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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 | BNP PARIBAS |
| Activity | Banking sector |
| Are you representing an association? |  |
| Country/Region | France |

# Introduction

Please make your introductory comments below, if any:

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

TYPE YOUR TEXT HERE

<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>

Q1.1 MiFID II / MiFIR did set up very ambitious goals for pre- and post-trade transparency across all asset classes. As such, the MiFID II / MIFIR post-Trade Transparency regime is now the largest transparency regime in the world in terms of scope of asset classes and products. However, the big bang approach of starting all transparency reporting obligations across all asset classes at the same time has certainly left room for further assessment and fine-tuning. The MiFID II transparency regime is only 2.5 years old, which is young compared to other transparency regimes in the world. For example, the US TRACE post-trade transparency regime for Corporate bonds started in 2002, 18 years ago, and its impacts are still and continuously being assessed and its rules evolving. Therefore, it seems realistic to think that it will take a few more years for MiFID II / MiFIR to reach the beginning of a mature level.

Q1.2 The main shortcoming of MiFID II / MiFIR transparency is the lack of a consolidated tape, not the transparency regime and rules themselves. Moreover, given the trading protocols in Non-Equity (based on bespoke instruments and bespoke prices depending on counterparty risk, among others), which are by nature different from Equity shares (liquid and fungibles instruments with order-book), the post-trade transparency has more interest than pre-trade transparency. The MiFID II / MiFIR pre-trade transparency for Non-Equity instruments is not really part of the price formation process.

Q1.3 BNPP believes that the best way to improve transparency on the markets is to move forward progressively and on a phased approach basis.

* + First, focus on setting up a consolidated tape of post-trade transparency for equity shares, ETF and bonds. Then assess results and impacts.
  + Second and separately, look at the post-trade transparency regime, waiver and deferrals. Then assess results and impacts.

Q1.4 This view is confirmed by a recent assessment by the French regulator where the AMF underlines that the main issues of the MiFID II transparency regime for bonds are (i) the accessibility to the data and (ii) data quality. The AMF advocates the tape as the first line of action.

AMF, Etat des lieux de la transparence obligataire sous MiFID 2, 19 May 2020,

<https://www.amf-france.org/en/news-publications/news-releases/amf-draws-first-assessment-bond-market-transparency-introduced-mifid2>

<https://www.amf-france.org/sites/default/files/2020-05/202005_etude_transparence_obligataire.pdf>

Q1.5 The MiFID II / MiFIR pre-trade transparency does not seem to be the priority in terms of interest from market participants and therefore not the priority in terms of action.

Q1.6 Regarding the consolidated tape, BNPP answered in the European Commission consultation on MiFID II / MIFIR of May 18th 2020 that the main challenges were on (i) Trading Venues (TV) & Approved Publishing Arrangements (APAs) holding on IP rights of market / trade data and on (ii) defining an appropriate governance for the CTP. Those are the items to tackle in priority to move forward.

Q1.7 In terms of assessment of transparency, while ESMA investigated three core dimensions of the evolution of (i) pre-trade transparency, of (ii) trading executed on- and off-venue and of (iii) the use of different type of waivers, such analysis of the financial market ecosystem and the impact of the new regulatory framework can only be meaningful if also considering and measuring the impact on market liquidity, of which the increase is ultimately the goal of MiFID II / MiFIR transparency regulation. As such, we should primarily measure, assess and monitor the liquidity available to market participants. Instead of being a goal in itself, transparency is sought to increase liquidity available in the market. More work and impact analysis should be devoted on analysing the impacts of transparency on the liquidity offered by liquidity providers and available to investors. KPI should be defined and monitored over time. Only then, the transparency regime should be further calibrated.

Q1.8 Before modifying any item of the transparency regimes, we would seek to improve the current process, in terms of understanding, and ideally to validate, the swings and increases of the transparency calculations.

* + For example, the annual transparency SSTI and LIS for bonds published on April 30th 2020 and based on 2019 trade data have shown increases up to 120%. LIS post-trade of Sovereign bonds has increased from EUR 15m to 25m.
  + While the reasons of the increases remain to be explained, those new SSTI and LIS apply from June 1st 2020.
  + An ideal calculation process would offer visibility, understanding and validation on data and calculations, before the new thresholds are applied. This could take the form of a regulators / industry data taskforce / board.
  + Furthermore, this should lead towards more data quality monitoring, outliers alerts and data cleaning, which can require additional mandates and resources.

**Annual bond transparency calculations (SSTI and LIS), 30 April 2020**



Source: Tables by BNP Paribas based on ESMA data

References:

* + ESMA publishes annual bond transparency calculations, systematic internalisers calculations and new bond liquidity data, April 30th 2020, <https://www.esma.europa.eu/press-news/esma-news/esma-publishes-annual-bond-transparency-calculations-systematic-internalisers>
  + Annual transparency calculations for non-equity instruments, <https://www.esma.europa.eu/annual-transparency-calculations-non-equity-instruments>

Q1.9 Finally, in the context of Covid-19 it is our understanding that the European Commission is rightly looking to tackle MiFID2 quick fixes in order to jump start the economy recovery. Transparency being not one of these quick fixes, it should therefore be given more time to assess this topic that require in-depth and detailed analysis in order to avoid (i) market disturbances and (ii) further unnecessary complexity and cost.

<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>

Q2.1 BNPP does not believe that the MiFID II / MiFIR pre-trade transparency needs to be reviewed at this stage. Please see our answer to Q1, which lists the main actions and priorities for improving MiFID II / MiFIR transparency framework.

Q2.2 BNPP does not believe that the simplification of the regime for pre-trade transparency waivers would automatically contribute to the improvement of the level of pre-trade transparency available. Moreover, the term “simplification” would need to be more detailed before further consideration.

Q2.3 BNPP does not believe that an increase, both in terms of number of instruments and recalibration of the levels of transparency, can be an objective per se. Transparency can be beneficial for investors as long as it is not to the detriment of the liquidity providers via increased risks.

Q2.4 In particular, the current regime is based on a set of carefully balanced waivers and takes into account the roles of each market participants in the provision of and access to liquidity.

* + As per paragraph 18 in this consultation paper and as per MiFIR Article 9 (1) (b), MiFIR recognises the role and existence of RFQ and voice trading systems and defines the SSTI waiver to protect liquidity providers from undue risks.
  + Similarly, for trading with systematic internalisers, MiFIR Article 18 (10) limits the quote transparency requirement when dealing in sizes above SSTI, itself referring to MiFIR Article 9 (5) (d), to protect liquidity providers from undue risks.

BNPP considers that this principle is sensible and guarantees the provision and access to liquidity.

<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>

Q3.1 No, BNPP is not supportive of deleting the pre-trade SSTI waivers for trading venues. As per our answer in Q2, BNPP believes that MiFIR principle to protect liquidity providers from undue risk is sensible and guarantees the provision and access to liquidity.

Q3.2 Moreover, please see our answer to Q1, which lists the main actions and priorities for improving the MiFID II / MiFIR transparency framework.

<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>

Q4.1 BNPP supports keeping the current SSTI waiver for TV and the SSTI thresholds for the SI quoting obligations. As per our answer in Q2, BNPP believes that the MiFIR principle to protect liquidity providers from undue risk is sensible and guarantees the provision and access to liquidity.

Q4.2 BNPP would rather see the regulators and industry focusing on the actions and priorities to improve the transparency regime as per our answer in Q1, and avoid a review of the Pre-Trade Transparency obligation of Systematic Internalisers (SI).

* + Pre-Trade Transparency for SI is defined in terms of liquid instruments and SSTI threshold, while does not take into account LIS thresholds.
  + Reviewing all waivers and thresholds of the pre-trade transparency regimes across all asset class would divert resources and attention from setting up a consolidated tape of post-trade transparency, starting with equity shares, ETF and bonds which remains for us the appropriate way to improve transparency on the market (assuming that markets move forward on this progressively and on a phased approach basis).

Q4.3 The paragraph 73 in this consultation says that:

* + “The SSTI waiver adds further complexity to an already complex pre-trade transparency regime by adding yet another threshold to be assessed. The last bullet point of this paragraph 73 also quotes the notification for the SSTI waivers to be burdensome and to lead to excessive bureaucracy.

BNPP understands that the complexity sits more with the assessment of each RFQ platforms and the SSTI threshold assessment (as part of the annual transparency calculations) than just the usage of the SSTI waiver itself. Rather than in the usage of the SSTI waivers itself, some simplification in the RFQ platform assessment and SSTI threshold calculations could be investigated.

* + “It should be noted that this concept is currently not applied in any other non-EU jurisdiction.”
    - BNPP agrees and believes that the MiFID II / MiFIR pre- and post-trade transparency regimes, rules and calibration are certainly the most appropriate / advanced as they take into account the roles and importance of each market participants in the provision of and access to liquidity.
    - Following the same line, other transparency regimes namely in the US, are progressively moving in the direction of the EU rules. For example, for post-trade transparency, TRACE for Corporate bonds recommendations to move from real-time to 48 hours, TRACE for US Treasury Securities set on Weekly aggregation not real-time, CFTC moving from real-time to 48 hours for derivatives – see our answer to question 12 for more details.
    - Next to the SSTI pre-trade, the question on the “need” of a MiFID II / MiFIR Pre-Trade Transparency regime and the SI status for Non-Equity instruments should be assessed further (see more details about SI status in our answer our Q14). Conversely, for Non-Equity and starting with bonds, the post-trade transparency does bring value and the consolidated tape will bring more value.
  + “the SSTI waiver grants a preferential treatment to RFQ- and voice-trading systems compared to other trading systems”.

BNPP believes that the word “preferential” without giving it more context is misleading. In particular, the current regime is based on a set of carefully balanced waivers and takes into account the roles of each market participants in the provision of and access to liquidity.

* + - As per paragraph 18 in this consultation paper and as per MiFIR Article 9 (1) (b), MiFIR recognises the role and existence of RFQ and voice trading systems and defines the SSTI waiver to protect liquidity providers from undue risks.
    - Similarly, for trading with systematic internalisers, MiFIR Article 18 (10) limits the quote transparency requirement when dealing in sizes above SSTI, itself referring to MiFIR Article 9 (5) (d), to protect liquidity providers from undue risks.

BNPP considers that this principle is sensible and guarantees the provision and access to liquidity.

Conversely, other trading systems, for example based on an order-book, gather “coincidence of wants” and do not need the same principle / protection.

