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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 | European Venues and Intermediaries Association |
| Activity | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |[x]
| Country/Region | Europe |

# Introduction

Please make your introductory comments below, if any:

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

**Summary**

The European Venues and Intermediaries Association, together with the London Energy Broker’s Association (together “EVIA”) welcome the opportunity to respond to ESMA’s consultation on the MiFID II/R review report on the transparency regime for non-equity instruments and the trading obligation for derivatives. By way of context, we underline that it remains the core business of our members to solicit and to advertise tradable interests in investments and other balance sheet instruments and payments in order to negotiate, to match (“arrange and bring about”) and to conclude (“execute”) transactions between clients. The absolute requirement to foster and promote liquid, transparent and fair markets lies at the heart of our members’ business models. EVIA members arrange the majority of multilateral liquidity pools and transactions not only in the EU, but across the UK, Asia and the America’s as well.

EVIA subscribes to the widespread view that the gains in utility of market information over the last three years have been very modest, indeed; with pre-trade transparency likely unchanged, at best, and generally confused with “addressable liquidity”. We also agree with the general view held by market participants that they all had no difficulty gaining access to information where markets were trading and what was trading (“transparency”) but had every difficulty in accessing market depth and transferring risk (“liquidity”). This consultation concerns the transmission of information about that liquidity provision. The relevance of this has risen due to the importance of the ongoing disintermediation of wholesale markets. The causes of this are known, due to the high costs of acting in the role of dealer principal stemming from the higher cost of conduct, much more expensive costs of funding and inventory, and the pace of technological change.

EVIA members remain highly sceptical of any use-cases for a post-trade consolidated tape and wait to understand how such can help to build deeper and more open capital markets in Europe. We note that it is reserved to certain cash markets, for which data has become very expensive and for which certain “Best Execution” metrics are more meaningful to market participants than the price and volume reports of more wholesale and episodic products.

We believe that a level 1 rewriting of the trading venue definition, as we set out in [our reply to the recent European Commission consultation on market structure within MiFID II/R](http://www.EVIA.org.uk), to be broader, wider and dependent on the licensing of a multilateral activity rather than turning solely upon trade execution, would vastly increase the transparency outcomes. We note this also has the consequence of segregating transparency from transaction reporting as execution may not happen on the venue carrying out the matching activity.

**Transparency**

Given its limited utility to market participants, we believe mandatory pre-trade transparency should be abandoned rather than increased. Instead, post-trade outcomes could be vastly improved by changes to market structure, instrument taxonomy, delivery systems, and additional rule revisions.

Our members report that, although they each make their markets pre-trade transparent in an open and free-to-access method, there is little evidence that it is being consumed or used by trading market participants. This is partially because the RTS 23 structure of the information renders it largely unintelligible; and, to a greater degree, because market participants find the information that they have access to as a participant in a trading venue far more timely, digestible and meaningful.

We find it difficult to understand what goal the pre-trade transparency rules meet in a wholesale context. The input from market participants is that they seek information as to the depth of market and liquidity. Not only do non-equities--and particularly derivatives--markets transact in large scale blocks and in a contingent manner as parts of package transactions; they are negotiated by way of spreads and “core economic terms” rather than simple prices. Therefore, the concept of pre-trade transparency, as MiFIR recast it from a MiFID I description of cash equity markets, has proved wholly inappropriate to these markets.

EVIA supported the creation of the Size Specific to the Instrument (“SSTI”) waiver and disagrees with the suggestion from ESMA to remove this safeguard. That our trading venues have not reported the use of the SSTI in the initial incarnation of MiFID II/R is due to the very small number of liquid instruments, outside of cash equities, and the broadly comparable starting level of the Large in Scale (“LiS”) waiver thresholds. This should not be taken as a sign that the SSTI waiver has no relevance; particularly as LiS thresholds change over time and more instruments are determined to be liquid.

**DTO and Brexit**

Regarding the DTO, EVIA concurs with the assessment that ESMA should have a standalone power to request the Commission to suspend the DTO, independent of whether or not the CO has been suspended. We also note that market functioning would be best served if the extraterritorial application of the DTO were to be eliminated. In any case, the Brexit-related problem of incompatible UK and EU DTOs applying to UK branches of EU firms should be addressed by a swift equivalence decision. The burden is on the Commission to carry through the intention of the legislation as soon as possible.

