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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 | Citadel |
| Activity | Other Financial service providers |
| Are you representing an association? |[ ]
| Country/Region | International |

# 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>

At the moment, non-equities markets are still typically characterized by a lack of published firm quotes, which often compels clients to rely on one-to-one private negotiations in order to obtain an executable price. Given that these executable prices are only then honored at that exact moment in time, it is challenging for clients to effectively put liquidity providers in competition and obtain pre-trade transparency regarding other available prices in the market. Instead, clients often face the choice of either accepting the first executable price received or starting over with a new one-to-one negotiation, where pricing can move against the client as its trading interest is sequentially disclosed to additional market participants. As a result, this opaque and fragmented market structure impairs client access to best execution by denying clients the ability to effectively compare and evaluate the quality of prices.

Improving pre-trade transparency improves competition among liquidity providers and overall liquidity conditions, reduces transaction costs, and facilitates execution quality analysis. On-venue pricing will materially improve, becoming more competitive and dependable, as liquidity providers seek to differentiate their offerings in light of the increased competition. This trend will particularly benefit smaller market participants, as widely available on-venue pricing makes it more difficult for liquidity providers to discriminate against certain “tiers” of clients.

It is important to note that the increased price competition and transparency resulting from improving pre-trade transparency can also be a catalyst for the entry of new liquidity providers. If clients are unable to easily compare prices across liquidity providers, it is difficult for a new entrant to be able to clearly demonstrate that it can offer more competitive pricing than the incumbent liquidity providers and clients are likely to continue selecting the established liquidity providers for one-to-one negotiations.

We set out in Question 2 below the changes to the Level 1 and Level 2 texts that are required to meaningfully improve pre-trade transparency in non-equities markets.

<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>

Level 1 Changes

* **Remove ToTV**. Current estimates find that only approximately ~5% of off-venue trading activity in OTC derivatives (including with systematic internalisers) is considered to be “traded on a trading venue” under the current ESMA interpretation (https://www.clarusft.com/what-we-need-to-do-to-fix-mifid-ii-data/). This means that ~95% of off-venue trading activity (1) is not subject to the MiFID II transparency framework at all, and (2) is not being taken into account for purposes of liquidity assessments (as the trading activity is never reported by an APA). As a result, any effort to improve pre-trade transparency in the non-equities markets must address ToTV. In our view, the concept should be eliminated for the interest rate, credit, and FX OTC derivatives markets, which will significantly reduce both regulatory complexity and operational costs for market participants (including those associated with separately determining whether each instrument transacted is ToTV). The waiver regime will ensure that off-venue transactions are granted exemptions from pre-trade transparency where appropriate and therefore the ToTV concept is unnecessary.
* **Simplify the regime by combining the SSTI and LIS waivers**. Given that RFQ and voice trading systems account for the vast majority of non-equities trading activity, the SSTI waiver is almost always available and therefore the LIS waiver becomes largely irrelevant. The transparency regime would be streamlined by combining these two waivers into one clear size-based waiver from pre-trade transparency requirements. This same change should be made to the corresponding provisions for SIs.

Level 2 Changes

* **Recalibrate the liquidity thresholds**. The current liquidity criteria, including average daily notional amount and average daily trade thresholds, should be recalibrated using current market data that is comprehensive. This includes addressing the problems associated with the current interpretation of ToTV, as at the moment ~95% of off-venue trading activity in OTC derivatives is not being taken into account for purposes of liquidity assessments (as the trading activity is never reported by an APA). In addition, the entire FX asset class should not be considered illiquid.

Importantly, the liquidity thresholds should be tailored to reflect differences in trading volumes across asset classes. For example, liquidity thresholds that are appropriate for interest rate derivatives, which account for the largest segment of the OTC derivatives market, are not appropriate for the smaller credit derivatives market. We note that the liquidity thresholds must also be recalibrated to the extent Brexit results in UK trading activity no longer being taken into account when ESMA conducts the liquidity assessments.

* **Add qualitative criteria to liquidity assessments**. OTC derivatives that are determined to be sufficiently liquid for the EMIR clearing obligation should always be considered liquid for MiFID II transparency purposes. Adding this qualitative criteria would address the current problem where liquid OTC derivatives are not subject to pre-trade transparency requirements.
* **Incorporate trading volume into the pre-trade thresholds**. Similar to how post-trade thresholds are calculated, we recommend adding a volume component to both the pre-trade SSTI and LIS thresholds (to the extent both are maintained) in order to ensure that a minimum amount of total trading activity is subject to pre-trade transparency, such as 50% of trading activity in the relevant sub-class. Relying solely on trade count leads to overly broad waivers.

<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>

Yes, we agree that the pre-trade SSTI waiver should be removed. Given that RFQ and voice trading systems account for the vast majority of non-equities trading activity, the SSTI waiver is almost always available and therefore the LIS waiver becomes largely irrelevant. The transparency regime would be significantly streamlined by combining these two waivers into one clear size-based waiver from pre-trade transparency requirements. In addition, making this change would increase harmonization with other jurisdictions, where there is typically one clear size-based waiver from transparency requirements.