Q4.4 Furthermore, in the Option 1, we can wonder whether the concept of waiver / threshold would make sense if different across on-and off-venue trades, that is if we were to remove the SSTI waiver for trades on-venues but keep the SSTI threshold for trade off-venue. Hypothetically, the “same” (type of) quote could be provided to a client by an SI but subject to different levels of waiver / threshold depending on the platform:

* + via an RFQ- or voice-trading systems on a TV (on-venue) - subject to a lowered LIS waiver
  + via voice / chat to an SI (off-venue) - subject to a SSTI threshold

Such situation would be difficult to maintain in a level-playing fields between RFQ- and voice-trading systems and SIs – which could lead to calls to remove the SSTI completely. This is another reason why BNPP supports keeping the current SSTI waiver for TV and the SSTI thresholds for the SI quoting obligations.

Q4.5 Finally, in the context of simplification and alignment, the subject could be addressed the other way round by aligning the use of the SSTI waiver of RFQ- and voice-trading systems to the use defined for SI / off-venue – see last row of the table below.

|  |  |  |  |
| --- | --- | --- | --- |
| **MiFID II / MiFIR**  **Pre-Trade Transparency** | **TV**  **(non RFQ, non voice)**  **On-venue** | **TV**  **(RFQ and voice)**  **On-venue** | **SI**  **(RFQ to 1)**  **Off-venue** |
| Today | LIS | Partial SSTI + LIS waivers | SSTI threshold |
| Consultation proposal Q3-4 - Option 1 | LIS | Lowered LIS waiver | SSTI threshold |
| Consultation proposal Q3-4 - Option 2 | LIS | Lowered LIS waiver | Lowered LIS threshold |
| Other proposal | LIS | SSTI waiver | SSTI threshold |

<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>

Q5.1 BNPP is not responding to this question.

<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>

Q6.1 BNPP is not responding to this question.

<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>

Q7.1 BNPP is not responding to this question.

<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>

Q8.1 BNPP does not believe that this is a priority as per answer to Q1, which lists the main actions and priorities for improving the MiFID II / MiFIR transparency framework, especially knowing that Pre-Trade Transparency has not attracted much interest from market participants.

Q8.2 BNPP believes that working on the set-up of consolidated tape for post-trade transparency, on a phased approach basis, should address the issues of IP rights and market data availability as a whole (i.e. off- and on-venue).

Q8.3 Moreover, there should be more important questions to raise about market data cost and IP rights in relation to the market data contributed by market participants to trading venues and to APAs. While SIs may set-up some charges to access their quotes, as per MiFIR Article 18 (8), those quotes are very rarely used. Conversely, market participants are facing significant and exponential market data cost from TV and data vendors, amplified since the start of MiFID II, and which are one of the main causes preventing the emergence of a consolidated tape.

Q8.4 In general, BNPP is not keen in modifying the SI pre-trade transparency regime, as it has been costly to implement and with very little interest from market participants. Any change in the SI pre-trade transparency regime should not be mandated, unless it can be shown that those changes are beneficial for both investors and liquidity providers.

Q8.5 Finally, BNPP believes that regulatory action should be taken on IP rights and cost of market data as a whole (i.e. off- and on-venue) rather than focusing on SIs only, especially if authorities want a consolidated tape to emerge. BNPP trust that regulators will tackle this rapidly, as mentioned in the paragraph 106 of this consultation and as per the ESMA MiFID II review report on the cost of market data.

<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>

Q9.1 BNPP believes that working on the set-up of a consolidated tape for post-trade transparency, on a phased approach basis, will subsequently achieve standardisation of the transparency information as a whole.

* + In that context and as per our answer to the European Commission consultation on MiFID II / MIFIR of 18 May 2020, we strongly recommend a governance led by regulators and in strong partnership with the industry.
  + Such governance and body will be ultimately in the best position to define data standardisation guidelines / best practices.

Q9.2 BNPP recommends such a collaborative approach, based on the review of consolidated post-trade data and on a phased approach basis as a first priority compared to reviewing the pre-trade transparency framework with limited interest 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>

Q10.1 The main issue with MiFID II / MiFIR transparency is accessing the data, not the deferral regimes.

* + This is why the focus should be on setting up a consolidated tape, on a phased approach basis, by tackling the issues of IP rights and governance, as per our answer to Q1.
  + Once a tape is set-up, with a regulators led governance based on a regulators – industry partnership, such a governing body will be in the best position to define data standardisation guidelines / best practices.

Q10.2 This is confirmed by a recent assessment by the French regulator where the AMF underlines that the main issues of the MiFID II transparency regime for bonds are (i) the accessibility to the data and (ii) data quality. The AMF advocates the tape as the first line of action.

AMF, Etat des lieux de la transparence obligataire sous MiFID 2, 19 May 2020,

<https://www.amf-france.org/en/news-publications/news-releases/amf-draws-first-assessment-bond-market-transparency-introduced-mifid2>

<https://www.amf-france.org/sites/default/files/2020-05/202005_etude_transparence_obligataire.pdf>

Q10.3 The data quality has been a challenge in the first years of MiFID II / MiFIR but this could only be expected from starting with all asset classes and products at the same time.

* + Firms have had to consolidate the reporting from many internal booking systems, which has been a challenge in itself.
  + Moreover, MiFID II / MiFIR introduced a very extensive level of complexity in terms of new concepts, often not appropriate (systematic internaliser for Non-Equity, ISIN for derivatives) and lack of golden source of reference data.

Large progresses have been made over the last 2 years, and continue to be made. With time and the increase use of the data via a consolidated tape, the definition of new industry data standard will emerge and bring the data quality to the appropriate level.

Q10.4 BNPP welcomes ESMA assessment exercise of the current level of post-trade transparency and the deferral regime, based on 2 dimensions, (i) post-trade transparency under MiFID I vs. MiFID II and (ii) deferral used by asset classes. Next to those 2 aspects, BNPP believes that other dimensions are key to assess the level transparency:

* + Data accessibility - Is the data accessible by market participants either by connecting directly to multiples TV and APAs, or via a consolidated tape – free / at a reasonable commercial basis and public, i.e. free for any IP right for any usage?
  + Level of liquidity accessible to market participants.

It is clear that the most important issue today is the non-existence of a consolidated tape.

Q10.5 Before and while “adjusting” the transparency regimes, we should be considering and measuring the impact on market liquidity, of which the increase is ultimately the goal of MiFID II / MiFIR transparency regulation.

* + To take an extreme example, if we were to suppress the deferrals for sovereign bonds, there would be a more limited number of buyers and sellers of sovereign debt because of the difficulty to hedge positions.

As such, we should primarily measure, assess and monitor the liquidity available to market participants.

* + Instead of being a goal in itself, transparency is sought to increase the liquidity available in the market, for the interest of both investors and liquidity providers.
  + More work should be devoted on analysing the impacts of transparency on the liquidity offered by liquidity providers and available to investors.
  + KPI should be defined and monitored over the time.
  + Only after, the transparency regime should be further calibrated.

Q10.6 In terms of harmonised transparency framework, BNPP supports harmonisation of deferral rules only if it is to extend the use of supplementary deferrals to all jurisdictions.

Q10.7 Before calibrating further the MiFID II / MiFIR transparency regime, BNPP would support and contribute to an in-depth analysis of transparency regimes across the world.

* + In particular, BNPP believes that it is important to bring more lights on the differences of each and specific asset classes, products, market structures and avoid the temptation of shortcuts by applying specific concept to a general regime.
  + This is especially important in terms of
    - provision and access of liquidity and of
    - competitiveness of the EU market vs. the rest of world and in particular vs. the USA.

Q10.8 Figure 24, page 53, Use of standard and supplementary deferrals across all non-equity instruments, notional amount trading volumes.

This figure 24 as well as figures 25-27 are not very clear. They represent the 7 different transparency regimes available as per MiFID II / MiFIR. However, when using the supplementary deferrals, those figures seem to omit the representation of the 2-step publication process. Or at least, the figures do not show the difference between the standard D+2 deferral regime and the 1rst step in D+2 of the volume omission regime. Also, there is no representation of the 1rst step Next Tuesday of the weekly aggregation regime.

As a reminder,

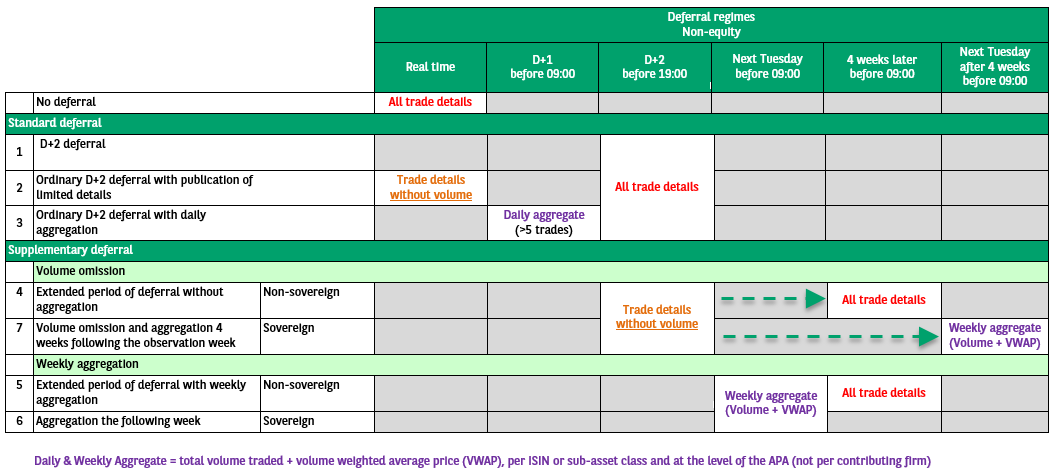
* + For volume omission, trades details, including prices, are published initially after 2 days without the volume. Then 4 weeks after with volumes.
  + For the weekly aggregation, all the trades of a week, including aggregated volumes and volume weighted average prices, are aggregated the first Tuesday after. For the trades executed on a Friday, this is less than 2 days after. Then 4 weeks after, all trade details are published.

