission to trading date submitted to FIRDS is many years before the issuance of a bond. This is problematic when determining if bond liquidity records in FITRS with a blank reporting period (for bonds newly admitted to trading) are valid. In accordance with Article 13(20) of RTS 2, such records are only valid for instruments newly admitted to trading in the last month of the quarter. Therefore, if the admission to trading date for an instrument does not accurately reflect the fact that the instrument is newly admitted to trading, market participants may bypass the liquidity record for a new bond issue and apply the default values instead (as mandated by [ESMA’s Transparency Q&A).](https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-35_qas_transparency_issues.pdf)

**Challenge 3: Deficiencies in FITRS Files**

1. **FITRS user interface (UI) out of sync with FITRS file**We have frequently observed mismatches between the data that we receive in the FITRS files and that which is displayed in the FITRS UI on the ESMA website, with the files being the more up-to-date source.
2. **Missing records in full files**

We do not believe that the full FITRS files serve as a true “master file”, that is, by accurately representing the current state of FITRS at any point in time. Notwithstanding the fact that records older than 18 months are removed from the full files, we have frequently observed ISINs being excluded from the FITRS full file from one weekend to another, despite the fact that there are still live records for the ISINs in question in FIRDS (i.e. the instruments have not been terminated) .

1. **New records which appear for the first time in full files**

We have also observed examples of ISIN codes which have been published for the first time in a FITRS full file, without having previously been published in a delta file. This is not in line with the expected behaviour of FITRS records.

**d) Duplicate records**

Often files can contain duplicate records. The absence of a calculation time makes it challenging to determine if/when there truly was an update made.

**e) Publication of liquidity records for bonds which can no longer be considered ‘newly admitted to trading’**We frequently observe ISINs for which FITRS continues to send/display a liquidity record for a bond newly admitted to trading (records with an empty reporting period), despite that fact that the instrument can no longer be considered a new issue given its admission to trading date. In some cases, the instruments have already received quarterly liquidity assessments.

**Challenge 4: The Need for a Calculation Time in FITRS**

The ‘calculation time’ for FITRS records is available on the ESMA website but not in the current XML schema (the downloadable and machine-readable version) of the FITRS files.   
  
If a calculation time were added to the XML schema, it would allow market participants to unequivocally see which record is the most recent, and therefore to determine the valid FITRS record to be used. This would help to ensure that all firms are interpreting the files in the same fashion, and by extension, using the same liquidity and thresholds records. It would also facilitate firms' data management by allowing them to filter out duplicate records.

In an ideal scenario, an ‘effective date’ would also be added to the XML schema to allow market participants to clearly see from which date a record applies.

**Challenge 5: Use of the CFI Standard**

We have observed instruments that have been assigned a CFI which does not accurately represent the instrument given its attributes. Inaccurate classifications for instruments can have a direct impact on the liquidity status and thresholds assigned, i.e. by assigning a liquidity status and thresholds which we would not expect. To cite one example, we have observed instruments which would be considered money market instruments according to the criteria in Article 11 of Commission Delegated Regulation 2017/565, but which have a 'DB' CFI code (as opposed to 'DY').

We have also observed 'flip-flopping' of classifications. For example, an instrument moving from a ‘BOND’ classification to ‘SFPS’ and then back to a ‘BOND’ classification. In some cases we also see instruments moving between equity and non-equity FITRS, that is, being assessed as non-equity instruments and then being reclassified as an equity instrument (or vice versa).

Finally, there are many instruments which are lacking an official CFI (and sometimes FISN), despite having an ISIN.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_14>

1. What would be the optimal transparency regime to help with the potential creation of a CTP?

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_15>

We agree with ESMA’s conclusion’s regarding the challenges that have hindered the emergence of a CTP under the current regulatory framework. CTs did not emerge due to lack of commercial incentive, lack of demand as well as flaws in the current regulatory framework including governance, where the CTP cannot control data quality, and expenses, where the CTP has to implement bespoke integration to data sources.