Brexit brings into focus the need to ensure that the MiFID II legislative package is implemented in a way that does not create unhelpful barriers to cross-border trading activity. It also invites caution in relation to changes (for example, to waivers and deferrals) that could impact upon liquidity during times of market stress.

**About:**

The European Venues and Intermediaries’ Association promotes and enhances the value and competitiveness of *Wholesale Market Venues, Platforms and Arranging Intermediaries* by providing members with co-ordination and a common voice to foster and promote liquid, transparent and fair markets. It maintains a clear focus and direction, building a credible reputation upon 50 years of history, by acting as a focal point for the industry and providing clear direction to their members when communicating with central banks, governments, policy makers, and regulators.

Its core strength is the ability to **consolidate views** and data and act as a common voice for an industry operating in a complex and closely regulated environment, by acting as a central point for the industry and providing clear communication with central banks, governments, policy makers, and regulators.

It provides **specific standards** and maintains a clear focus and direction for the participant s and stakeholders across the market ecosystem, building upon a credible reputation from over 50 years of experience.

<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>

EVIA does not see any value in increased pre-trade transparency across any of the different non-equity markets.

We see almost no demand for the mandatory pre-trade transparency data from market participants. We note, also, that the pre-trade transparency rules have increased costs for EU trading venues, while traded volumes appear to be rising outside the MiFID venue perimeter and “in the dark”. This is especially true for packages, portfolios and other contingent trade sets, for which the published data is not helpful or representative. In this respect, EVIA believes that markets can be made to function better by revising those parts of the current rules that encourage trades to be arranged, matched or concluded off-venue.

Rather than a focus on pre-trade transparency, policymakers could have more impact by focusing on an improved post-trade transparency offering through changes in instrument taxonomy and delivery systems (including a consolidated tape).

<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>

EVIA does not 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. The SSTI waiver remains largely unreported because of the very design of MiFIR to provide greater protections against false positive liquidity assignments in the first years after MIFID. Clearly, this does not detract from the design intent overall.

In respect of improving the level of pre-trade transparency available, EVIA would recommend removing the pre-trade transparency provisions in Articles 8, 9 MiFIR (and therefore in related articles and recitals) in order to focus on post-trade transparency. The demand for pre-trade transparency data from non-equity trading venues is negligible.

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<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>

EVIA sees no reason to delete the SSTI and therefore disagrees with ESMA’s proposal. We hold this view the same across all asset classes.

As per our comments above, the SSTI will become more relevant, relied upon and reported under the normal course of events as MiFIR passes through the liquidity stages and ongoing recalibration of LiS thresholds. Whilst SSTI may not have been a prominent feature to date, going forwards it will become more relevant.

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<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>

EVIA does not have a position on this question.

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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>

No EVIA does not support turning the hedging exemption into a limited negotiated trade waiver [‘NTW’]. The hedging exemption has real and valid uses currently. Any further NTW across non-equites should be a discreet addition in its own right.

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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>

Yes, EVIA does agree with ESMA issuing an opinion for each new trading system and therein defining its characteristics and the transparency requirements. This should not preclude that the definitions for each of the systems should be sufficiently broad in scope to permit innovation and futureproofing.

EVIA notes that the trading systems described in the MiFID II package do not align to the trading systems operated by EVIA members, because they are based on systems common to equities trading. We would suggest that this subject be revisited in order to ensure that the categories of trading systems reflect actual practices without being prescriptive.

The formalisation of an approach containing a statement of the modalities would be welcome if it can better locate the prescribed functionality of a system or facility inside the trading venue perimeter, especially if it can be achieved in a more timely manner. Currently many such protocols or systems have recast themselves outside the MiFID perimeter, often by dint of not concluding the transactions themselves or as a series of bilateral arrangements. Furthermore, we suggest that this will become of particular relevance when applied to crypto assets and to trades occurring on distributed ledgers.

We note that in respect of ‘Opening and Closing auctions,’ these are principally historical and related to retail equity methodologies that have developed in order to match outstanding client orders before a daily reconciliation and trade processing requirement could happen. These are not necessary facets of non-equites markets which are generally continuous and operate straight through processing.