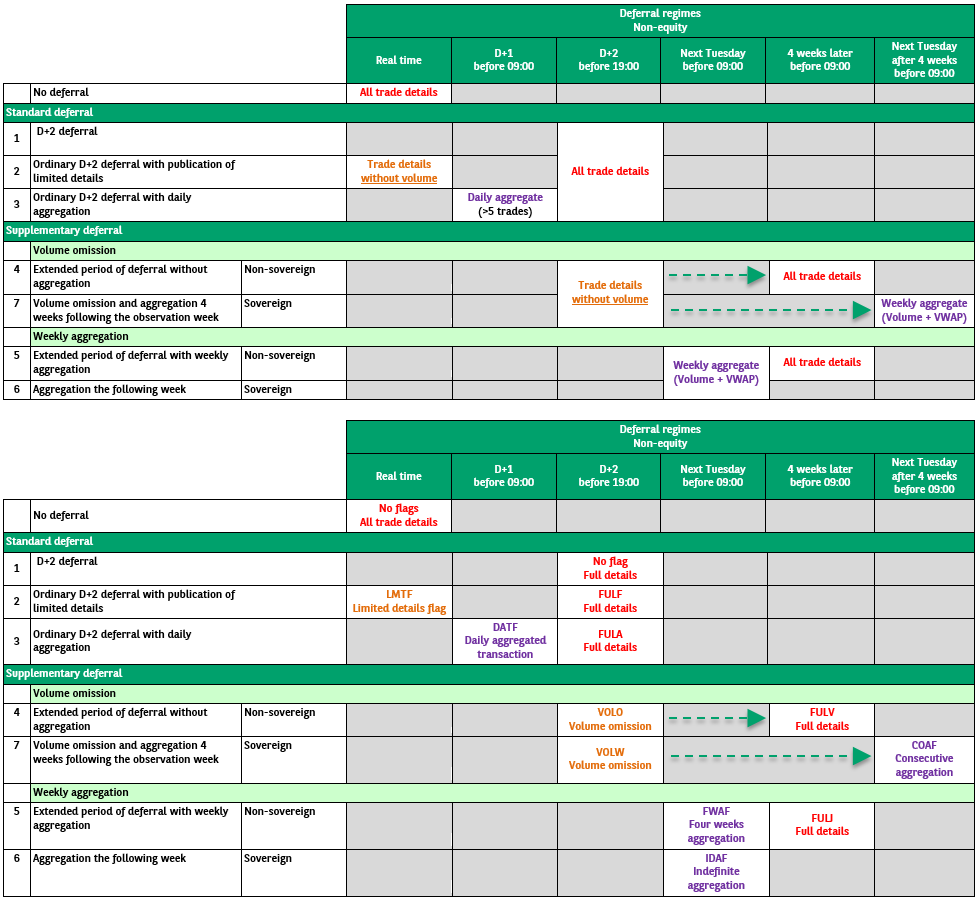
For more details, we refer to a table representing those 7 deferral regimes and the moment of their publication in the screenshot below. More details can be found in our BNPP factsheets on Post-Trade Transparency, pages 10-14.

<https://cib.bnpparibas.com/documents/factsheet-mifid-ii-focus-on-post-trade-transparency.pdf>

On that basis, we can argue that, for all asset classes, a large amount of transparency is done on D+2 or on a weekly basis. In the paragraph 144 of this consultation, the conclusion that many transactions are published only after an extended period of deferral of 4 weeks is therefore incomplete and debatable.

**MiFID II / MiFIR deferral regimes for non-equity instruments, as per MiFIR Article 11**





Source: BNP Paribas, as per MiFIR Article 11

Q10.9 Paragraph 147 and figure 28 in this consultation may be misleading as they imply that many EU member states are stricter in terms of deferrals or only allow supplementary deferrals. When looking the MiFID II List of Supplementary deferrals regimes provided on the ESMA website (<https://www.esma.europa.eu/document/mifid-ii-list-supplementary-deferral-regimes>), and based on our knowledge, our understanding is different.

The ESMA list can be summarised in the table below, and it appears that:

* + all EU member states listed allow for supplementary deferrals regimes for derivatives or more asset classes
  + 11 states allow for all supplementary deferrals regimes for all asset classes
  + 4 states allow for volume omission but not weekly aggregation.
  + Only 1 state does not allow for any supplementary deferrals for bonds.

Although BNPP would recommend an in-depth analysis of each country specificities, BNPP believes that the states not allowing specific supplementary deferrals regimes are doing so because of some product and market structure specificities (e.g. covered mortgage bonds in Denmark, of which prices represent the cost of a mortgage).

Certainly, it does not seem appropriate to draw conclusions of some specific situation, small in relative sizes and apply it to all asset classes across the whole EU market.

|  |  |
| --- | --- |
| Supplementary deferral regimes | EU Member State |
| Allowing all supplementary deferral regimes  = volume omission for derivatives, non-sovereign and sovereign  + weekly aggregation for derivatives, non-sovereign and sovereign | 1. UK 2. Germany (BaFin)\* 3. Malta 4. France 5. Italy 6. Belgium 7. The Netherlands 8. Portugal 9. Austria 10. Ireland 11. Luxembourg |
| Allowing volume omission for derivatives, non-sovereign and sovereign  Not allowing weekly aggregation for derivatives, non-sovereign and sovereign | 1. Spain |
| Allowing volume omission for derivatives, non-sovereign and sovereign, but not allowing indefinite deferral for sovereign  Not allowing weekly aggregation for derivatives, non-sovereign and sovereign | 1. Finland 2. Sweden 3. Latvia |
| Allowing volume omission for derivatives  Not allowing any supplementary deferral regimes for sovereign and non-sovereign bonds | 1. Denmark |
| For TV only - Not allowing any supplementary deferral regime for derivatives | 1. Germany (Hessen/Eurex) |

Q10.10 Next to this, the statements in paragraph 147 of this consultation seem to indicate that some states do not allow for deferrals, and that everyone should align with those. However, it must be noted that, from the list of states presented in the table above, and based on common knowledge, it seems that the states representing the vast majority of financial market activity in Europe are represented. The absence of some countries seems to indicate a lack of interest or participation in the regime more than anything else.

Q10.11 The paragraph 147 also mentions that, in the list of deferrals, only Portugal and Sweden allow for the D+2 deferral (supplementary deferral in accordance with Article 11(3)(a) of MiFIR).

* + BNPP believes that there are probably errors of reporting in this table. Why would a state allow for volume omission and weekly aggregation and not allow for shorter D+2 deferral?
  + For example, the AMF allows for all deferral regimes under MiFID 2 / MiFIR. This is confirmed clearly in an AMF Consultation Paper and in the resulting AMF Reglement General.
  + References:

AMF Consultation Paper, Mise en œuvre des dispositifs prévus par MIF 2 relatifs à la transparence pré- et post-négociation en France, 30 Jun 2017, pages 4-5-6,

<https://www.amf-france.org/en/news-publications/news-releases/amf-news-releases/amf-holding-consultation-application-pre-and-post-trade-transparency-mechanisms-provided-under-mifid>

<https://www.amf-france.org/fr/actualites-publications/consultations-publiques/consultation-publique-de-lamf-sur-la-mise-en-oeuvre-des-dispositifs-prevus-par-mif-2-relatifs-la>

AMF Reglement General, Articles 514-6, 514-8, 522-3, 522-5,

<https://reglement-general.amf-france.org/eli/fr/aai/amf/rg/notes/en.html>

Q10.12 Finally, the paragraph 147 also mentions that “many CAs opted for the most flexible approach, i.e. allowing an extended deferral period of 4 weeks during which transactions can be either aggregated or the volume omitted (see Figure 28). Only two CAs (Portugal and Sweden) required the publication of additional information during the standard deferral period of T+2”. In conjunction with the figures 24-27, this seems to imply that when using the volume omission and weekly aggregation, no information is disseminated to the public before 4 weeks. Such a statement is debatable, as mentioned earlier:

* + For volume omission, trades details, including prices, are published initially after 2 days without the volume. Then 4 weeks after with volumes.
  + For the weekly aggregation, all the trades of a week, including aggregated volumes and volume weighted average prices, are aggregated the first Tuesday after. For the trades executed on a Friday, this is less than 2 days after. Then 4 weeks after, all trade details are published.

Q10.13 Finally, BNPP wishes to quote the statements and recommendations of the European Commission Expert Group on corporate bond markets, from November 2017:

* + “*The harmonisation of full supplementary deferral regimes across the EU is essential, not just for corporate bonds, to ensure financial stability, allow hedging of risk, maintain liquidity and preserve a level-playing field across the EU for investment firms and investors.*
  + *In many illiquid markets (and most corporate bonds will initially be deemed illiquid), it can take weeks or months for liquidity providers to hedge or unwind their positions. The inability to de-risk before the size of a Large In Scale (LIS) or illiquid trade is made public will act as a significant deterrent to the provision of liquidity. (…)*
  + *Some NCAs may be considering shorter deferral periods, because of the share of retail investors in their domestic markets. However, it is not clear why this should be a factor in the choice of the deferral regime chosen as trades with those counterparties, because of their smaller sizes, are unlikely to be eligible for deferrals (deferred publication is only authorised in respect of transactions that are Large In Scale (LIS), above a Size Specific To the Instrument (SSTI), or in illiquid instruments).*
  + *In addition, most retail trades will not be eligible for a deferral because ESMA has excluded trades below EUR 100 000 from the deferral threshold calculations. Therefore, the SSTI/LIS thresholds will mechanically be above EUR 100 000. Lastly, the 4-week supplementary deferral only relates to volume – not price which will be published at the latest T+2, ensuring transparency of pricing levels for retail investors.”*
  + Recommendation - *“The Expert Group recommends that ESMA actively encourage NCAs to adopt similar deferral regimes across European jurisdictions in regard to post-trade transparency requirements. This would apply not only to corporate bonds but also to other financial instruments.”*
  + References:

European Commission Expert Group on corporate bond markets, Analysis of European Corporate Bond Markets, Analytical report supporting the main report from the Commission expert Group on Corporate Bonds, 20 November 2017, pages 77-78,

<https://ec.europa.eu/info/publications/171120-corporate-bonds-report_en>

<https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=35768&no=1>

Q10.14 For all the reasons mentioned above, we should certainly harmonise and keep the existing supplementary deferrals for all national regimes.

<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>

Q11.1 BNPP does not believe that this proposal is a priority, as per our answer to Q1 and Q10, which lists the main actions and priorities for improving MiFID II / MiFIR transparency.

Q11.2 BNPP is not supportive of deleting the concept of post-trade SSTI for the deferral regime.

Q11.3 Similarly to paragraph 18 in this consultation paper and to MiFIR Article 9 (1) (b) for pre-trade transparency, in MiFIR Article 11 (1) (c) – Authorisation of Deferred Publication, for Post-Trade Transparency[[1]](#footnote-2), MiFIR recognises and defines the SSTI deferral to protect liquidity providers from undue risks. BNPP considers that this principle is sensible and guarantees the provision and access to liquidity.

Q11.4 Certainly, this question 11 should only be raised after careful analysis on the impact on the protection of liquidity providers from undue risk.

Q11.5 Next to that, BNPP is open to work with the regulators and the industry to analyse further the possibility of simplifying the transparency regime and possibly work with one threshold. This analysis would take into account:

* + the protection of liquidity providers from undue risk,
  + the definition, measuring and monitoring of the liquidity available to market participants via KPI,
  + the improvement of the data quality / outliers checks of transparency calculations (SSTI, LIS, list of liquid instruments))
  + the understanding and validation of the changes in periodic transparency calculations results (SSTI, LIS, list of liquid instruments)

Q11.6 Moreover, whatever would be decided, it will be appropriate to adopt a cautious approach and move in a phased-approach basis, per asset classes or product type, assess the impact and roll further if appropriate. MiFID II / MiFIR Transparency regime for Non-Equity covers a large universe of very different asset classes and product types. Devoting the right amount of focus, analysis and post-go-live / continuous assessment to each product and market is certainly the right thing to do.