Cost plus plus: Under the existing MiFID economic model for an EU CTP, the CTP is a customer with obligations to: (a) connect (and pay for the connectivity) to post-trade data suppliers, and (b) to pay data subscription fees that its supplier(s) demand without any ability to question whether the prices demanded are reasonable and customary

But APAs and trading venues operate on a cost-plus basis as per regulatory requirements. CTPs also operate on a cost-plus basis. Therefore, if a CTP was delivering a product to its customers, that product would effectively be cost-plus-plus (as the APA or trading venue is selling data to the CTP and the CTP is selling to its customers). As such market participants have the option to purchase from trading venues and APAs directly at cost-plus or buying from a CTP at cost-plus-plus thereby putting the CTP at a commercial disadvantage.

Short window to monetize: The product a CTP offers is post-trade print or trade execution data. For non-deferred data, the period a CT has to monetize the data is 15 minutes after the trade was executed. After 15 minutes, the data must be available for free. Given the deferrals environment, often this trade execution data is made public four weeks after execution. The period that a CT has to monetize that data is between four weeks and four weeks + 15 minutes, because from four weeks + 16 minutes onwards the data must be made available for free.

Bespoke integration: Moreover, it is incumbent upon the CTP to integrate with post-trade data suppliers according to their terms – meaning that each integration is bespoke. These are steep start-up costs: the connectivity and terms and conditions of purchasing the data from suppliers also result in steep on-going costs.

Pricing constraints: There is no certainty that those steep costs will be recouped. Demand is uncertain because the CTP has little ability to set the price of its product, something which is also imposed by the RCB terms that CTPs are subject to.

The lack of pricing freedom creates uncertain demand. On the revenue side, ESMA’s Q&As have created a lack of clarity about the ability of the CTP to commercialize the use of its product (see December 2017 guidance on delayed market data fees (See https://www.esma.europa.eu/sites/default/files/library/esma70- 872942901-35\_qas\_transparency\_issues.pdf, Question/Answer 9)

As responses to ESMA70-156-1065 highlighted, because RCB is not defined and cost-plus pricing not enforced across the board, most market participants do not subscribe to all sources of post-trade data – it’s too expensive.

Data Quality: The regulation is open to interpretation as regards to the format and syntax of values associated to fields. As such, different sources of post-trade data, which are subject to transparency regulations, are creating variants in the format and syntax of the content that they are publishing for required fields. This variance would fall on a CT to correct under the current legislation. That activity is onerous.

Furthermore, due to the fact that the CTP is required to connect to venues, the CTP also has no adequate governance control to ensure the data quality of the product it is selling. Moreover, despite that lack of control, the CTP retains all of the regulatory risk for any data timeliness issues or poor data quality that stems from the source’s technology or competence.

Latency: Although in the Fixed Income market latency is not as much a concern as in the equity market, it is still a relevant input, especially in liquid instruments where trading will only get faster. A CTP by virtue of consuming data from APAs and trading venues will have, all things being equal, at least double the latency of publication that a trading venue or an APA has. Thus, if a market participant wishes to consume at lower latency, it may be more practicable to do so from the APA or trading venue directly than it is from a CTP.

APA’s economic model: We recall that firms have invested a great amount of time and money in creating APAs. Any changes in the regulatory framework aimed at ensuring CTPs emerge (either via commercial offerings or through publicly mandated CTPs) must avoid undermining the economic models of APAs.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_15>

1. Do you agree with ESMA’s above assessment? If not, please explain.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_16>

The approach taken in requiring ISINs for derivative products defined down to the maturity or expiry date level, has resulted in the creation of a vast pool of new ISINs. These ISINs are created in the DSB, as the only infrastructure permitted to offer such ISINs.

Since the start of MiFID II, the DSB’s own numbers suggest over 35 million ISINs have been created. We believe that this vast pool of ISIN creation adds little value to the industry, and hinders transparency.

The DSB typically charges annual fees to users who need to create ISINs for RTS23 reporting requirements. As ESMA points out in paragraph 194, industry participants often create a range of ISINs for future use, given the need to obtain an ISIN for every maturity date. This saves time, and the annual fee model of the DSB provides no disincentive to upfront bulk ISIN creation.