We do not agree that the pre-trade LIS threshold should be lowered in order to account for this change. By referring to only trade count, far too much trading volume (by notional) is eligible for the pre-trade LIS waiver as currently implemented. Before modifying the current pre-trade LIS threshold, ESMA should analyse the percentage of trading volume (by notional) that is covered by the pre-trade LIS waiver, as excluding 40% of trades could easily exclude over 75% of trading volume (by notional). In order to address this going forward, we suggest incorporating a trading volume component into the pre-trade thresholds in order to ensure that a minimum amount of total trading activity (by notional) is subject to pre-trade transparency. As this level should be lower than the corresponding levels for post-trade transparency, we suggest that the pre-trade LIS threshold for each sub-class should be the greater of (a) the 60th percentile by trade count and (b) the 50th percentile by volume.

<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>

In order to level the playing field between trading venues and SIs, we support linking the quoting obligations of SIs to the pre-trade LIS threshold. To the maximum extent possible, waivers should be harmonized across trading venues and SIs such that the same-size transaction in an identical instrument is not subject to different pre-trade transparency requirements depending on whether it is executed on-venue or off-venue.

<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>

Yes, we agree that the hedging exemption should turned into a limited negotiated trade waiver, and would support Option 2, where it would be limited to risk reducing transactions in commodity derivatives only. According to the data provided to ESMA, this is the only asset class where the hedging exemption is being meaningfully used.

<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>

Yes, we agree with the proposed approach.

<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>

Yes, we agree with the proposed approach.

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

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

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

Yes, in our view the pre-trade transparency data that is required to be provided by SIs should be made available free of charge, and should be published in machine-readible format and be available for at least 24 hours after publication. These requirements would be harmonized with the publication requirements that apply to trading venues and APAs (as clarified by additional ESMA guidance).

<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, standardising the pre-trade transparency data published by various trading venues, APAs, and SIs would greatly assist market participants in using the data for its intended purpose, which is to allow clients to effectively compare and evaluate the quality of prices available in the market.

<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>

We agree with ESMA’s assessment that MiFID II has not delivered meaningful post-trade transparency for non-equities asset classes. However, the data collected by ESMA from trading venues and APAs appears to be inaccurate and grossly understates the magnitude of the problem. We urge ESMA to analyse the actual data being published to the public by trading venues and APAs. This data shows:

* + ~85% of trading activity in EU bonds is not being published in real-time, with full transaction details never published for the vast majority of activity (and minimal data published T+2). (<https://www.clarusft.com/mifid-ii-data-for-bonds/>)
	+ ~90% of on-venue trading activity in interest rate OTC derivatives is being published with a 4-week delay (and only aggregated information is being made available prior to this date). (<https://www.clarusft.com/what-we-need-to-do-to-fix-mifid-ii-data/>).
	+ ~95% of off-venue trading activity in interest rate OTC derivatives is currently excluded from any post-trade transparency requirements. (<https://www.clarusft.com/what-we-need-to-do-to-fix-mifid-ii-data/>).

As detailed above, individual transaction details regarding bonds and OTC derivatives are typically only being made available after 4 weeks (or not at all, due to the availability of an indefinite deferral for sovereign bonds). This data is readily available through the MiFIDView tool provided by Clarus (<http://mifidview.clarusft.com/>) and should be incorporated into ESMA analysis.

Simplifying the MiFID II post-trade transparency framework and standardising it across the EU27 is part of the solution. However, in order to deliver post-trade transparency in non-equities asset classes, the following problems must be addressed:

* **Post-trade transparency must be comprehensive**. Post-trade transparency should provide market participants with a consolidated view of all trading activity in a particular instrument (both on-venue and off-venue). Comprehensive coverage is critical for accurate transaction cost analysis and best execution assessments, as well as for more general market research and commentary that will benefit all investors.

At the moment, ~95% of off-venue trading activity in interest rate OTC derivatives is currently excluded from any post-trade transparency requirements due to the overly granular interpretation of “traded on a trading venue” (**ToTV**). In our view, the concept should be eliminated for the interest rate, credit, and FX OTC derivatives markets, and we provide further detail on this recommendation in Question 18.

* **Post-trade transparency must be real-time**. Post-trade transparency should provide market participants with data as close to real-time as possible. Real-time data enables market participants to more confidently assess current market dynamics, which increases investor confidence and is particularly important during times of market volatility. In addition, real-time data reduces existing information asymmetries, where certain market participants may have greater knowledge regarding ongoing trading activity than other investors. Leveling the playing field with respect to access to information regarding ongoing trading activity helps investors hold liquidity providers accountable and promotes overall market competition.

At the moment, (1) too many non-equities transactions are qualifying for deferrals, and (2) the available deferrals are too long. Both of these issues must be addressed in order to deliver meaningful post-trade transparency. We provide our recommendations in Questions 11 and 12 below.

Where comprehensive and real-time post-trade transparency has been implemented, academic research finds that material benefits accrue to investors. For example:

 *Corporate Bonds*

* Academic research has found that post-trade transparency has improved corporate bond liquidity and has reduced transaction costs in the US (<https://www.researchgate.net/publication/222515781_Market_Transparency_Liquidity_Externalities_and_Institutional_Trading_Costs_in_Corporate_Bonds> / <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=593823>).
* Post-trade transparency has caused trading costs to decline significantly for the entire bond market and has benefited not only retail investors, but also institutional investors transacting in larger size (<https://www.nber.org/papers/w19417> / <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=686324>).
* Post-trade transparency has even improved liquidity conditions for large block trades. Specifically, an analysis of the institutional 144A corporate bond market found that the introduction of post-trade transparency in 2014 significantly reduced transaction costs for block trades, with the largest reductions observed for blocks that exceed $25 million in size. In addition, there is no evidence that post-trade transparency reduced block trading volume or otherwise impeded the ability of market participants to execute blocks, or reduced dealers’ willingness to hold inventory. In fact, overall trading volume of large blocks increased following the introduction of post-trade transparency (<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3171056>).