<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>

Q12.1 BNPP does not support any change in the deferrals regimes at this stage. Setting up a consolidated tape is a priority and a large scale project, as per our answer to Q1, which lists the main actions and priorities for improving MiFID II / MiFIR transparency.

Q12.2 In particular, BNPP does not support:

* + any real-time volume or price publication for illiquid, SSTI or LIS transactions.
  + the removal of the weekly aggregation deferral (as suggested by ESMA as discussing 3 options of volume masking only)
  + the removal of the specific treatment for Sovereign bonds (in the volume omission and weekly aggregation deferrals)

Q12.3 BNPP believes that it is highly risky to change drastically the deferral regimes, while we are still improving the data quality of the MiFID II / MiFIR reporting framework. At this stage, we are still unable to understand what drove the increases of the latest SSTI and LIS for bonds, published on 30 April 2020. As described in our answer to Q9 and 10, BNPP believes that setting up the consolidated tape will lead to continuous data quality improvement, thanks to further definition of data standardisation guidelines / best practices. This, in turn, will help understanding better the SSTI and LIS values swings, before changing the deferrals regimes.

Q12.4 The changes to the deferral regimes suggested on this consultation papers should only be considered after deeper data analysis of the following items and of their impacts:

* + Suppressing SSTI
  + Reducing of the LIS and to what level
  + Variation of LIS over time (which we suspect is linked to data quality)
  + Impact of moving from D+2 to real-time
  + Impact of reducing the 4 week deferral

Q12.5 BNPP wonders what the objectives of moving to real-time transparency are.

* + The goal of the MiFID II / MiFIR transparency regime is to reinforce market resilience by trying to increase liquidity by opening the markets to additional market participants.
  + As such, transparency is about bringing more visibility to on- and off-venue trading, and as such setting a level playing field between TV and off-venue trading.
  + At the same time, we must continue to recognise the distinct role of liquidity providers, intrinsically linked to risk taking & hedging activity.

Q12.6 Calibration to allow liquidity providers to play their role: provide liquidity and hedge their risk

* + At the same time as setting up a level playing field, this transparency regime and the related calibration were set-up to take into account the crucial difference between TV and liquidity providers.
  + The main risk of setting up a tape and bringing more transparency to the markets is to do it to the detriment of the current market participants, especially current liquidity providers that commit their balance sheets and take risks to be able to provide liquidity and attractive prices to their clients.
  + It is therefore key to carefully assess and calibrate transparency rules so that the liquidity providers are able to hedge the risk they take when trading with clients.

Q12.7 Real-time transparency can be detrimental to hedging and to liquidity when applied across the board to all asset classes and product types, whatever their liquidity level. For example, when trading interest rates derivatives on emerging markets such as South Africa, Hungary, Czech Republic or Poland, if a European liquidity provider is facing a US client, it will result into real-time dissemination in the US, as per current CFTC rules. In such circumstances and given the small number of liquidity providers on such market, after the initial client trade, the liquidity can quickly evaporate and therefore making the hedging very difficult. Liquidity providers have then to think twice before trading (client location and related transparency regime, risk of information leakage, perceived demand for the hedge from other market participants, risk tolerance to market price change), and possibly have to adjust their client price for the additional risk of hedging – or to consider not to trade. Real-time transparency for illiquid products is detrimental to liquidity, affecting all market participants, including corporate and institutional clients.

Q12.8 More specifically, BNPP wonders what the basis of moving to real-time transparency is

* + What will be the impact on the hedges of liquidity providers? Has any quantitative study or survey been done in this direction?
  + What will be the impact on the liquidity offered to market participants?
  + Will it vary across asset classes and product types? In particular, is it expected to cover Sovereign bonds?

Q12.9 MiFID II / MiFIR has introduced one of the largest transparency regime in the world in terms of asset classes and product types. Starting the regime with all asset classes and products at once has been a challenge in terms of setting up a whole reporting framework and, still today, we are working on improving the data quality of this reporting. If we were to change drastically any deferral rules, which we do not recommend at this stage, it would make sense to adopt a phased-approach by asset class and product type, with careful impact assessment after each stage.

Q12.10 The paragraph 157 in this consultation mentions “a patchwork of rules across the Union which is difficult to understand and to apply for market participants”. As per our answer to Q10, only a handful of state restrict some deferrals to some specific products because of some market structures specificities (e.g. covered mortgage bonds in Denmark, of which prices represent the cost of a mortgage). Certainly, it does not seem appropriate to draw conclusions of some specific situation, small in relative sizes and apply it to all asset classes across the whole EU market. This is also advocated by the European Commission Expert Group on corporate bond markets, in their November 2017 report, as mentioned in our answer to Q10.

Q12.11 The paragraph 157 in this consultation mentions that “a four-week delay for the publication of a transaction provides information to market participants which is of limited use”. BNPP believes that this generic statement is debatable and makes the following observations:

* + As further explained in our answer in Q10, a large amount of details is in fact disseminated in D+2 (including price) or the next Tuesday of the week after (including volume weighted average price and volumes). Only some information is held for 4 weeks.
  + As per our answer in Q11, the deferrals are set-up for the protection of liquidity providers from undue risk, in order to guarantee the provision and access to liquidity.
  + As noted in our answer to Q10, the main issue with MiFID II / MiFIR transparency is accessing the data, not the deferral regimes.
  + Comparatively to other transparency regimes in the world, 4 weeks is already a very short period. For example, for the TRACE regime for Corporate Bonds, the dissemination of volumes for transaction above size cap is 6 months (shortened from 18 months just in 2017)

Q12.12 The paragraph 158 in this consultation mentions the potential to reduce unnecessary complexity. In our views, managing a handful of deferral rules is not complex. Instead, the complexities lie into the fact that the MiFID II / MiFIR transparency regime covers a vast amount of asset classes and product types and that the whole reporting framework is still at its infancy and facing basic issues such as instrument identification and mapping (CFI vs. ESMA asset and sub-asset classes).

Q12.13 Next to that, BNPP would be keen to prioritise the discussion of other items in the MiFID II / MiFIR reporting framework which are currently bringing a large amount of unnecessary complexity and cost, including:

* + SI regime for TOTV only, which also means to clarify that ISIN are not required of uTOTV
  + SI regime Non-Equity - review the meaningfulness of the SI regime for non-standardised products, as it brings substantial complexity in the Transaction Reporting, and of limited benefit to anyone.

See our answer to Q14 for more details on the above 2 points.

Q12.14 The paragraph 158 also mentions a “level-playing field for post-trade transparency”. We guess that this level-playing field is across the RFQ- and voice trading systems (with SSTI and LIS) compared to other trading systems (LIS only), as previously mentioned in this consultation paper. It is unclear what this notion of level-playing field refers to in the context of deferrals.

Q12.15 In particular, liquidity providers need deferrals to be able to offer liquidity, offer competitive prices to clients and hedge their positions – and this to the advantage of corporate and government issuers, investors and corporates clients hedging their corporate risks. The level-playing field is not so much in terms of type of trading venues but rather in terms of trading protocols used by market participants for specific products. Bonds investors use RFQ to query prices from liquidity providers, which would take a position on their balance sheet to offer this liquidity – the same bonds are not traded via order book by matching opposing interests. BNPP does not believe that there are any concerns of level-playing field in this area.

Q12.16 BNPP believes that such an important question on the timeliness of the publication should only happen:

* + After considering the impact on the protection of liquidity providers from undue risk,
  + After the definition, measuring and monitoring of the liquidity available to market participants via KPI,
  + After improving the data quality / outliers checks of transparency calculations (SSTI, LIS, list of liquid instruments)
  + After the understanding and validation of the changes in periodic transparency calculations results (SSTI, LIS, list of liquid instruments).

Q12.17 Moreover, whatever would be decided, it will be appropriate to adopt a cautious approach and move in a phased-approach basis, per asset classes or product type, assess the impact and roll further if appropriate. MiFID II / MiFIR Transparency regime for Non-Equity covers a large universe of very different asset classes and product types. Devoting the right amount of focus, analysis and post-go-live / continuous assessment to each product and market is certainly the right thing to do.

Q12.18 The paragraph 157 in this consultation states that “a four-week delay for the publication of a transaction provide information to market participants which is of limited use.” In conjunction with the figures 24-28 and paragraph 147, this seem to imply that when using the volume omission and weekly aggregation, no information is disseminated to the public before 4 weeks. Such a statement is debatable, as per our answer to Q10.

Q12.19 **TRACE** - As we often refer to / compare with the US TRACE transparency regime for corporate bonds, BNPP would like to underline some key aspects of TRACE that should certainly be taken into account:

1. TRACE was built very progressively: focusing over one sub-asset class and increasing calibration over 3.5 years, between 2002 and 2006. Today, after 18 years, the regime is still scrutinised, assessed continuously and evolving.
   * + Conversely, the MiFID 2 Transparency regime ambitiously started in one go and for all asset classes, just 2.5 years ago.
2. TRACE is using “cap”, which can be seen as volume omission deferral, currently set to 6 months (shortened from 18 months just in 2017).
   * + Conversely, the MiFID 2 Transparency regime allows volume omission deferrals strictly limited to 4 weeks.
3. TRACE and the impact on market liquidity is continuously assessed by regulators, the industry, independent research and academic study.
   * + Here is a reference that we found. We would need to investigate further if part of a regulatory consultation, and if other studies come to the same conclusions. In this case, it reveals that the US TRACE transparency does not increase trading activity / liquidity and, by one measure, decreases it.
     + Paul Asquith, MIT Sloan School of Management, Thomas R. Covert, Chicago Booth School of Business, Parag A. Pathak, MIT Economics, The Effects of Mandatory Transparency in Financial Market Design: Evidence from the Corporate Bond Market, 04 April 2019, <https://home.uchicago.edu/~tcovert/webfiles/trace.pdf>
     + Conversely, such analysis and interactions within the MiFID 2 Transparency regime still remain to be seen.
4. FINRA is currently studying an increase of the initial dissemination to 48 hours, after 18 years of experience and continuous assessment, based on recommendations of the Securities and Exchange Commission’s (SEC) Fixed Income Market Structure Advisory Committee (FIMSAC).
   * + Regulatory Notice 19-12, FINRA Requests Comment on a Proposed Pilot Program to Study Recommended Changes to Corporate Bond Block Trade Dissemination, June 2019, <https://www.finra.org/rules-guidance/notices/19-12>
     + Conversely, MiFID 2 consultations are raising questions in the other direction, to possibly suppress deferrals,
       - just after 2.5 years of implementation of an ambitious “all asset classes” transparency regime
       - while not backed by any independent research or academic study on the impact on liquidity
     + See illustrative table below.
5. FINRA has just started to include US treasury securities in March 2020
   * + After 18 years of experience on corporate bonds, demonstrating of a cautious phased approach per sub-asset classes
     + Being reporting since 10 July 2017, then started dissemination almost 3 years later, demonstrating of a phased approach on implementation, assessing the feed and data quality before dissemination to the public
     + In weekly aggregation uniquely, and no dissemination of trade details at a later date
     + FINRA, Trace fact book, 2018, <https://www.finra.org/sites/default/files/2019-08/2018-trace-fact-book.pdf>
     + FINRA, Treasury Aggregate Statistics to Provide More Transparency in Marketplace, 10 March 2020, <https://www.finra.org/media-center/newsreleases/2020/finra-launches-new-data-treasury-securities-trading-volume>
     + Conversely, the MiFID 2 Transparency regime ambitiously started in one go and
       - for all asset classes,
       - just 2.5 years ago
       - with reporting and public dissemination starting on the same day
       - with 2-step deferral process of D+2 or weekly, then 4 weeks
       - with a consultation raising questions in the other direction, to possibly suppress deferrals