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<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>

EVIA notes that the trading systems described in the MiFID II package do not align to the trading systems operated by EVIA members, because they are based on systems common to equities trading. The term “hybrid system” is used as a catch-all category within the MiFIR perimeter. We would suggest that this subject be revisited in order to ensure that the categories of trading systems reflect actual practices without being prescriptive.

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<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>

EVIA does not have a position on this question.

TYPE YOUR TEXT HERE

<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>

No, EVIA sees no value in further standardising the pre-trade transparency information; indeed, it would be better to remove the pre-trade transparency requirements from the MiFID II package.

We see almost no demand for the mandatory pre-trade transparency data from market participants. We note, also, that the pre-trade transparency rules have increased costs for EU trading venues, while traded volumes appear to be rising outside the MiFID venue perimeter and “in the dark”. This is especially true for packages, portfolios and other contingent trade sets, for which the published data is not helpful or representative. In this respect, EVIA believes that markets can be made to function better by revising those parts of the current rules that encourage trades to be arranged, matched or concluded off-venue.

Rather than a focus on pre-trade transparency, policymakers could have more impact by focusing on an improved post-trade transparency offering through changes in instrument taxonomy and delivery systems (including a consolidated tape).

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

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

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

Yes, EVIA does agree with ESMA’s summary that post-trade transparency is indeed suboptimal. However, we would point out that these matters are in no way determined by the venues, who can only publish or send to APAs the prescribed information.

Notwithstanding these limitations, EVIA does concur that more standardisation would surely increase the utility of post-trade transparency; and we note that better and global adoption of UPIs and UTIs should provide for significant benefits. We have proposed to ESMA before, that a small subset of the post trade requirements, principally the core economic terms [‘CETs’] of each trade should be made public as soon as reasonably possible. Because non-equity markets are intrinsically global, it is important that any further measures that ESMA recommends are made entirely in accordance with ISO and IOSCO standards in a way that ingested data can be harmonised between jurisdictions.

EVIA also notes that, as also acting in the capacity as the operators of SEFs under CEA/Dodd-Frank, we observe that the US required post-trade reporting within minutes has not diminished liquidity nor dissuaded counterparty involvement. We also add that in general, trading venues themselves do not see meaningful divergences between EU NCAs to date.

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<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>

No, EVIA does not agree with this ESMA proposal to remove the post-trade SSTI.

As noted above, the SSTI mechanism has not been used to its fullest because of the liquidity status of instruments and the LiS thresholds being set at a level that corresponds closely to the SSTI levels. We would still fully expect the relevant market sectors, instruments and trading venue methodologies to rely on the SSTI going forwards, as more instruments are treated as liquid and LiS thresholds rise.

With respect to LiS thresholds, clearly different market segments and products would be affected and would evolve differently, especially money markets, FX and commodities markets. In terms of EU bond markets, which are predominantly arranged under ‘Matched Principal’ [“MP”] models, again the effects will be idiosyncratic rather than generalised.

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<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>

EVIA does not have a position on which of the options ESMA proposes is preferable; however, we would make the following four points:

1. As referred to above, EVIA did advocate within the initial policy design for MiFID that the CETs should be made public sooner than the detailed transparency disclosures. Trading venues have always broadcast trade information in a manner that masks the balance sheet risks to the transacting market participants. If anything, the transparency rules have, on balance, made these disclosures more difficult to produce and consume. Therefore, the ESMA proposals do progress in the right direction, but we would stress the need for sufficient proportionality between products, instances and use cases, whilst at the same time take account of the need for harmonisation with third country regimes. Therefore, we would urge ESMA to first create broad principles in the international standards bodies before considering EU rules.
2. We consider what ESMA is proposing across all the three options put forward is an “EU Trace.” Clearly, the European Commission has put forward proposals under the CMU initiative which are closely tied to MiFID II/R reform, and we would therefore expect any ESMA proposals to be closely aligned with the European Commission. This is particularly relevant in terms of scope, where the emphasis is currently on fixed income instruments which can be coherently identified through current reference data [‘ISINs’]. The US Trace only applies to domestic corporate bonds, and the evidence is scant that it has improved transparency. It has been suggested that its introduction prompted the shift of risk transfer activity into derivative markets and away from cash securities.
3. The risks of getting the calibrations wrong will likely result in the migration of activity and flows outside the regulated perimeter, as we have witnessed across the implementation of MiFID II/R to date.
4. Finally, and perhaps most important, is the cost/benefit framework into which any MiFID II/R Refit proposals should sit. Changes which appear theoretically advantageous may actually be more costly to implement than is justified by results that will be obtained. It may be the case that incremental changes are more effective than abrupt changes of the types imposed in the EMIR Refit model.