*OTC Derivatives*

* Academic research has found similar benefits following the implementation of comprehensive post-trade transparency for OTC derivatives in the US (<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2176561> / <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2443654>).

Recent consultations in the US clearly demonstrate how much institutional and retail investors value a robust post-trade transparency framework once implemented, while large bank dealers continue to argue in favour of reducing market transparency. For example, in 2019 FINRA requested market participant feedback on increasing the post-trade deferral for large-in-scale bond trades from 15 minutes to 48 hours. The feedback was 25-5 against the proposal, with a broad and diverse coalition of market participants strongly preferring to keep the current 15 minute deferral. (see <https://www.sec.gov/spotlight/fixed-income-advisory-committee/finra-block-pilot-comment-summary.pdf>). As a result, this proposal will not move forward (see <https://www.bloomberg.com/news/articles/2020-01-22/a-48-hour-delay-for-bond-trades-stalls-after-wall-street-balks?sref=BNAbdgOy>).

Similarly, the CFTC recently requested market participant feedback on increasing the post-trade deferral for large-in-scale OTC derivatives trades from 15 minutes to 48 hours. The feedback was 13-3 against the proposal, with a similar broad and diverse coalition of market participants strongly preferring to keep the current 15 minute deferral (<https://comments.cftc.gov/PublicComments/CommentList.aspx?id=3081&ctl00_ctl00_cphContentMain_MainContent_gvCommentListChangePage=1_50>).

Fixing the MiFID II post-trade transparency framework should be an urgent priority issue, and ESMA has correctly identified the problems to be addressed and the necessary solutions in this report. We urge ESMA to put forward the final recommendations necessary to deliver meaningful post-trade transparency to market participants in EU non-equities markets.

<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>

We agree that the post-trade SSTI deferral should be removed. The transparency regime would be significantly streamlined by combining the SSTI and LIS deferrals into one clear size-based deferral from post-trade transparency requirements. In addition, making this change would increase harmonization with other jurisdictions, where there is typically one clear size-based deferral.

However, we do not agree that the post-trade LIS threshold should be lowered in order to account for this change. The post-trade LIS threshold is set at the greater of (a) the 90th percentile by trade count and (b) the 70th percentile by volume, with the volume component typically the operative one. Permitting 30% of trading volume to be deferred from real-time post-trade transparency requirements is already quite significant and expanding the deferral risks undermining the benefits that should be delivered to investors. In addition, setting the size-based deferral at the 70th percentile by volume is consistent with the US regime, where the CFTC first set its size-based deferral at the 50th percentile by volume but the existing rule contemplates moving to the 67th percentile by volume (see CFTC regulation 43.6(f) at <https://www.ecfr.gov/cgi-bin/text-idx?SID=f785cd5a91a9fe4747ff5ab1e21979b1&mc=true&node=se17.2.43_16&rgn=div8>).

<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>

All three options presented by ESMA represent a significant improvement to the current framework, as they (1) significantly shorten the available deferral to “as close to real-time as possible” and (2) mask (or “cap”) the volume of transactions eligible for a deferral. Both of these elements are consistent with the post-trade transparency frameworks in the US that have delivered significant benefits to investors (see the academic research cited in response to Question 10).

We suggest that, based on experience in the US across bonds, futures, and OTC derivatives, the maximum deferral should be 15 minutes. In the US, the maximum deferral for large-sized blocks is (i) 15 minutes for bonds, asset-backed securities, and agency mortgage-backed securities,[[1]](#footnote-2) (ii) 15 minutes for most OTC derivatives (although slightly longer time periods apply to certain asset classes that are not subject to mandatory clearing or on-venue execution)[[2]](#footnote-3), and (iii) between 5 to 15 minutes for futures.[[3]](#footnote-4) As noted above in Question 10, market participants in both the bond and OTC derivatives markets in the US have recently re-affirmed the appropriateness of a 15 minute deferral for large-sized trades through market-wide consultations, and many of these same participants are active in EU financial markets.

We support either Option 2 or Option 3 given the difficulties that ESMA has experienced in accurately assessing liquidity for transparency purposes. For example, ESMA has determined that nearly all OTC derivatives are illiquid for transparency requirements, including interest rate and credit derivatives that have been assessed to be sufficiently liquid for the EMIR clearing obligation and the MiFIR derivatives trading obligation. As a result, far too many transactions are eligible for deferrals from post-trade transparency requirements.

Providing only a size-based deferral from post-trade transparency is consistent with the US post-trade transparency frameworks and should not be expected to negatively impact liquidity conditions. As a leading liquidity provider in non-equities asset classes, Citadel Securities has found that more transparent markets lead to greater efficiency, fairness, and resiliency. Post-trade transparency reduces information asymmetries that levels the playing field and spurs greater market competition that serves to improve overall liquidity conditions. The reduction of information asymmetries also promotes market resiliency during periods of volatility, with comprehensive information regarding price levels and market dynamics leading to greater investor confidence.

In the event Option 1 is selected, it is critical that the liquidity assessment process be improved in order to more appropriately calibrate the scope of the current deferral. This includes:

* Recalibrating the liquidity thresholds. The current liquidity criteria, including average daily notional amount and average daily trade thresholds, should be recalibrated using current market data that is comprehensive. This includes addressing the problems associated with the current interpretation of ToTV, as at the moment ~95% of off-venue trading activity in OTC derivatives is not being taken into account for purposes of liquidity assessments (as the trading activity is never reported by an APA). In addition, the entire FX asset class should not be considered illiquid.