**Transparency regimes for Corporates bonds: TRACE vs. MiFID 2 / MiFIR**



Source: BNP Paribas

Q12.20 Finally, it is also worth noting that, in terms of transparency for derivatives in the US, the CFTC is adjusting the delay for the public dissemination of block transactions to 48 hours.

* + - In particular, the following quote is most appropriate in this context – see pages 77-78 of the amendment approved in February 2020 (references below):

*“In particular, the Commission is receptive to concerns that market participants may generally seek to hedge their portfolios before the close of business on the day a swap is executed, which would seem to support an either 24-hour or end-of-day reporting delay. The Commission understands that there are many variables that influence the time a market participant may take to put on a hedge, including risk tolerance to a price change, the risk of information leakage, the asset class involved and perceived demand for the hedge from other market participants, as well as consideration of the deadlines imposed by other authorities. In light of these considerations, the Commission proposes to extend the delay to 48 hours for all block trades as a conservative measure to account for potential situations when a market participant requires additional time to place a hedge position without significant unfavorable price movement and to create some consistency with the disclosure requirements of other authorities for non-liquid swaps.”*

* + - CFTC, Proposed Rule: Amendments to the Real-Time Public Reporting Requirements (Part 43), 20 February 2020, <https://www.cftc.gov/PressRoom/PressReleases/8121-20>
    - Conversely, MiFID 2 consultations are raising questions in the other direction, to possibly suppress deferrals,

Q12.21 Before concluding, BNPP wishes to quote again some statements from the European Commission Expert Group on corporate bond markets, in November 2017:

* + “*In many illiquid markets (and most corporate bonds will initially be deemed illiquid), it can take weeks or months for liquidity providers to hedge or unwind their positions. The inability to de-risk before the size of a Large In Scale (LIS) or illiquid trade is made public will act as a significant deterrent to the provision of liquidity. (…)*
  + References:

European Commission Expert Group on corporate bond markets, Analysis of European Corporate Bond Markets, Analytical report supporting the main report from the Commission expert Group on Corporate Bonds, 20 November 2017, pages 77-78,

<https://ec.europa.eu/info/publications/171120-corporate-bonds-report_en>

<https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=35768&no=1>

* + *“While it is agreed that the use of post-trade information can support price formation and engage more participants in all-to-all trading, it is also generally agreed that the post-trade information dissemination can be a disincentive to capital deployment for liquidity provision. The extent and timing of dissemination of the information is critical, as a market-maker having executed a trade may be at risk until they are able to exit or hedge its position. Otherwise, this will have a negative effect on both price and willingness to provide liquidity.*

*Acknowledging the necessity to calibrate the timing of the post-trade information disclosure, in order not to dis-incentivise liquidity provision on the corporate bond markets, MiFID II gave National Competent Authorities some discretion in the implementation of post trade transparency regimes.”*

* + References:

European Commission Expert Group on corporate bond markets, Improving European Corporate Bond Markets, November 2017, page 38,

<https://ec.europa.eu/info/sites/info/files/171120-corporate-bonds-report_en.pdf>

Q12.22 For all the reasons mentioned above, BNPP continues to argue for a phased implementation of the tape, separately to and before considering any change of the transparency deferral regimes.

<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>

Q13.1 BNPP does not support any change in the deferrals regimes at this stage. Setting up a consolidated tape is a priority and a large scale project, as per our answer to Q1, which lists the main actions and priorities for improving MiFID II / MiFIR transparency.

Q13.2 BNPP believes that it is highly risky to change drastically the deferral regimes, while we are still improving the data quality of the MiFID II / MiFIR reporting framework. Please refer to our answer to Q12.

Q13.3 BNPP wonders what the basis of suggesting a period of 2 weeks is.

* + Does it arise from a quantitative analysis as an optimal period of time to achieve a specific goal?
  + Does it arise from a quantitative analysis as an optimal period of time to hedge or offload a position?
  + Does it come from a comparison with another transparency regime? The 6 months of the US TRACE regime is showing the opposite.
  + What do we expect for the 2 weeks to provide which would be different from the current 4 weeks?
  + Will it vary across asset classes and product types? In particular, is it expected to cover Sovereign bonds?

BNPP was not able to analyse those questions because of lack of data and of time to answer to this consultation but BNPP would be willing to collaborate on such an analysis in the future.

Q13.4 The paragraph 161 of this consultation says that the “ESMA proposal would align MiFIR more closely with the US regime”. It is not indicated however to which US regime, to which asset class / product type or to which specific aspect it refers.

Q13.5 In particular, as per our answer in Q12 where we list a few specific dimensions of the US transparency regimes, we observe that the US regimes are more protective in term of dissemination period of volumes and are actually moving away of real-time publication to D+2:

1. For US TRACE for Corporate bonds, the volumes are masked until 6 months (shortened from 18 months in 2017)
2. Moreover, the latest SEC FIMSAC recommendations is to start a pilot phase to move from real-time publication to D+2, for transaction above volume caps.
3. For US TRACE for US Treasury bonds (went live in March 2020), the transparency is done by weekly aggregation, while trade-by-trade details are not disclosed at any point later
4. For the CFTC for derivatives, is has just been approved to move from real-time publication to D+2, for transaction above block sizes, especially to cope better with the hedging need of liquidity providers.

Q13.6 BNPP believes that the MiFID II / MiFIR transparency regime is currently well defined with a Day+2 and Week+4 dissemination. The regime represents a fair and healthy balance between the objectives of more transparency and the protection of liquidity providers from undue risk, and therefore to guarantee the provision- and access to liquidity, by liquidity providers and to investors.

Q13.7 The paragraph 163 in this consultation takes the example of the Nordic countries for their handling of deferrals for sovereign bonds, which does not allow for indefinite aggregation. BNPP believes that the Nordic countries market to be of relative small size compared to the rest of the EU market and to have a specific market structure (see sour answer to Q10). It is therefore not the best example of comparison, certainly not to take as model of implementation. Next to that, it might be more appropriate to compare with the US TRACE regime for US Treasuries securities, certainly in terms of size, which has just started a weekly aggregation with no trade-by-trade dissemination at any point later.

Q13.8 BNPP raises the question of what ESMA is suggesting to do for deferrals of Sovereign bonds. Do we have to understand from statements in paragraphs 163 and 164 (streamlined harmonised approach) that ESMA is suggesting:

* + To remove the specific handling of Volume Omission for Sovereign bonds and
  + To remove the Weekly Aggregation for Sovereign bonds and for all asset classes?

Those would be important consideration to take into account to be able to answer to this question on the change of deferrals regimes.

Q13.9 The paragraph 164 also refers to the paragraph 142, as “reducing complexity and sources of errors”. It is unclear what ESMA is referring to, as the paragraph 142 is not mentioning any “complexity and errors” but only describes the use of deferrals.

<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>

Q14.1 BNPP agrees with ESMA that further guidance should be defined and this should ideally take place in the general framework of setting up a consolidated tape, on phased approach basis, as per our answer to Q1.

Q14.2 BNPP believes that working on the set-up of a consolidated tape for post-trade transparency, on a phased approach basis, will achieve standardisation of the transparency information as a whole.

* + In that context and as per our answer to the European Commission consultation on MiFID II / MIFIR of 18 May 2020, we strongly recommend a governance led by regulators and in strong partnership with the industry.
  + Such governance and body will be ultimately in the best position to define data standardisation guidelines / best practices.

Q14.3 About enforcement, BNPP underlines that tremendous progresses of data quality have already been done in Transaction Reporting, while working in collaboration with our NCA, in the first 2.5 years of MiFID II / MiFIR. This is where the enforcement was prioritised quite logically by regulators at the launch of MiFID II / MiFIR. In general, data quality improvements in one regulatory obligation are applied across obligations, therefore improving post-trade transparency.

Q14.4 BNPP will continue to work with regulators and the industry in that direction but also wishes to remind that data quality improvement takes time. By comparison, the set-up of the US TRACE regime took about 3.5 years (2002-2006) for Corporate Bonds and about 3 years for US Treasury Securities (2017-2020). MIFID II / MiFIR started 2.5 years ago (Jan 2018) and included a large range of reporting obligations (transaction reporting, pre- and post-trade transparency, best execution, cost & charges) across all asset classes. It is therefore normal to have still some work to do. Next to those considerations, let’s add also that market participants are heavily regulated and continuously required to increase the regulatory reporting framework, most often managing a large number of regulatory reporting obligations deadlines at the same time. This takes time as well, which is another reason for moving forward on phased approach basis.

Q14.5 What is important is to learn continuously how to best move forward, for example by increasing regulators / industry collaboration (moving to small taskforces mode), cutting the large programme in smaller tasks, meaning progressing further on a phased-approach basis, and working and analysing common and accessible data sources, therefore the interest for the tape.

Q14.6 Last but not least, BNPP strongly believes that the whole MiFID II / MiFIR reporting framework could benefit from massive simplification and therefore allow to focus on data quality. Several items should be looked at.

