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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 | CFI Monitor |
| Activity | FinTech |
| Are you representing an association? | No☐ |
| Country/Region | United Kingdom |

# Introduction

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

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

[Contact relations](mailto:relations@cfimonitor.com)

CFI Monitor is a FinTech that uses agile tools to provide efficient and scalable technology for market data subscribers. We focus on non-equity data.

Subscription benefits include:

* Aggregation of APA feeds in capturing RTS 2 (i.e. EU Regulation 2017/583) reports
* Automated data validation to safeguard aggregated records with rule-based data quality bots
* Modular, programming language-agnostic and resilient cloud Application Programming Interface (API) reports
* Advisory in trade flow analysis and in training models to generate transaction cost analysis labels[[1]](#footnote-0)

CFI Monitor is expanding the free services such as modern web user interfaces to leverage regulatory driven APIs.

CFI Monitor welcomes the transparent discussion on consolidated tapes and engages to promote an ecosystem in which the information asymmetries flagged by ESMA can be addressed and continually overcome step by step.

The concerns raised by ESMA in point 171 (p. 63) are critical and the aggregation of data with high quality is to some extent avoided. The seriousness of a MiFID II transparency breach has been qualified by regulators as GBP 1.50 per transaction record[[2]](#footnote-1) by regulators. The end investor remains unprotected without reliable and timely data. For instance, end investors pay additional daily execution costs that amount to USD 3m to 6m in the IRS market[[3]](#footnote-2).

In last year’s consultation that started on 12 July 2019 (ESMA70-156-1471) we noted that a machine readable interface was not available. This resonated with many responses that ESMA received. We appreciate significant improvements after intervention by the community.[[4]](#footnote-3)

Furthermore, due to a significant shift in the technology the computing and storage of resources is gradually becoming more decentralised. There are many known and unknown impacts and care should be applied to pool certain resources. We do not believe a single data provider should receive state aid to set up a CTP and any hope for competition should be given up. A sustainable CTP solution must not contradict core rules in the European Union. Rather a performance sensitive approach may lead APAs to acknowledge specific data quality input with bounty fees similar to tech companies who are keen to ask developers to report security gaps (see more at Q15). This would equally benefit the parties who oversee APAs and rely on accurate transaction reports to discharge their regulatory responsibilities.

Overall, CFI Monitor is keen to engage with industry leaders to determine the best governance model to create an ecosystem in which public market data sets become better day by day. In this context, CFI Monitor particularly supports option 1 that was suggested by the International Capital Markets Association:

“A limited company working with ESMA in a close public- private partnership with outsourced IT operations, could take out a loan to be paid back on a cost recovery basis from user fees, to provide a CTP.”[[5]](#footnote-4)

Such tenders should allow for equal access to opportunities for CTPs as in some CTP market data segments subscriptions could likely be generated quicker. CFI Monitor believes the Regulatory Sandbox model employed by the FCA will prove the most effective collaboration model to support innovations that protect investors who have to bear transaction costs which are unequivocally too high.

<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>

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<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>

CFI Monitor fully supports ESMA’s position as complex publication rules decrease data quality in a fragile market data transparency ecosystem.

<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>

Same as response to Q2. CFI Monitor fully supports ESMA’s position as complex publication rules decrease data quality in a fragile market data transparency ecosystem.

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

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

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

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

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

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

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<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>

CFI Monitor fully supports ESMA’s position and specifically recommends to require UTC timestamps, order ids, trade ids, price, notional, quantity (with specification for all products) and benchmark price.

<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>

Same as response to Q6. CFI Monitor fully supports ESMA’s position and specifically recommends to require UTC timestamps, order ids, trade ids, price, notional, quantity (with specification for all products) and benchmark price.

<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>

Same as response to Q6. CFI Monitor fully supports ESMA’s position and specifically recommends to require UTC timestamps, order ids, trade ids, price, notional, quantity (with specification for all products) and benchmark price.

<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>

Yes, actioning this proposal will improve data quality. ESMA should also require a quote id to determine how trade ids can be mapped to quotes irrespective of timestamps, which cannot replace reliable identifiers. The aim should be to understand whether pre-trade quotes are indicative of trade execution prices.