Importantly, the liquidity thresholds should be tailored to reflect differences in trading volumes across asset classes. For example, liquidity thresholds that are appropriate for interest rate derivatives, which account for the largest segment of the OTC derivatives market, are not appropriate for the smaller credit derivatives market. We note that the liquidity thresholds must also be recalibrated to the extent Brexit results in UK trading activity no longer being taken into account when ESMA conducts the liquidity assessments.

* Adding qualitative criteria to the liquidity assessments. OTC derivatives that are determined to be sufficiently liquid for the EMIR clearing obligation should always be considered liquid for transparency purposes. Adding this qualitative criteria would help to address the current problem where liquid OTC derivatives are not subject to post-trade transparency requirements.

Finally, regardless of the option selected, we recommend that ESMA focus on two additional issues:

1. **Treatment of packages**. At the moment, only one leg of the package needs to be eligible for a deferral in order for the entire package to be eligible for a deferral. This approach results in far too many package transactions being eligible for a deferral since the average notional value of a leg of a package is often larger than the average notional value of a standalone transaction. It also allows market participants to easily structure a package transaction with the intent of qualifying for a post-trade deferral. We note that under US rules, all legs of a package must qualify for a post-trade transparency deferral in order for the package to qualify and we recommend that ESMA adopt a similar approach (see, e.g., <https://data.bloomberglp.com/professional/sites/4/BSEF-2014-R-7-Self-Certification-2014-10-291.pdf>).
2. **Third-country trading venues**. We note that ESMA has recently identified the third-country trading venues that operate under comparable post-trade transparency frameworks. To the extent changes are made to increase post-trade transparency in the EU for non-equities asset classes, ESMA should ensure that these third-country trading venues remain comparable with the updated EU requirements. Otherwise, we are concerned that certain market participants may be incentivized to move trading activity to third-country venues located in jurisdictions that do not have comparable post-trade transparency requirements. We note that under US rules, all transactions by US firms are subject to US post-trade transparency requirements, even if executed on third-country trading venues. It is important that an exemption from EU rules is only granted where the third-country transparency regime is truly comparable, including with respect to available deferrals.

<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>

We support publishing the full volume of a transaction that has received a deferral after a limited period of time. This information will assist market participants in understanding specific market dynamics, such as total traded volumes. We note that full trade sizes are published under certain US rules. First, the TRACE post-trade transparency framework for bonds in the US publishes the full, uncapped size of trades receiving a deferral six months after the calendar quarter in which the transactions are reported (see <https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-23.pdf>). In our view, this delay in publishing the full size of the trade is unnecessarily long, and we would support ESMA adopting a shorter timeframe. Second, full trade sizes are reported by SEFs on a T+1 basis, aggregated at the instrument level, and we would support a similar requirement applying to EU trading venues (see <https://www.clarusft.com/mifid-ii-transparency-can-we-get-it-right-this-time/>).

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

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

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

Yes, we agree with ESMA that there should be a stronger focus on enforcing existing rules and guidance. While ESMA has continued to provide additional guidance regarding how to populate specific data fields, in many instances this guidance appears to be largely ignored by market participants.

For example, ESMA provided additional guidance that clearly specified how to populate the “Delivery Type” field for interest rate derivatives in September 2018 (*see* Section 16 of <https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-56_qas_mifir_data_reporting.pdf>). However, analysis by ANNA-DSB in October 2019 shows that this guidance has not been implemented and that “a large population of OTC IRD users are continuing to create OTC ISINs with a delivery type of “Cash” for interest rate swaps where the currency amounts are paid in the reference currency” (<https://www.anna-dsb.com/2019/10/31/cash-or-physical-otc-ird-delivery-type-user-activity-evolves-but-more-work-needed-to-implement-the-esma-guidance/>). We are concerned that a similar lack of compliance exists for many data fields where ESMA has provided additional guidance, such as “IR Term of Contract.”

We recommend that ESMA engage more closely with ANNA-DSB to identify areas of non-compliance and put a stronger focus on enforcement in order to improve data quality.

In addition, in order to address the continuing lack of accessibility to the published data, ESMA should consider recommending a Level 1 change that would prohibit trading venues and APAs from charging for regulatory-required post-trade transparency data, even prior to the expiration of the 15 minute delay period. This will remove the commercial incentive trading venues and APAs currently have to decrease the quality of the data published free of charge in order to compel market participants to subscribe to expensive real-time data packages. We note that this approach is consistent with US post-trade transparency frameworks for non-equities, where real-time data is provided free or charge (or at an extremely low cost).

<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>

A post-trade consolidated tape (CT) meaningfully improves post-trade transparency for market participants if it is (a) comprehensive, (b) real-time, and (c) low cost (or free of charge).

Therefore, the optimal transparency framework should support those elements:

* + **Comprehensive**. At the moment, ~95% of off-venue trading activity in interest rate OTC derivatives is currently excluded from any post-trade transparency requirements due to the overly granular interpretation of “traded on a trading venue” (ToTV). We address how to fix this in Question 18.
	+ **Real-time**. At the moment, (1) too many non-equities transactions are qualifying for deferrals, and (2) the available deferrals are too long. We address how to fix this in Questions 11 and 12.
* **Low cost (or free of charge)**. A post-trade CT must be low cost (or free of charge) in order to be accessible by all investors and to level the playing with respect to access to information regarding market trading activity. This can be achieved by requiring trading venues and APAs to submit post-trade data to the CTP free of charge (i.e. mandatory contribution). Prohibiting trading venues and APAs from charging for regulatory-required post-trade transparency data, even prior to the expiration of the 15 minute delay period, therefore supports the establishment of a post-trade CT for non-equities asset classes. We address this further in Question 14.