Q14.7 **Clarification and simplification - SI regime for TOTV only**

* + We would like to take the opportunity to reiterate that the Systematic Internaliser (SI) regime for derivatives should apply to TOTV instruments only, and not to uTOTV instruments.
  + The direct impact of this is that there should be no RTS-23 instrument reference data reporting for uTOTV instruments for SI.
  + This will not have any impact on any other reporting obligations.
    - Trading Venues will continue to report ISINs for TOTV instruments (RTS-23)
    - Investment firms will continue to report their transactions (RTS-22) for TOTV & uTOTV instruments. uTOTV instruments will continue to be reported with the instruments characteristics (description fields 42-56).
    - Transparency obligations will remain applicable to TOTV.
    - SI determination will remain calculated on the basis of TOTV instruments
  + Those change can be brought:
    - either via a clarification of Q&A
    - or, preferably, to avoid any (mis-)interpretation, via targeted changes to the level 1 texts (MiFID 2, article 4(1)(20) and MiFIR Article 27).
  + On this subject, BNPP has written a (public) position paper that we would gladly share (we will upload it with this answer if allowed). We can also refer to multiple industry position papers (ISDA, FIA, GFMA, AMAFI, EFSA, FBF) arguing in that direction.

Q14.8 **Simplification - Questioning the value of the SI regime for Non-Equity**

* + While we recognise the rationale of transparency for investment firms trading TOTV instruments off-venue, in the spirit of a level playing field with TVs, we question the value of the SI regime in Non-Equity.
    - For Transaction Reporting, the SI regime brings a large amount of unnecessary complexity and rejections, for SI and their clients (from the moment of execution, up to the transaction reporting). There are indeed multiples scenarios, corner cases and possible values to fill in for
      * Venue – SI MIC, XXXX, XOFF – in function of the instruments status – TOTV, uTOTV, non-TOTV
      * ISIN for TOTV – ISIN for derivatives created in ANNA DSB but not reported into FIRDS
    - For Post-Trade Transparency, all investments firms have to submit their trades. The SI status only plays a role in the publication / reporting rule, which could easily be replaced by some other rule, independent from the SI status.
    - For Pre-Trade Transparency, the obligation that has yet to prove its value for Non-Equity could remain in place but without the need of using dedicated SI MIC.
  + Therefore, we believe that it should be possible to continue complying with all MiFID 2 / MiFIR reporting obligations while simplifying the framework by removing the SI regime concept for Non-Equity.
  + We suggest further regulators / industry analysis and reflection in that direction.

Q14.9 Next to that, several other items are worth in-depth considerations

* + Data referential enrichment - MiFID Investment Firms
    - a list of MiFID Investment Firms (existing on ESMA website) with corresponding LEI (not Existing) would be much welcome as this constitutes one of the basic reporting rule in post-trade transparency - to distinguish between MiFID Investment Firms and the rest, i.e. Non-EEA investment firms, Corporates…
  + Data referential - more automation and digitalisation, API – less Excel sheet and PDF
    - For example, ESMA list of liquid instrument, SSTI, LIS, ESMA list of third country equivalent trading venues exempted of post-trade transparency.
  + Data referential of TOTV
    - Technology firms, ARM or APA do not always use the same implementation / assumption for the TOTV check, even in the current situation of “narrow interpretation”
    - Regulators and the industry should agree on a pragmatic solution, what is the TOTV master source and how does it need to be read.
    - Some TOTV checks do refer to ESMA FIRDS and do not differentiate between instruments reported by TV or SI – in other words, consider as TOTV uTOTV instrument reported by an SI.
  + FIRDS & FITRS – harmonisation and synchronisation of data (e.g. matching number of bonds across both database)
  + Mapping ESMA asset classes & CFI, and inclusion within FIRDS & FITRS for each instrument
    - This would facilitate greatly the deferral to apply in post-trade transparency, as it is not rare to observe difference of instrument definition across the booking and up to the regulatory reporting framework.

Q14.10 **Simplification** – In conclusion, as per the elements above mentioned, BNPP believes that streamlining the reporting framework and removing unnecessary and costly complexity will allow investment firms and regulators to dedicate valuable attention, time and resources to data quality.

* + In such way, focusing on improving data quality of each asset classes and financial instruments (e.g. definition of standard and best practices).
  + This will surely represent
    - a better allocation of resources in covid-19 economic recovery, and
    - a quicker road to the consolidation of the transparency in a tape.

<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>

15.1 The creation of the CTP is not dependent on any specific transparency regime or rules. Rather the CTP should be handled in priority, on a phased approach basis, and with the current transparency regime rules, as per our answer in Q1.

15.2 The question should actually be raised the other way round. It is the consolidated tape that will facilitate and push for data standardisation, data quality improvement, better understanding of market activity and liquidity and therefore allow for an appropriate calibration of the transparency regime.

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

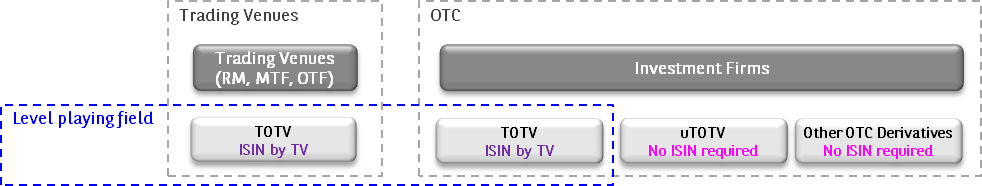
1. Do you agree with ESMA’s above assessment? If not, please explain.

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

Q16.1 BNPP does not agree with ESMA’s assessment. In paragraph 195 of this consultation, ESMA states that “the status quo results in exempting many OTC derivatives form the MiFIR transparency and reporting requirements”. This is true and this is the goal of MiFID II / MiFIR Transparency regime, which is to have a level-playing field between TVs and investment firms trading off-venue, as illustrated by the drawing below. By definition, this means that the instruments traded off-venue, if also traded on-venue, should be made transparent. Next to TOTV instruments, investment firms offer a wide range of custom solutions to their clients. Those can be offered under the form of be derivatives, covered bonds, structured notes, securitised derivatives, etc. Those custom instruments are typically tailor-made, unique, and the price specific to the product, depending on the capital consumption for example, and specific to the client, depending on the counterparty risk among others. Making such non-TOTV instruments transparent would not serve any purpose:

* + This would not help any price discovery or identification of available liquidity either on- or off-venue for any existing or potential new market participants, because such products are custom, unique and therefore not comparable,
  + This would not help the development of those custom products & client solutions by liquidity providers if this transparency results in increased risks for them (more difficulty to hedge notably),
  + This would not help clients trading those non-TOTV / custom product, because such products are custom, unique and therefore not comparable
  + This would not help the level-playing field with TV, as such instruments are not available on venue and would never need to be.

**Level-playing field between trading on- and off-venue**



Source: BNP Paribas, SI regime for TOTV only - Position Paper, November 2018

Q16.2 TVs serve the purpose of facilitating the trading of standardised products, for which several buyers and sellers are interested. Conversely, custom instruments of which the existence are due to the definition of a specific need and solution for a client have no reason to be traded on trading venue or via a third party.

Q16.3 Next to OTC derivatives, let’s also remind that a very large number of derivatives are listed and traded on Exchanges / Regulated Markets (e.g. Securitised derivatives / warrants, Equity Options, Futures). The table below illustrates the scope and type of instruments, with typical place of trading (on- or off-venue). The vast majority of trading is happening on-venue and, when traded off-venue, they are made transparent, as they are TOTV by definition (listed). The volumes of listed derivatives should also be taken into account when assessing the transparency regime, especially when assessing the ratio of derivatives that are considered TOTV vs. those that are not TOTV.

**Derivatives terminology - Listed and OTC - On-and off-venue trading – ISINs creation sources**

|  |  |  |  |
| --- | --- | --- | --- |
|  | On-venue trading | Off-venue /  OTC trading |  |
| ISINs creation | RM / MTF / OTF | Some examples of products |
| ANNA SB | Equity shares | Equity shares | Equity shares |
| Bonds | Bonds | Bonds |
| SFPs | SFPs | Structured Finance Products |
| (Listed) **Derivatives** | (Listed) **Derivatives**     By definition TOTV | Securitised derivatives / warrants, Equity Options, Futures |
| ANNA DSB | (OTC?) **Derivatives** | (OTC?) **derivatives** - TOTV | “Standard” IRS |
| - | - | Custom (OTC?) **derivatives**     u-TOTV or Non-TOTV | All types, including Equity Option and Equity Swaps |

Disclaimer: this view/representation is not exhaustive

Source: BNP Paribas

Q16.4 In general, with the introduction of MiFID II / MiFIR, further definition of concepts should help everyone, especially listed derivatives, OTC derivatives, TOTV, non-TOTV. It might be more appropriate to talk about TOTV, uTOTV, non-TOTV and, next to this, of trading protocols, Order book (= listed and on-venue) - or RFQ-based (on or off-venue), instead of “OTC” derivatives. For example, it is not appropriate to call ANNA DSB a “generator of ISIN for OTC derivatives” (as per their homepage). Derivatives traded on a MTF should be called TOTV not OTC.

**Derivatives terminology - On-and off-venue trading - TOTV**

|  |  |
| --- | --- |
| On-venue trading | Off-venue trading /  OTC trading |
| RM / MTF / OTF |
| Derivatives TOTV | Derivatives TOTV  + Derivatives uTOTV  + Derivatives Non-TOTV (neither TOTV nor uTOTV) |

Source: BNP Paribas

Q16.5 Let’s also remind that the goal of MiFID II / MiFIR Transparency, which was brought in after the financial crisis of 2008, is about making the markets more resilient by bringing more liquidity and therefore trying to attract more market participants, typically retail investors. In that perspective, the concept of transparency is very much about level-playing field between TV and OTC / off-venue trades for TOTV instruments. Market resilience and liquidity is only about TOTV instruments. Custom non-TOTV instruments are by definition not liquid and do not have a market, except between the 2 initial counterparties of the trade.

Q16.6 Finally, whatever the view on this subject, it seems more than appropriate to focus time, energy and resources on making a “narrow interpretation of the scope of TOTV”, as per ESMA opinion of May 2017 and as per paragraphs 184-187, work. This means to continue with the current TOTV concept and focus on the set-up of a consolidated tape and data standardisation guidance / best practices, on a phased approach basis. Once the basis are done, we can all understand the market, the products traded and continue further with the calibration of the transparency regime, whether it is the deferrals or the TOTV concept. Touching the TOTV concept will only bring more complexity and errors and waste time.

Q16.7 In paragraph 189 in this consultation, ESMA mentions that “other stakeholder express strong concerns that the interpretation was too narrow and therefore exempted too many OTC derivatives from the scope”. BNPP is keen to understand the rationale of such concerns and is open to work further on those considerations. What would be the reason of such concern, what would be the objectives that we are trying to achieve, related to which reporting obligation? Certainly, such points should be described at least at the minimum. As explained above, BNPP does not believe that transparency would be any helpful for such custom products. Moreover, if the point is about Transaction Reporting, and we wanted to report / collect the whole scope of OTC derivatives, we can wonder if this is not already reported in the EMIR reporting.