We therefore believe that ESMA cannot infer from the delta between the number of ISINs in the DSB, and the smaller number in FIRDS, that the scope of the TOTV regime is necessarily too small. Over time some of these ISINs will end up in FIRDS when they trade on venues, and it is not necessarily the case that all are being used in trading outside the TOTV regime.

We would recommend that ESMA conducts further research with the industry as to how exactly the DSB ISIN creation facility is being used, and the relationship of the ISIN volume to the trading of OTC instruments, both on and off venue. This work with the industry should be conducted prior to any further development of the post trade transparency regime relating to these products. The opportunity might also be taken to revisit the way in which ISINs are assigned, as we cannot believe that 35 million + ISINs created thus far by the DSB really helps deliver meaningful insights and transparency in this sector.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_16>

1. Are you of the view that the interpretation of TOTV should remained aligned for both transparency and transaction reporting? If not, please explain why.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_17>

Given the centrality of the TOTV concept in market participants’ MiFID II processes, any change to the scope of TOTV is likely to cause significant disruption and necessitate considerable changes to reference data and systems. Consequently, we do not see any reason to change or extend the differences in scope beyond those which are currently in place (as discussed in paragraph 180), nor do we see any reason why the interpretation of the term ‘TOTV’ should be different across transparency and transaction reporting.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_17>

1. Which of the three options proposed, would you recommend (Option 1, Option 2 or Option 3)? In case you recommend an alternative way forward, please explain.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_18>

Clearly the ISIN does not add anything to the characteristics of the instrument being traded, and the allocation level as defined in RTS 23 ensures far more ISINs are being issued than are really needed to identify similar products. This inhibits transparency. Under the current arrangement very similar instruments where one has an ISIN (because someone traded it on a venue) and where the other does not have an ISIN, would result in the second instrument remaining unreported, simply because of the absence of the ISIN. In addition, given the overnight update mechanism for FIRDS, an instrument which is traded OTC, and very similar to one traded on a venue today, will not be reported, as the venue traded new ISIN is not yet in FIRDS. Both of these scenarios are less than optimal for the delivery of transparency objectives.

Option 2 therefore appears to be most consistent with the objective of increasing transparency for OTC derivatives (and bringing them into line with the TVs).

However, the proposal for OTC derivatives under option 2 would be extremely difficult to implement. TOTV checks are not performed manually. Indeed, most market participants will be programmatically determining TOTV status. On that basis, it would be very challenging to programmatically check TOTV status for OTC transactions if it were necessary to compare their attributes (excluding ISIN) against those of derivatives available for trading on trading venues.

In addition, the suggestion under point 201 that trading venues publish on their websites a list of the derivatives they offer for trading so that market participants can compare and determine whether contracts they trade OTC are reportable would be highly impractical. Again, based on the assumption that most market participants are checking TOTV status programmatically, checking multiple websites and comparing the attributes of contracts traded OTC against those lists would be extremely challenging, if not impossible, to automate.

As ESMA states in point 207, both options 2 and 3 would be complex to implement from the perspective of the ESMA IT systems. Given the numerous existing challenges that market participants experience when using ESMA FIRDS and FITRS, it would not seem prudent to introduce further complexities, and certainly not without having addressed some of the existing data management challenges.

We therefore would support remaining with Option 1 at the moment, and refer ESMA back to our answer to Q16 above, where we would urge ESMA to work with the industry to further study the way in which ISIN is actually working today in the context of OTC derivatives and examine how OTC derivative identification might be improved

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_18>

1. What is your view on the proposal to delete the possibility for temporarily suspending the transparency provisions? Please explain.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_19>

We think it would make sense for ESMA to retain the use of this lever as an insurance policy (even if the option never has to be used).

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_19>

1. Do you have any remarks on the assessment of Article 28 of MiFIR? Please explain.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_20>

We broadly agree with ESMA’s assessment of Article 28 of MiFIR, however we would welcome the de-politicisation of equivalence determinations, with a focus on equivalence of outcome to deliver deepest liquidity and optimal pricing for EU market participants.