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<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>

Yes, we agree that the current interpretation of ToTV significantly narrows the scope of post-trade transparency for OTC derivatives. As the analysis by ANNA-DSB shows, an extremely small percentage of ISINs created for OTC derivatives are reported to FIRDS. We note that users creating different ISINs for the same instrument is part of the problem and does not “inflate the numbers”, since the ESMA Opinion requires the ISIN field (RTS 23 Field 1) to “match” in order for an instrument to be considered ToTV. Therefore, a different ISIN alone is sufficient to render an instrument out of scope from post-trade transparency requirements.

We recommend that ESMA incorporate into its analysis estimates regarding the percentage of OTC derivatives not considered to be ToTV. In particular, one analysis found that~95% of off-venue trading activity in interest rate OTC derivatives is currently not considered ToTV. (<https://www.clarusft.com/what-we-need-to-do-to-fix-mifid-ii-data/>). This demonstrates the magnitude of the current problem and the urgency required to address it.

<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>

In our view, the ToTV concept should be eliminated for both transparency and transaction reporting in the interest rate, credit, and FX OTC derivatives asset classes. This would ensure that all OTC derivatives transactions are subject to transaction reporting, providing policymakers with comprehensive data for monitoring and oversight purposes. We further detail this recommendation in Question 18.

<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>

We strongly support Option 3 for the interest rate, credit, and FX OTC derivatives markets for the following reasons:

* **Establishes a comprehensive post-trade transparency regime**. Eliminating ToTV is the only way to ensure that all off-venue OTC derivatives are subject to post-trade transparency. Comprehensive post-trade transparency is critical in order for investors to perform accurate transaction cost analysis and best execution assessments, and enables the production of more general market research and commentary that benefits all market participants. Academic research finds that where post-trade transparency is comprehensively implemented, material benefits accrue to investors, including improved liquidity (even for larger sized trades), lower transaction costs, and increased competition. See our response to Question 10 for specific research citations.
* **Provides sufficient time to hedge**. Eliminating ToTV does not mean that all off-venue transactions are reported in real-time. Instead, the available post-trade deferrals are designed to provide sufficient time for liquidity providers to hedge, regardless of whether the transaction is executed on-venue or off-venue. The post-trade deferral should include (a) volume masking for large-sized trades, and (b) a short reporting delay of approximately 15 minutes. As a leading liquidity provider in non-equities asset classes, Citadel Securities has found that this type of post-trade transparency framework provides appropriate protections against information leakage while supporting robust competition and liquidity.
* **Levels the playing field between trading venues and SIs**. At the moment, all transactions executed on a trading venue are subject to post-trade transparency but the vast majority of off-venue OTC derivatives transactions executed with SIs are excluded. This creates an unlevel playing field in favour of SIs, and incentivizes SIs to keep as much of their trading activity away from regulated venues as possible. These incentives are contrary to the objectives of the post-crisis reforms to the OTC derivatives markets, which include increasing market transparency and transitioning OTC derivatives trading activity onto regulated trading venues.
* **Increases harmonisation with other jurisdictions**. As noted by ESMA, the post-trade transparency frameworks implemented in the US for non-equities asset classes, including OTC derivatives, options, futures, corporate bonds, municipal bonds, and agency mortgage-backed securities, cover all off-venue transactions and do not contain anything similar to the ToTV concept in MiFID II.
* **Reduces operational and compliance costs**. Removing the ToTV concept will eliminate the need for market participants to conduct checks and surveillance, on a daily basis, regarding whether each executed transaction is ToTV and subject to MiFID II transparency and transaction reporting requirements, which represents a significant compliance burden associated with the current regime. Operational costs associated with the change should be minimal, as market participants have already established the necessary reporting infrastructure under MiFID II and will simply leverage these existing systems to report a greater number of transactions. Unless there are market participants that only transact in non-ToTV instruments (which we doubt), the elimination of ToTV should not create new reporting parties or a need to establish new reporting arrangements.

Similarly, the elimination of ToTV should greatly simplify regulatory oversight of the transparency framework, reducing burdens on ESMA related to data collection, analysis, and publication and enabling NCAs to more easily assess whether market participants are complying with their reporting obligations.

* **Reduces systemic risk**. A key lesson of the financial crisis is the importance of providing policymakers with access to comprehensive data regarding trading activity in the OTC derivatives market for monitoring and surveillance purposes. Eliminating ToTV for transaction reporting is the only way to provide comprehensive data regarding off-venue transactions to policymakers.[[4]](#footnote-5) Providing policymakers with comprehensive data will not only assist in the analysis of specific market events, but will also improve general monitoring and surveillance capabilities, including those designed to detect disruptive trading practices or risks to market stability. These reporting enhancements will also protect market resiliency by increasing market oversight and will provide policymakers with the data to better evaluate how policy decisions may be expected to impact the market.