Q16.8 About the paragraphs 190-191 in this consultation, BNPP agrees with ESMA observations that only a small portion of the ISIN created in ANNA DSB are reported in ESMA FIRDS. BNPP believes that this mainly due to some misunderstanding on the goals of MiFID 2 / MiFIR, and therefore on wrong interpretations that the concept of SI should apply outside of transparency and to non-TOTV instruments.

Q16.9 First, as explained in our answer to Q15, BNPP wonders whether the concept of SI is really helping in the Non-Equity universe. It only brings complexity, much more than one could expect, in many reporting obligations and for no benefit.

Q16.10 Second, assuming we continue to work with the concept of SI in Non-Equity, the SI status is by definition based on the concept of level-playing field between TV and OTC / off-venues trades with investment firms, and therefore intrinsically linked to the concept of TOTV. As such, BNPP believes that ISINs should only be used for derivatives traded on a trading venue, to allow comparison between “standardised” derivatives traded on- or off-venue. The same ISIN is therefore used potentially for various trade executions of the same derivatives instruments on several TVs and by several investment firms trading OTC / off-venue. This ISIN is therefore useful (although not essential) in the transparency regime to compare the various trades executed on the same instrument.

Q16.11 Conversely, there is absolutely no need to create and allocate an ISIN to a custom OTC derivatives instrument (non-TOTV) that will be traded only once, ever. It does not serve any purpose and potentially, according to interpretation of the regulation, complexifies the whole reporting framework as an ISIN would need to be created with an external provider (ANNA DSB), reported to ESMA FIRDS, used in the Transaction Reporting of both counterparties of the transactions, meaning exchange of that ISIN and integration in both counterparties systems, after execution. This type of framework is very far from the origin of the ISIN for a security, a share or a bond (i.e. a fungible instrument), where the ISIN is created before the instrument is listed on a trading venue – and, at the moment of the execution, can easily flow in both counterparties systems.

Q16.12 On that basis, BNPP believes that only TVs should create ISINs for derivatives in ANNA DSB and report them into FIRDS. Only derivatives traded on trading venues do need an ISIN. In other words, no ISIN for derivatives would ever need to be created by any investment firm, neither for TOTV nor for uTOTV instruments. This would greatly simplify the whole reporting framework for all investment firms and reduce the number of reporting errors (wrong ISIN, ISIN not available at the time of the reporting, ISIN not reported to FIRDS…). Moreover, the scope of instrument reported in Transparency and Transaction Reporting would remain the same, with less errors. In the Transaction Reporting, the uTOTV instruments would continue to be reported with the characteristics of the instruments.

Q16.13 Coming back to paragraph 192 and the observations of the large number of ISINs in ANNA DSB compared to the number of them reported into FIRDS, this comes from the complexity and different interpretations of the regulation (MiFIR Article 27 (1) – Obligation to supply financial instrument reference data and RTS-23).

* + Some SIs have made the assumption that they needed to create and report ISINs for uTOTV.
  + Some SIs are creating ISIN for uTOTV but not reporting them to FIRDS, not using them into their Transaction Reporting
  + Some SIs are creating ISIN for quotes of uTOTV instruments in Pre-Trade Transparency (although not required) but those are note reported to ESMA FIRDS if there is no execution
  + Some SIs are creating ISIN for all their instruments to make them go through the “TOTV check” of their APA or ARM, then discarding those ISINs and trades if deemed non-TOTV
  + Some SIs are creating ISIN for TOTV instruments and reporting to ESMA FIRDS

This is indeed mainly around equity derivatives as mostly those instruments can be uTOTV with an underlying being a financial instrument, while for other asset classes of derivatives, the underlying would be a rate and therefore cannot considered as uTOTV.

Q16.14 The paragraph 193 in this consultation mentions again “concerns that only a few OTC derivatives are TOTV”. As explained earlier, BNPP is keen to understand what those concerns are.

Q16.15 The paragraph 194 in this consultation mentions that it is possible that the number of ANNA DSB underestimates the share of OTC derivatives currently not considered TOTV. This is certainly the case, as there are no requirement, and no rationale really, to create ISIN for non-TOTV instruments.

<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>

Q17.1 BNPP is keen to hear and discuss constructively the motivations of this question. What is the objective that the regulators are trying to achieve with the MiFID II / MiFIR Transaction Reporting? If regulators want to receive the whole scope of transactions for OTC derivatives, why not use the EMIR reporting. Certainly, everybody wants to avoid multiple parallel reporting, with Transaction Reporting and EMIR. And this could actually be an objective to merge those 2 reporting.

Q17.2 We should add as well that the EMIR reporting for OTC derivatives works without the concept of ISINs and without the concept of SI. And that should be an example to follow. This is one more reason to call for more simplicity in the reporting framework and to review whether those concepts could be removed from MiFID II / MiFIR (no ISINs for non-TOTV, no SI for Non-Equity). There are too many “not purely trade related” pieces, concepts, information to report at different place, to pull from somewhere, to imply from different situations (get an ISIN to check TOTV status, make assumptions to define uTOTV status, depending of which set execution venue to SI MIC or XOFF or XXXX, except if intragroup trade…) and to push to different places (from ANNA DSB, ESMA FIRDS, to APA, to ESMA FIRDS, to ARM/NCA, to clients for their Transaction Reporting and ARM/NCA). All this added complexity is generating too many reporting errors, which are not purely related to the trades themselves. Let’s simplify massively, and report with a perfect degree of data quality.

Q17.3 As per our answer to Q16, the scope of Transparency should remain on the “narrow interpretation of the scope of TOTV”, as per ESMA opinion of May 2017, primarily because MiFID II / MiFIR’s objective of level-playing field between TVs and investment firms trading the same products off-venue.

Q17.4 The scope of Transaction Reporting is currently TOTV & uTOTV, based on the “narrow interpretation of the scope of TOTV”, as per ESMA opinion of May 2017. Many specific and complex enrichment, eligibility and reporting rules have been set-up, at a massive infrastructure cost for the industry and regulators. This whole set-up is based on the current and aligned concept and definition of TOTV, across the scope of Transparency and Transaction Reporting. Any change to this will most probably lead to very complex implementation. In this context, BNPP call for prudence and continues to argue for more simplicity and alignment across reporting obligations.

<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>

Q18.1 BNPP is in favour of the status quo - option 1. If regulators were to go in the direction of Option 2 or 3, BNPP recommends further analysis to which it would be keen to participate.

Q18.2 Please refer to our answers to Q16 and 17 about the objectives of MiFID II / MiFIR and what would the transparency achieve on non-TOTV instruments.

Q18.3 After 2.5 years, at the infancy of new huge regulation in terms of reporting obligation and scope of instruments, as we are about to start focusing on the tape and data standardisation, it does not seem appropriate to bring in a large amount of custom instruments that will not serve much purpose in term of transparency and will prevent moving quickly towards better data quality for standard instruments.

Q18.4 BNPP would advise and again would be keen to participate actively to an assessment / comparative study of the Dodd Frank reporting for derivatives.

Q18.5 In the paragraph 204 in this consultation, ESMA mentions that the reporting and dissemination of swaps in Dodd Frank act is real-time. We refer to our previous answer to Q12, where DF is actually moving from real-time to D+2 for block trades.

Q18.6 Next to that, a couple of good elements to steal from the Dodd Frank regime, no complexity of ISINs and SI status concepts.

<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>

Q19.1 BNPP strongly recommend keeping the possibility for temporarily suspending the transparency provisions, in the hands of NCAs. We understand that this brake should only be used for extreme circumstances and we gladly welcome the fact that they have not been used yet.

Q19.2 At this stage, BNPP believes this is a fair emergency brake given:

* + The lack of data quality of post-trade transparency
  + Translating into the lack of data quality used for the calibration of the regime (list of liquid instruments, SSTI, LIS)
  + The lack of control, monitoring and validation governance in the transparency calculations / calibration (list of liquid instruments, SSTI, LIS)
  + The lack of understanding of the variation in the transparency calculations results (SSTI, LIS)
  + The lack of tape and therefore access by everyone to the view of the data / market activity
  + Brexit and the lack of visibility on possible discussion or agreements between UK & EU regulators

Q19.3 BNPP also believes that such emergency brakes are even more needed given the series of radical conclusions and proposals addressed in this consultation.

<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 MiFIR Article 28 but we would like to take this opportunity to propose an amendment of article 28(2) in order to remove EU DTO for third country branches of EU firms. In the context of Brexit, where a potential ‘no-deal’ scenario has highlighted DTO implementation issues, especially around extra-territoriality, we would, as a matter of priority, welcome as our preferred option a full equivalence between EU/UK Trading Venue similarly to what has been granted to US CFTC Swap Execution Facilities (SEF) and MAS Trading Venues in Singapore. But if such equivalences are unfortunately not granted, we would, at the very least, welcome the removal (via article 28(2)) of EU DTO requirements for third country branches of EU firms. Otherwise, and limiting the example to EU investment firms trading in-scope instruments through their London branches, such trading would have to comply with both (i) the EU DTO (ie: limiting the trading on EU trading venues and third county venues deemed equivalent, especially on US SEFs) and (ii) the future UK DTO (ie: limiting the trading on UK trading and third country venues which shall be deemed equivalent for UK purposes: the US SEF’s notably). As a consequence, such trading could occur only on US SEFs (as the sole equivalent trading venues from an EU and UK perspectives), and this outcome would obviously be detrimental.l

<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>

While we agree that mentioned criteria are sufficient and somehow appropriate it should also be highlighted that in the context of Brexit, the liquidity of instrument currently in-scope for DTO and more generally the scope of DTO should be reassessed knowing the drastic changes that Brexit could introduce (especially regarding GBP and USD IRS).

We consider that ESMA should not use the provision in Article 32(4) for asset classes currently not subject to the clearing obligations. We have not identified any asset class which should be subject to the DTO in the absence of CCPs offering clearing of such products. More generally, we are in the view that instruments should always be in-scope for the DTO only if they are in-scope for Clearing Obligation as a mandatory pre-requisite.

<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 agree that a procedure for the swift suspension of the trading obligation for derivatives is needed by ESMA to request the Commission to suspend the DTO. The current mechanism to request such suspension via an RTS amendment does not offer a tool that allow regulators to react quickly enough to unforeseen situations.

While the DTO should be automatically suspended when the Clearing Obligation is suspended, it must also be possible to suspend the DTO independently of the Clearing Obligation to be able to cope with specific situation requiring the suspension of the DTO only.

<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>

As explained in details in Q20, we urge ESMA to consider amending article 28(2) in order to remove EU DTO for third country branches of EU firms.