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

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

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

Please see the EVIA answers to question 12. We reiterate that the detailed considerations for post-trade transparency disclosures should be developed and owned by the market participants and principals themselves.

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

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

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

EVIA firmly disagrees with the suggestion that a stronger focus on enforcement is needed to improve the quality of post-trade data. While data quality is indeed sub-standard, the issue is not the publication arrangements of trading venues; it is the construction of the transparency regime itself, including its trade identification mechanisms.

Firstly, as the operators of MiFIR trading venues, we would note that the data quality in FIRDs and FITRS has suffered due to the challenge to access the files in a meaningful way and connect them to addressable liquidity. We believe that there are too many gaps in the data production system feeding into IRDS/FITRS; whilst, in respect of derivatives, the ongoing reliance on the ANNA\_DSB has complicated the data quality debate.

An incomplete and difficult-to-interrogate FIRDs is usually ignored in favour of an expensive and privatised DSB, which is equally dependent upon the indexation of post-trade transparency by individual ISIN reports. These do not map back to trading, but the interest of participants is to relate data to transactions in their economic whole (for example, as packages). As a first step, we would strongly recommend the adoption of UPIs as appropriate reporting formats in preference to bare ISINs.

EVIA members operating MiFIR trading venues extract and freely publish very large amounts of compliant transparency data on a daily basis, but this remains universally overlooked by market participants because the venue interface naturally provides a more usable and timely resource for this information. It appears to us that the underlying barrier within MiFIR was to suppose that in creating “machine readable data,” so that information would then become readily consumable, which it clearly has not.

In responding to the EU Commission’s consultation on MiFID II/R last month, EVIA recognised that the development of a post trade CTP for fixed income bonds was predicated on an improvement in data quality and standardisation; however, such a construction should in itself contribute to further and ongoing standardisation and improved data quality by the peer review and consumption of the tape formed from the submissions. The CTP, therefore, together with a more open approach to reference data, are the two changes at level 1 which would improve data quality: not fiddling with pre-trade transparency.

In summary, we maintain our strong advocacy for RTS2 to form the basis of post-trade transparency when expanded into CFI product identifiers. Such a move towards global standards is imperative.

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<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>

EVIA emphasises that a post-trade CTP is only suitable for spot starting fixed ISIN instruments; that is, both liquid corporate and sovereign cash bonds. The transparency regime envisaged under a CTP is not suitable for derivatives which are traded via pricing core economic terms and are generally nominations of fungible cashflows and therefore not discreet.

The most important practical change that EVIA would propose is the addition of information as to whether any trade is “price forming” or not, because clearly the decision around the deployment into a CTP needs to take account of this. We note that in this case example as in many others, the widespread adoption of the Financial Information Exchange protocol [“FIX”] will seek to solve this in a stakeholder led process and generally provisions the benefits of an open and common industry standard such that the reporting of these instruments can provide for adequate data quality.

Away from FIX protocol standardisation, clearly the further issue for harmonised transparency is to address the differential national deferral regimes. Since the CTP only requires certain fields and flags, these may be provided separately to the broader transparency disclosures and therefore we do not think that this would require a fundamental revision of the MiFID II rules.

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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>

Overall, we agree with ESMA’s assessment. As operators of trading venues, all EVIA member venue activities are by definition ‘TOTV.’ Members do, however, arrange and bring about trades which are not concluded on their MiFID venues, nor a pre-arranged block on another venue or exchange, and are consequently “X-OFF.”

In general, we have found the concept and the application of the TOTV concept to be confusing and an obstacle to transparency, especially in respect of derivatives, packages, foreign exchange and SFTs. The principle hurdle arises from the RTS23-based instrument definition.