Eliminating ToTV for public post-trade reporting also reduces systemic risk. First, CCPs rely on publicly available data regarding market-wide trading activity for risk management purposes. Impeding their access to comprehensive information regarding off-venue trading activity that is not cleared at that specific CCP can negatively impact their margin calculations and risk management and default management frameworks. Second, the lack of available information regarding off-venue trading activity may complicate the ability of market participants to accurately value end-of-day positions, reducing the effectiveness of reforms designed to mitigate systemic risk, such as uncleared margin requirements and portfolio reconciliations.

* **The lack of suitable alternatives**. ESMA provides two other options to eliminating ToTV. The first retains the status quo. This would mean that ~95% of off-venue trading activity in interest rate OTC derivatives, for example, would continue to be entirely exempt from transparency requirements, even in instruments that are subject to the EMIR clearing obligation. In our view, selecting this option while having data regarding the significant shortcomings of the current regime would abandon the core MiFID II objective of increasing market transparency, particularly in historically opaque non-equities asset classes. It is imperative that off-venue transactions, which account for a significant percentage of overall market volume, are subject to transparency and transaction reporting requirements.

The second option would amend the interpretation of ToTV, with the intent of broadening its scope. However, this option would fail to deliver the benefits detailed above, leaving a post-trade transparency regime that (a) is not comprehensive, (b) creates an unlevel playing field between trading venues and SIs, (c) is not harmonised with other jurisdictions, (d) does not reduce the operational and compliance costs associated with implementing and monitoring ToTV, and (e) fails to appropriately mitigate systemic risk. Importantly, as long as market participants are subject to radically different post-trade transparency requirements depending on whether a transaction is considered to be ToTV, there will be incentives to structure around whatever definition of ToTV is provided.

The current regime has clearly demonstrated the practical difficulties associated with attempting to delineate specific characteristics of complex OTC derivatives that must be present in order for an instrument to be considered ToTV, characteristics that are likely to vary across asset classes. In addition, the current regime has clearly demonstrated how easy it is for market participants to structure around any definition provided by ESMA and that many SIs have commercial incentives to minimize the transparency that applies to off-venue trading activity. In our view, these limitations will continue to exist as long as the ToTV concept is retained.

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

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

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

We agree with removing the provisions allowing individual NCAs to temporarily suspend the transparency obligations. At a minimum, such a decision should be considered and applied on an EU-wide basis, which is not contemplated under the current regime. More fundamentally, maintaining robust transparency during all market conditions is critical to investor confidence, liquidity, and efficient market functioning. Preliminary analysis of recent market events demonstrates how transparency aids price discovery and improves resiliency in particular during volatile market conditions (see <https://www.clarusft.com/is-transparency-helping-markets-function/>). The waivers and deferrals contained in the transparency regime should be relied upon to provide appropriate protections, and overall market transparency should be protected, not undermined, during periods of volatility.

<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 support amending Article 28(4) to ensure that central aspects of the MiFID II framework are considered and protected as part of equivalence decisions. In particular, the legal and supervisory framework of a third country should:

* **Ensure trading venues provide market participants with non-discriminatory access**. Otherwise, EU market participants may not be able to access trading venues determined to be equivalent, fragmenting liquidity and increasing transaction costs.
* **Apply comparable transparency requirements to derivatives subject to the trading obligation**. Otherwise, an unlevel playing field may be created that negatively impacts EU trading venues, as certain market participants may be incentivized to transition trading activity to less transparent venues if determined to be equivalent.

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

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

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

We agree that the holistic approach taken by ESMA to evaluate liquidity for purposes of the DTO has produced a sensible result that is consistent with other jurisdictions and therefore the liquidity criteria do not require amendment at this time.

Going forward, we recommend that ESMA assess the impact of the DTO using transaction reports published under MiFID II instead of voluntary data collection exercises. In this report, it appears that ESMA is basing its analysis on data provided by only a handful of trading venues. It is critical that policy assessments take into account market-wide trading activity across all relevant trading venues, particularly given that certain trading venues may account for more volume than others and clients may not be active on all trading venues.

With respect to the scope of DTO, we note that it may be appropriate to expand in the future to fixed-to-float swaps in additional currencies and certain commonly traded forward-starting swaps (e.g. 1Y1Y and 5Y5Y). We recommend that ESMA regularly assess liquidity conditions in instruments that have largely transitioned to central clearing.

<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>

Given the significance of a decision to suspend the trading obligation for derivatives, we recommend that public feedback be obtained if practical given the circumstances at the time. While this may not be possible in every situation, policymakers should ensure they take into account various viewpoints prior to making such an important decision.

<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>

The following three topics merit ESMA’s attention:

1. **Monitoring the impact of the DTO on clients**. The mandatory trading of derivatives on regulated platforms is a central component of the G20 reforms, and is critical to achieving the policy goals of improving conditions for investors through increased transparency, more competition, and better pricing. Market experience with the implementation of the trading obligation in other jurisdictions has demonstrated the tangible benefits to investors that result from open and competitive execution, including better liquidity and lower transaction costs. Specifically, the Bank of England has found that market participants transacting USD interest rate swaps are saving as much as $20 million - $40 million per day, of which $7 million - $13 million is being saved by market end-users alone per day, due to lower transaction costs resulting from the implementation of the trading obligation in the US (<https://www.bankofengland.co.uk/-/media/boe/files/working-paper/2018/centralized-trading-transparency-and-interest-rate-swap-market-liquidity-update>).