We fully support the answers provided by ISDA to the ESMA consultation to align the DTO regime with the EMIR Refit changes with regard to the clearing obligation for small financial counterparties and non-financial counterparties. More generally we are in the view that, similarly to instruments, counterparties should always be in-scope for the DTO only if they are in-scope for Clearing Obligation as mandatory pre-requisite.

<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>

We agree that this register is useful and should be maintained.

<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>

Q25.1 BNPP agrees with ESMA comments on paragraph 282 in the consultation.

*“282. These statistics seem hence to confirm that many bonds remain only liquid for a short period of time and that it is therefore necessary to regularly reassess the liquidity status of bonds. It should be noted that the change of the liquidity status from one quarter to the next is also linked to the current stage of the phase in and that at a future stage of the phase in the results may differ. Moreover, it could be argued that a different methodology for the liquidity determination of bonds could be simpler to perform and may result in less volatility.”*

Q25.2 In reference to paragraph 276 in the consultation, BNPP agrees with the description of the cyclical trading patterns of bonds. However, with a very cautious quarterly assessment, one might wonder if the assessment will ever “catch” the liquidity of the bond. It would be most useful to study a sample of bonds and assess their liquidity / number of trades over the life of the bonds. In addition, how long does the high trading frequency typically last shortly after issuance and when the bond comes close to maturity? Maybe the liquidity status assessment could be more dynamic and taking into account different criteria depending on the life of the bond. For example, and using purely hypothetical numbers, not backed by any quantitative analysis, the liquidity could be defined as per follow:

* + during the first month after issuance, 30 trades/day,
  + during the last month before maturity, 30 trades/day
  + during the rest of the life of the bonds, 15 trades/day

Q25.3 BNPP agrees that the liquidity status could be defined more appropriately. More than “stability”, we should be looking for the “right” liquidity status. More data analysis, thanks to the tape for example, would allow reviewing how long a bond is typically liquid, over what time period, and this can certainly vary per product type and market / issuer. In function of this, we could review the best way to assess the liquidity status.

Q25.4 We can therefore think that a more dynamic assessment of liquidity will bring a better representation. A large range of ideas are possible, from a monthly assessment of the last running 3 months to a daily assessment of the last running month. And this can only be possible if based on data of extreme good quality and with a strong control and validation governance. As per paragraph 285 in this consultation, consistent data quality is a challenge, given the corrections on quantitative data, on reference data or on calendar days. Therefore, we argue that the priority of work for Post-Trade Transparency is to work on tape, on a phased approach basis and with a regulators-led governance based on a partnership between regulators and the industry so as to define together appropriate data standard guidelines / best practices. Concretely, this can take the form of small taskforces reviewing together data output of the tape and proposing best practices.

Q25.5 We can quote another recommendation of the European Commission Expert Group on corporate bond markets, from November 2017:

* + Recommendation - *“The Expert Group recommends that ESMA establish a specialist industry working group or consultations with experts from both the buy and sell side to help formulate a suitable methodology for the yearly assessment of corporate bond liquidity.”*

Q25.6 The report also discusses some of the challenges of the Assessment of the liquidity of newly issued bonds

* + *The liquidity of a bond will be determined by calculating trading data over a quarter. During the first two years of implementation of MiFID II (i.e. until 31 December 2019), new issues will be deemed liquid when the issuance size exceeds EUR 1 billion. After these first two years, corporate bonds issued as part of an issuance exceeding EUR 500 million will be classed as liquid.*
  + *Because the liquidity determination calculations can only be completed once a full quarter's worth of trading data is available, depending on when a corporate bond is issued, there could be a maximum time frame of 5.5 months before the first liquidity assessment can be calculated. This means that a bond could be classed as liquid for 5.5 months before any assessment of its liquidity is performed.*
  + *However, analysis of trading in corporate bonds indicates that the most active trading period typically only lasts three weeks after issuance, after which liquidity diminishes drastically as bonds get "siloed" in portfolios of buy-and-hold investors. With the phased in approach to liquidity calibration, a corporate bond is classed as liquid if it trades 15 times a day from MiFID II go live to 15 May 2019, then 10 times the following year, 7 times the year after and 2 times from 16 May 2021.*
  + *This raises concerns around a possible concentration of bond issuance in an attempt to make this false positive period as short as possible.*
  + References:

European Commission Expert Group on corporate bond markets, Analysis of European Corporate Bond Markets, Analytical report supporting the main report from the Commission expert Group on Corporate Bonds, 20 November 2017, page 79,

<https://ec.europa.eu/info/publications/171120-corporate-bonds-report_en>

<https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=35768&no=1>

**Q25.7 There are clearly some items to tackle and to work on together. Hopefully, regulators and the industry can define a more appropriate assessment of bonds liquidity, which in turn will lead to more trades being made transparent in real-time (liquid and under size thresholds). This should not impact liquidity providers negatively as those bonds should be liquid and under size thresholds at the time of execution and of dissemination.**

Q25.8 Some comments on specific paragraphs to finish. The paragraph 289 in this consultation mentions that the result of the analysis is that there is a high share of illiquid instruments. This is indeed a characteristic of most Non-Equity instruments which market structure, instruments numbers and trades numbers are very different from Equity shares instruments.

Q25.9 The paragraph 290 in this consultation mentions that “ESMA considers it unlikely that such a change would have negative market impact”. As mentioned in our answer to Q10, BNPP recommends to define, measure and monitor KPI of market activity and the access to and provision of liquidity.

<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>

Q26.1 BNPP believes that the determination of the liquidity assessment of bonds should not move to stage 2.

Q26.2 BNPP believes that the move to stage 2 should only happen after:

* + Further improvement of data quality in the post-trade transparency framework
  + Translating into further improvement of the data quality for the calibration of the regime (list of liquid instruments, SSTI, LIS)
  + Further improvement of the control, monitoring and validation governance in the transparency calculations / calibration (list of liquid instruments, SSTI, LIS)
  + Further improvement of understanding of the variation in the transparency calculations results (SSTI, LIS)
  + The availability of the tape and therefore access by everyone to the view of the data / market activity
  + The definition and monitoring of KPI for the provision and availability of market liquidity, as mentioned in our answer to Q1, and as per paragraph 269 in this consultation and per RTS 2 Article 17 (5) (b)
  + Brexit and the lack of visibility on possible discussion or agreements between UK & EU regulators, as per paragraph 269 in this consultation and per RTS 2 Article 17 (5) (c)

Q26.3 As mentioned in our previous answers of this consultation the MiFID II / MiFIR reporting regime is extremely large in terms of reporting obligations (transaction reporting, pre and post-trade transparency, best execution, cost & charges) and scope of asset classes. The regime is also at its infancy after 2.5 years and data quality and enforcement priorities were rightly set on obligation like transaction reporting. It is now appropriate to focus on post-trade transparency where the priorities are about accessibility of the data and therefore the set-up of a consolidated tape.

Q26.4 Once the data is available to all, easy review and data analysis will allow for

* + better control and monitoring (identification of outliers)
  + easier comparison
  + and therefore further data standardisation and data quality improvement

Q26.5 The tape will also allow reading better the changes of market activity that will be key for the appropriate calibration of the transparency regime. Until then, any attempt of calibration of the transparency regime looks more like a game of trial an error instead of quantitative assessment, which can only be detrimental to the market, to liquidity and to all market participants.

Q26.6 As we are still trying to understand the changes of SSTI and LIS published on 30 April 2020, based on the figures of 2019, we continue to argue for the set-up or reinforcement of a validation governance of those figures (outliers check, comparison with market data from 3rd party vendors, review and validation by industry representatives). Until then, we cannot feel comfortable about future assessments, even in stage 1.

Q26.7 The paragraph 269 in this consultation and the Article 17 (5) of RTS 2 mentions the factors to take into account for the assessment of the calibration. The 3rd element is “any other relevant factors” which is smartly inserted to take into account any element that can impact the financial markets, the provision and availability of liquidity and transparency. In that context, we can only take into account two events that have and continue to shake the financial markets worldwide: Covid-19 and Brexit.

* + Covid-19 has led to an unprecedented pressure on volatility and liquidity in 1H2020, which does not seem to be over.
  + Brexit has also brought a fair share of volatility and pressure on liquidity over the last 2 years and will continue to do so until more certainty is reached.

Q26.8 How will the calibration take into account the increased volumes traded during the 1H 2020 due to Covid-19, will the next SSTI and liquid bonds be much larger in 2H 2020 and 2021 and applying on markets with much less liquid and less volumes? If so (which will happen if we remain in status quo, which is the most probable), this will force a much bigger transparency on less liquid bonds and higher-level threshold in 1H 2020 and 2021. In that context, and until a mechanism of calibration of market events on the transparency calculations can be defined, BNPP recommend remaining cautiously at the stage 1 level.

Q26.9 Similar reasoning must also be held about Brexit and the immense changes of market structure it will lead to. Where will all financial instrument be listed, where will they be traded? Let’s take a fictional example. Assuming we have a list of 1,000 liquid bonds today, and each traded at a volume of EUR 1bn over the last quarter. Assuming that 800 of those bonds are currently traded in the UK, exclusively. What will happen at the end of the transition period? Will those 800 bonds be listed separately on an EU TV with all volumes still traded in the UK. Will those 800 bonds still appear on the EU list of liquid bonds (again which will happen if we remain in status quo, which is the most probable)? If so, this will lead into making transparent in the EU bonds that are potentially not liquid at all in the EU. In that context, and until a mechanism of calibration of market events on the transparency calculations can be defined, BNPP recommend to remain cautiously at the stage 1 level.

Q26.10 One can wonder actually if such cases (covid-19 and Brexit) should not lead to full reset and temporary suspension of transparency dissemination.

<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>

Q27.1 BNPP believes that the determination of the pre-trade SSTI thresholds for all Non-Equity instruments should not move to stage 2, for the same reasons exposed in our answer to Q26.

<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>

Q28.1 BNPP believes that the determination of the pre-trade SSTI thresholds for all Non-Equity instruments should not move to stage 2, for the same reasons exposed in our answer to Q26.

Q28.2 Moreover BNPP supports keeping the current SSTI waiver for TV and the SSTI thresholds for the SI quoting obligations, as per our answer in Q1-2-3-4. BNPP believes that the MiFIR principle to protect liquidity providers from undue risk is sensible and guarantees the provision and access to liquidity.

<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>

Q29.1 BNPP is not responding to this question.

<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>

Q30.1 BNPP is not responding to this question.

<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>

Q31.1 BNPP is not responding to this question.

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

1. Article 21 (4) - Post-Trade disclosure by investment firms, including systematic internalisers, in respect of bonds, structured finance products, emission allowances and derivatives – refers to Article 11 - Authorisation of deferred publication. [↑](#footnote-ref-2)