Whilst we are aware that equivalence decisions are not in the gift of ESMA, we would encourage the European Commission to expedite equivalence decisions under MiFIR Article 28(4), specifically with reference to UK trading venues. This would serve the interests of EU market participants by enhancing their ability to efficiently comply with the MIFIR DTO. It would also be consistent with an outcomes based equivalence process.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_20>

1. Do you have any views on the above-mentioned criteria and whether the criteria are sufficient and appropriate for assessing the liquidity of derivatives? Do you consider it necessary to include further criteria (e.g. currency)? Do you consider that ESMA should make use of the provision in Article 32(4) for asset classes currently not subject to the trading obligations? Please explain.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_21>

We consider that requiring the market to trade less liquid products on venue could potentially be detrimental to liquidity in those specific instruments. Clearing support is usually an indication of liquidity in a given instrument and hence its suitability for DTO. Consequently, we do not consider that ESMA should make use of the provision in Article 32(4).

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_21>

1. Do you agree that a procedure for the swift suspension of the trading obligation for derivatives is needed? Do you agree with the proposed procedure? Please explain.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_22>

We consider that ESMA should reserve the right to suspend the DTO obligation due to unforeseen market circumstances. The suspension of the DTO should be a last resort option and subject to objective market metrics that are both easily observable by all participants and defined by ESMA and presented to the market for comment.

Additionally, ESMA should have objective measures in place to determine when the DTO should be put back in place, in the event that it was suspended. Any objective criteria set forth by the Commission should be subject to periodic review to ensure accuracy and appropriateness for a given market.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_22>

1. Do you have a view on this or any other issues related to the application of the DTO?

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_23>

No.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_23>

1. Do you have any views on the functioning of the register? Please explain.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_24>

No.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_24>

1. Do you agree that the current quarterly liquidity calculation for bonds is appropriate or would you be of the view that the liquidity determination of bonds should be simplified and provide for more stable results? Please explain.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_25>

The idea of monitoring a bond's trading patterns and then placing a liquidity value ex-post on it is counter-intuitive. A bond is generally most liquid at issuance.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_25>

1. Do you agree with ESMA proposal to move to stage 2 for the determination of the liquidity assessment of bonds? Please explain.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_26>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_26>

1. Do you agree with ESMA proposal not to move to stage 2 for the determination of the pre-trade SSTI thresholds for all non-equity instruments except bonds? Please explain.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_27>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_27>

1. Do you agree with ESMA proposal to move to stage 2 for the determination of the pre-trade SSTI thresholds for bonds (except ETCs and ETNs)? Please explain.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_28>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_28>

1. What is your view on the current calibration of the ADNA and ADNT for commodity derivatives? Are there specific sub-asset classes for which the current calibration is problematic? Please justify your views and proposals with quantitative elements where available.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_29>

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<ESMA\_QUESTION\_CP\_MIFID\_NQT\_29>

1. In relation to the segmentation criteria used for commodity derivatives: what is your view on the segmentation criteria currently used? Do you have suggestions to amend them? What is your view on ESMA’s proposals SC1 to SC3? In your view, for which sub-asset classes the “delivery/cash settlement location” parameter is relevant.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_30>

In our capacity as a data provider we have had difficulty sourcing the delivery/cash settlement location information for exchange-traded commodity derivatives. This data point is not made available by all venues. Any efforts to standardise and make this data point more readily available to market participants would therefore be welcome.

Specifically in regards to ESMA's proposals SC1 to SC3, given the challenges that we have observed in sourcing the delivery/cash settlement location, we would suggest that this segmentation is only extended to all commodity derivatives if it is certain that the data will be readily available to market participants. Where not available, there would need to be a clear default standard which market participants could apply, or instructions as to how to determine the appropriate transparency parameters in the absence of this segmentation criterion.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_30>

1. What is your view on the analysis and proposals related to the pre-trade LIS thresholds for commodity derivatives? Which proposal to mitigate the counterintuitive effect of the current percentile approach do you prefer (i.e. keep the current methodology but modify its parameters, or change the methodology e.g. using a different metric for the liquidity criteria)? Please justify your views and proposals with quantitative elements where available.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_31>

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<ESMA\_QUESTION\_CP\_MIFID\_NQT\_31>