However, the DTO only really started to directly impact clients once it was applied to Category 3 counterparties in October 2019 (as clients are generally not Category 1 or Category 2 counterparties). Therefore, the data collected by ESMA in connection with the current report does not take into account the impact of the DTO on clients, since it covered a period prior to the application of the DTO to Category 3 counterparties. Going forward, we recommend that ESMA focus specifically on the impact of the DTO on clients, as this is the segment of the market that is intended to be the primary beneficiary of the relevant changes in market structure.

As a related matter, ESMA should regularly assess whether a sufficient number of clients are subject to the DTO, as the intended benefits will only materialize to the extent that most of the market transitions to trading on regulated trading venues. We suggest conducting a regular review of the EMIR clearing thresholds (which also establish the counterparty scope of the DTO) to ensure they remain appropriately calibrated. This review should leverage “flow” data to calculate (a) overall trading volume by financial counterparties in the OTC derivatives subject to the DTO (which should all be considered ToTV and therefore the reported data should be more comprehensive) and (b) the percentage of this overall volume that is being executed on MTFs and OTFs.

This analysis can be done using the MiFIDView tool provided by Clarus (<http://mifidview.clarusft.com/>) by comparing (1) SI trading volumes reported by APAs with (2) trading volumes reported by MTFs and OTFs in instruments subject to the DTO. For example, the most significant APAs for OTC derivatives are Tradeweb (MIC codes TREA and TWEA) and Bloomberg (MIC code BAPA), as they include trading volumes from the largest SIs. ESMA should compare the trading volumes reported by these APAs with the trading volumes in OTC derivatives subject to the DTO reported by the trading venues listing instruments subject to the DTO (as identified by the ESMA register). This analysis shows that a large percentage of the OTC derivatives market remains exempted from the DTO due to the SFC thresholds established in EMIR. To the extent these trends continue, the EMIR thresholds should be recalibrated, as is permitted in EMIR.

1. **Prohibiting post-trade name give-up**. It is critical that EU market participants are able to access the trading venues that list instruments subject to the DTO. Unfortunately, certain trading venues are not complying with the non-discriminatory access requirements in Articles 18(3) and 53(1) of MiFID II.

One example of a non-objective and discriminatory trading practice is the continued use of “post-trade name give-up” by certain MTFs, and OTFs, that offer pre-trade anonymous trading protocols for OTC derivatives that are centrally cleared. “Post-trade name give-up” refers to the disclosure of counterparty identities post-trade, after a transaction has been executed anonymously. It does not relate to disclosed trading protocols, such as request-for-quote, where counterparties voluntarily disclose their identities to each other pre-trade.

The practice of “post-trade name give-up” has a legitimate purpose for non-cleared financial instruments that are executed anonymously (for example, through the use of a broker). For non-cleared instruments, trading counterparties need to know who they are matched with in order to manage the ongoing credit, operational, and legal exposures of the trade. However, EU trading venues are continuing to apply “post-trade name give-up” to cleared OTC derivatives that are executed anonymously, even though the two trading counterparties do not have any credit, operational, or legal exposure to each other. This is because these trading venues are typically dealer-only venues and “post-trade name give-up” serves as a meaningful access barrier to other types of market participants. “Post-trade name give-up” is a discriminatory practice that impedes market participant access to trading venues for the following reasons:

* It functions as a source of uncontrolled information leakage since a market participant has no control over who it will be matched with when executing through an anonymous trading protocol, such as an order book (in contrast to a request-for-quote, where a market participant will carefully chose which firms to disclose trading information to). Therefore, before using an anonymous order book with “post-trade name give-up”, a buy-side firm (such as an asset manager, insurance company, or pension fund) must be comfortable potentially sharing its trading activity with every other participant on the trading venue, including other buy-side firms. This is an unattractive proposition for buy-side firms that completely undermines the anonymous nature of the trading protocol and deters access and participation.
* It allows dealers to monitor whether buy-side firms have started to transact in anonymous order books. This information can be used as a policing mechanism by dealers to deter buy-side access and participation.
* There is no legitimate justification for the continued use of the practice for centrally cleared instruments. Straight-through-processing rules (STP) ensure that a cleared transaction is immediately submitted to a CCP , resulting in each trading counterparty facing the CCP and having no credit, operational, or legal exposure to the other trading counterparty. Even in the rare event that a transaction is rejected from clearing, the STP rules provide that the transaction either is void or is to be resolved by the trading venue, meaning that there is still no reason to disclose trading counterparty identities to each other. This is why “post-trade name give-up” is not used by trading venues in other asset classes where financial instruments are centrally cleared and traded anonymously, such as equities and futures (ETDs).

Due to the discriminatory nature of “post-trade name give-up”, non-dealer market participants (such as an asset managers, hedge funds, insurance companies, and pension funds) have been unable to join the trading venues offering anonymous execution of cleared OTC derivatives subject to the DTO. This reduces pre-trade transparency regarding available bids and offers, limits choice of trading protocols and access to available liquidity, and creates information asymmetries, as only dealers have full access to all of the available trading venues in the market.

For these reasons, the US CFTC has recently proposed to prohibit “post-trade name give-up” for OTC derivatives that are centrally cleared and executed anonymously. This action was specifically based on the equivalent CFTC requirement for trading venues to provide market participants with non-discriminatory/impartial access. The CFTC also engaged in extensive market outreach prior to taking this step, which revealed that clients and buy-side trade associations universally support prohibiting the practice and only the largest bank dealers disagree.

We recommend that ESMA clarify that the use of this practice for cleared OTC derivatives executed on trading venues is inconsistent with MiFID II non-discriminatory access requirements. This will ensure that EU market participants are able to access the trading venues that list instruments subject to the DTO.