Therefore, as stated in prior answers, we would endorse a broader approach to identifying instruments based upon UPI and CFI taxonomies and referenced to RTS 2 within MiFIR.

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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>

EVIA believes that a full alignment between the reporting and transparency scope is not appropriate. This is because transparency and transaction reporting are very different functions with separate attributes. For instance the concept of “Market side” versus “Client side” is becoming a more prevalent reporting topic, especially as trading venue customers more regularly act as agents for buyside firms, but with substantial netting occurring within the intermediary to the trading venue.

Looking forwards, we believe that the definition of a trading venue should be predicated on a licensable activity and not solely turning on the conclusion or the execution of a transaction. Therefore, under such an evolved market structure framework, the trading venues would be responsible for transparency, but they may not automatically hold any role for transaction reporting if the execution is legally finalised in the FMIs, even where market counterparties are not themselves reporting firms. Such a level 1 rewriting of the trading venue definition, as we set out in [our reply to the recent European Commission consultation on market structure within MiFID II/R](http://www.EVIA.org.uk), to be broader, wider and dependent on the licensing of a multilateral activity rather than turning solely upon trade execution, would vastly increase the transparency outcomes. We note this also has the consequence of segregating transparency from transaction reporting as execution may not happen on the venue carrying out the matching activity.

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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>

EVIA supports option 3, because we do not see any benefit from the concept of TOTV.

Under option 3, the concept of TOTV for OTC-derivatives would be abandoned and, in principle, any OTC derivative would be subject to post-trade transparency and transaction reporting. This would remove an incentive for market participants not to trade on MiFIR venues, or to broadcast their interests and arrange their trades on facilities that are not licenced as venues. It follows that option 3 most closely fits with our view that the definition of a trading venue should be broader and predicated on a licensable activity, so that it is not solely turning on the conclusion or the execution of a transaction.

We do think that option 2 would present more difficulties and complications than it would solve, whilst the status quo option continues the situation that many market participants find it more beneficial not to conclude trades within the MiFID II perimeter.

It follows from our prior answers concerning the difficulties experienced with the ISIN identifier that we do concur with ESMA’s comments in paragraph 201 that the ISIN should not be one of the key characteristics to be met in order for an OTC derivative to be within scope.

We also endorse taking an approach that more closely harmonises with the approach taken in the US for derivatives under part 43 of the CFTC rules for post-trade transparency.

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<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>

EVIA disagrees with ESMA’s proposal. EVIA supports continuing the possibility for temporarily suspending the transparency provisions; principally, because it remains too early to make any coherent view otherwise, but also taking account of the stressed conditions of the markets due to the volatile events seen during Q1 2020.

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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>

EVIA broadly agrees with ESMA’s assessment that no substantial changes to Article 28 MiFIR are needed with reference to equivalence decisions, circumvention provisions, and the link to the EMIR clearing obligation (CO). We note that these provisions are mindful of ongoing G20 commitments.

We continue to encourage the European Commission to accelerate the process of adopting equivalence decisions under MiFIR Article 28(4); in particular, with respect to UK trading venues. This would greatly simplify the supervision of the circumvention provisions cited within Article 28.

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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>

EVIA broadly agrees with ESMA’s conclusions that it is not currently necessary to amend the provisions at Level 1 and Level 2 concerning the criteria set out in Article 32 and RTS 4, respectively. This is principally because it remains too early to tell, but also considering the unknown impacts from the mutual recognition outcomes surrounding Brexit.

Article 32.4 does present some conundrums under Brexit without either equivalence or a full mutual recognition, because most of the derivatives traded on MiFIR venues are cleared in UK CCPs.

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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>

Yes, EVIA does concur with the assessment that ESMA should have a standalone power to request the Commission to suspend the DTO.

The procedural timeframes set out in paragraph 259 appear coherent, and we agree that the important aspect here is that the suspension would be an appropriately swift procedure.

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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>

We wish to highlight, again, the impact of conflicting UK and EU DTOs. This problem arises because of the extraterritorial application of the EU DTO, and it can be resolved by an equivalence determination or deferential mutual recognition.

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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>

It has proven helpful to have the relevant information in one place and we therefore agree with ESMA’s suggestion in paragraph 264.