<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>

CFI Monitor fully supports ESMA’s position and encourages ESMA to take all steps for an outstanding cooperation with the FCA.

<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>

CFI Monitor would appreciate more information how a deferral may have a positive impact on liquidity and why LIS thresholds do not increase uncertainties in illiquid markets that depend on certain days on each single trade.

<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>

CFI Monitor fully supports ESMA position to introduce Option 3 and believes that this concept of deferrals results will promote investor confidence.

<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>

CFI Monitor fully supports ESMA’s position to introduce Option 3 and believes that this two-step approach results will promote investor confidence.

<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>

CFI Monitor suggests to further harmonise the DEPP 6.5A of the FCA handbook in EU law to prevent competent authorities to offer significantly lower MiFID II standards.

In addition to the concerns raised by ESMA we also advise to analyse the following cases in which our “smoke and edge tests” failed:

1. Duplicate APA reports with same trade ids with all other fields unchanged except **Publication Date and Time**
2. **Publication Date and Time** before **Trading date and time**
3. **Publication Date and Time** significantly higher than 28 days in comparison to **Trading date and time**
4. Certain **ISIN**s are reported as deferred and not deferred and deferral flags cannot be validated with an order

<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>

CTPs should not carry the stigma that such data providers would compete with the largest market data providers. Regulators and market participants can have a positive impact on market transparency by issuing bounty programs for data quality in similar fashion as the cyber security industry. This would eliminate equally the reputational impact if an APA or a market participant, who missed to oversee the APA service, is subject to a regulatory fine.

For instance, APAs could engage and solicit data quality assurance requests with a number of trade ids and the field that is inconsistent. In exchange, CTPs should receive a reasonable commercial reward per transaction. The benefits are far greater than GBP 1.5 per transaction in case of a regulatory fine.

CFI Monitor advises that each automated data source is qualified as an API and versioned following [best practices](https://semver.org/).

In RTS 2, Annex II, Table 1 the alphanumeric field could be further defined to include more information about order ids. These order ids do not require any investor specific information and allow investors to focus on validating the order routing flow logic. CTPs are uniquely positioned to support in this context in contrast to certain markets providers who need to manage conflicts of interests.[[6]](#footnote-5)

<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>

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<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>

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<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>

CFI Monitor fully supports ESMA’s position to introduce Option 3.

Please also refer to Q14 as missed APA reports need to be identified and approaches to cover these in line with MiFID II should be suggested by market participants overseeing APAs.

<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

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<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>

CFI Monitor fully supports ESMA’s position.

<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>

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

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

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

TYPE YOUR TEXT HERE

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

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

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

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

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

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

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

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

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

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

1. Such analysis is currently not possible with APA reports only and requires intensive pre-processing of orders and trades. [↑](#footnote-ref-0)
2. <https://www.fca.org.uk/publication/final-notices/merrill-lynch-international-2017.pdf>. [↑](#footnote-ref-1)
3. BoE, Centralized trading, transparency and interest rate swap market liquidity: evidence from the implementation of the Dodd-Frank Act (May 2018), [p23](https://www.bankofengland.co.uk/-/media/boe/files/working-paper/2018/centralized-trading-transparency-and-interest-rate-swap-market-liquidity-update). [↑](#footnote-ref-2)
4. TradeWeb introduced a [clip service](http://f747716ce556.mifid.io.tradeweb.com/html/) (unversioned) that is not shielded from the public by an Amazon S3 security token anymore. [↑](#footnote-ref-3)
5. ICMA, EU Consolidated Tape for Bond Markets Final report for the European Commission (April 2020), [p. 7](https://www.icmagroup.org/assets/documents/Regulatory/MiFID-Review/EU-Consolidated-Tape-for-Bond-Markets-Final-report-for-the-European-Commission-290420v2.pdf). [↑](#footnote-ref-4)
6. See also [SEC Charges Bloomberg Tradebook for Order Routing Misrepresentations](https://www.sec.gov/news/press-release/2020-104). [↑](#footnote-ref-5)