1. **Reconsidering pre-arranged trading**. In the report, ESMA found that “about 40% of requests for LIS waivers were for pre-arranged transactions” and “the volume of genuine and price-forming on-venue trading in non-equity instruments is very limited”.[[5]](#footnote-6) As a result, we recommend that ESMA re-assess whether it is appropriate to permit pre-arranged trading in instruments subject to the DTO as long as the transaction is above the pre-trade LIS threshold.

As detailed in Question 3 above, the pre-trade LIS threshold permits a significant percentage of overall market activity to be pre-arranged instead of being competitively executed on transparent trading venues. At the moment, the pre-trade LIS threshold is calibrated such that 40% of transactions in a particular instrument qualify, which can easily cover over 75% of trading volume in that instrument (by notional). Permitting this much trading activity to be pre-arranged away from a regulated trading venue undermines the objectives of the DTO and materially limits its benefits to EU market participants.

It would be much more appropriate to use the **post-trade** LIS threshold for defining the scope of transactions in instruments subject to the DTO that can be pre-arranged. Limiting the scope of pre-arranging is consistent with MiFIR Article 28(1), which requires derivatives subject to the trading obligation to be concluded on one of the listed trading venues. While MiFIR provides trading venues with flexibility regarding the trading protocols that they can offer, transactions in derivatives subject to the trading obligation still must be executed on a trading venue using a trading protocol offered by that venue. In contrast, allowing transactions to be entered into completely away from an MTF or OTF undermines the trading obligation, as it allows bilateral off-venue trading to continue to occur.

We note that US rules currently provide that pre-arranged trading is prohibited for transactions in derivatives subject to the trading obligation, except for large “block” trades that receive a deferral from post-trade transparency.[[6]](#footnote-7) Therefore, using the post-trade LIS threshold as a reference point would increase harmonisation with US rules.

At a minimum, ESMA should analyse the percentage of trading volume (by notional) that is covered by the pre-trade LIS waiver and incorporate a trading volume component into the pre-trade thresholds in order to ensure that a minimum amount of total trading activity (by notional) in instruments subject to the DTO cannot be pre-arranged. We would suggest that the pre-trade LIS threshold for each sub-class should be the greater of (a) the 60th percentile by trade count and (b) the 50th percentile by volume.

<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>

In our view, the liquidity assessments for bonds should be simplified in a manner that provides for more stable results and that correctly determines many more bonds to be liquid. A framework that concludes only .15% of bonds are liquid is not correctly calibrated and does not reflect market realities.

<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>

Yes, ESMA estimates that moving to stage 2 will result in .32% to .48% of bonds being considered liquid. This remains far below ESMA’s original estimate that 2% of bonds would be considered liquid in stage 1 and still only captures a small percentage of bonds that are actually viewed as liquid by market participants. Increasing the number of bonds considered to be liquid will improve overall market transparency, as it will reduce the number of transactions eligible for waivers and deferrals.

<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>

No, we do not agree. Despite the data challenges that ESMA continues to encounter with respect to derivatives, the MiFID II regime has now been in place for 2.5 years. In that time, as detailed in this report, it has become clear that the current framework has not delivered meaningful pre-trade transparency for non-equities asset classes. Indeed, as a result of these findings, ESMA has proposed making significant changes to both the Level 1 and Level 2 frameworks in order to improve conditions for investors. In the meantime, while those more significant changes are being considered, ESMA should take immediate steps to increase pre-trade transparency. One such step that ESMA is empowered to recommend is to increase the pre-trade SSTI thresholds by moving to stage 2. In light of the widely accepted conclusion that the current regime has not delivered meaningful pre-trade transparency, ESMA has a strong and clear justification to move to stage 2. We note that even under stage 2, 60% of transactions in an instrument will qualify for a pre-trade waiver (which will likely include over 90% of volume by notional), and therefore the waiver remains incredibly broad and generous in terms of overall scope.

<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>

Yes, as noted in Question 27 above, the current framework has not delivered meaningful pre-trade transparency for non-equities asset classes. Therefore, ESMA should take immediate steps to increase pre-trade transparency, including by recommending to increase the pre-trade SSTI thresholds by moving to stage 2.

<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. FINRA Rule 6730(a)(1). [↑](#footnote-ref-2)
2. CFTC Regulation 43.5. [↑](#footnote-ref-3)
3. <https://www.cmegroup.com/rulebook/files/cme-group-Rule-526.pdf>. [↑](#footnote-ref-4)
4. We note that the current transaction reporting requirements apply to instruments that are ToTV and transactions with ToTV underliers. However, this does not meaningfully expand the scope of transaction reporting requirements for many OTC derivatives, such as interest rate derivatives, which do not contain underliers. [↑](#footnote-ref-5)
5. Pages 31-32. [↑](#footnote-ref-6)
6. *See* CFTC Regulation 37.203(a) (“Specific trading practices that shall be prohibited include frontrunning, wash trading, **pre-arranged trading (except for block trades permitted by part 43 of this chapter** or other types of transactions certified to or approved by the Commission pursuant to the procedures under part 40 of this chapter), fraudulent trading, money passes, and any other trading practices that a swap execution facility deems to be abusive”), available at: [http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2013-12242a.pdf](http://www.cftc.gov/idc/groups/public/%40lrfederalregister/documents/file/2013-12242a.pdf) at 33587. [↑](#footnote-ref-7)