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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>

EVIA notes the empirical work done by AFME in respect of the liquidity calculation for bonds and refers to their response.

 TYPE YOUR TEXT HERE

<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>

EVIA notes the empirical work done by AFME in respect of the liquidity calculation for bonds and refers to their response.

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<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>

Yes EVIA firmly agrees that it is not yet appropriate to move to stage 2 for the determination of the pre-trade SSTI thresholds for all non-equity instruments not only because of the challenges to transparency in the experience of MiFID to date, but equally due to the uncertainties surrounding the impending Brexit event and the absence of a widely adopted and understood equivalence framework between the UK and Eurozone activities.

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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>

EVIA notes the empirical work done by AFME in respect of the liquidity calculation for bonds and refers to their response.

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<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>

EVIA concurs with the broader market view that the liquidity calibration methodology has not worked in respect of commodities, most especially that set of commodities in the sub asset classes: Energy commodity futures/forwards; Energy commodity options; and Energy commodity swaps. In the first instance the MiFID II liquidity analysis needs to be normalised to a base quantity unit that is native to the asset class. For commodities this will typically be a specific unit of measure (e.g. barrels, tons, MW, etc.). We find the deployment of the unit “lots” wholly meaningless and inappropriate in the framework, not least because venues can arbitrarily create and set “lot size” where none existed before MiFID II.

Waiver thresholds have also failed the above sub asset classes. A broad-brush analysis of the can simply be viewed by comparing the LIS to the traded “Block Size” and “Standard Market Size” in the markets. For these reasons alone, SSTI remains a vital tool for the operation of transparency rules in commodity markets, but will only be observable to CAs, ESAs and other relevant authorities once the stay on open access provisions is lifted and trading venues can admit cleared liquidity for on venue trading.

In general, the “false positives” in these sub asset classes stand in stark contrast to the other asset class outcomes in the experience of MiFID to date. The reasons for this are several and fundamental, we would highlight that the approach within MiFID identifies the instruments poorly and out of context to the underlying physical market. It compounds errors by calculating ADNA and ADNT by reference to the unit price by seeking to measure the notional value of transactions. The failures of the approach would be better addressed in level 1 definitions which are outside the scope of this response, but we draw attention to comments we set out in [our reply to the recent European Commission consultation on market structure within MiFID II/R](http://www.EVIA.org.uk).

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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>

EVIA supports the introduction of the segmentation criteria proposed by ESMA and because they are not mutually exclusive, would endorse both SC1 and SC2 proposals as “quick fixes” at level 2. However, a similar outcome would be obtained by simply restating the sub asset classes as illiquid for an interim period.

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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>

It follows from our comments to section 3 that EVIA\_LEBA considers pre-trade transparency rules to be an ineffective requirement in general and entirely ignored by market participants under MiFID II. The commodities framework mistakes individual market operators and designated contracts for the actual instruments with concomitant access and competition malfeasance. We therefore caveat these responses to level 2 specific comments where RTS 2 sets out the methodology for calculating SSTI and LIS thresholds.

We would point out that in the first instance any false or inappropriate LIS thresholds could be safeguarded by maintaining an SSTI below “market standard size,” thus enabling on venue execution of the wholesale liquidity requirements, usually spread based and OTF arranged, once the open access provisions facilitate clearing access. We also note from question 29 that MTFs and OTFs do not calibrate or admit instruments in terms of ‘lots’ and this would in appropriate for energy markets that are arranged and executed in actual standardised quantities such as barrels, tons, MW, etc.

EVIA\_LEBA does agree that the current percentile approach can generate counterintuitive outcomes, but moreover, its complexity is simply unwarranted given the paucity of the results. It is clear to any observer of European energy markets where the liquidity is concentrated, as there are benchmark instruments in Gas, Power, Coal, Oils and Emissions to which all other instruments and physical forwards are arranged as spreads. It’s clear that the current quantitative process fails to elucidate this common market practice and indeed makes tertiary markets admitting regional instruments, whose liquidity is dependent on wholesale arranged spread trading by LEBA firms, falsely liquid and with an inappropriately high SSTI and LIS. Therefore, we would rather endorse a more straightforward approach to observe trade frequency and standard size rather than volume as liquidity indicators, leaving the granularity of the instrument definitions as the key metric.

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