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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 | Invesco |
| Activity | Investment Services |
| Are you representing an association? |[ ]
| Country/Region | International |

# Introduction

Please make your introductory comments below, if any:

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

As a global asset manager with operations across the EU, Invesco welcomes the opportunity to contribute to the European Securities and Markets Authority (ESMA) consultation on the MiFID II/MiFIR transparency regime for non-equity and the trading obligations for derivatives.

While the MiFID II/MiFIR framework has only been in application since January 2018, it is appropriate to consider the application and effectiveness of the MiFID II/MiFIR regulatory framework in the context of the effective functioning of European financial markets.

On balance, we believe that the implementation of MiFID II/MiFIR has generally improved the overall regulatory framework in financial services, and that significant and positive progress as regards market structure has been achieved. However, we also believe that the MiFID II/MiFIR framework would benefit from some targeted amendments and optimisations.

As such, in responding to this consultation, Invesco has focused on the following areas:

* the pre-trade transparency regime for trading venues in respect of non-equity instruments;
* the post-trade transparency regime for trading venues and investment firms in respect of non-equity instruments;
* the trading obligation for derivatives (DTO); and
* the trade percentile for the determination of the pre-trade SSTI threshold.

On each of these items, Invesco can provide further detail at ESMA’s request.

<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>

Invesco strongly supports the objectives of MiFID II/MiFIR framework to enhance the efficiency, resilience and integrity of financial markets, and ultimately improve their functioning. It is important, however, that the consideration of potential adjustments to the regime is based on reliable, high quality data.

We therefore acknowledge ESMA’s reservations, as expressed in paragraph 67 of the consultation, that there are a number of issues with respect to the quality of data relating to non-equity instruments which may undermine the validity of the analysis and subsequent policy considerations.

Moreover, we also note that ESMA “recognises that, for non-equity instruments other than bonds, the first regular transparency calculations will only be published in May 2020”. Indeed, since the publication of the consultation, the application of the rules obliging the publication of these calculations has been pushed back due to the implications of the Covid-19 pandemic.

In this regard, we generally consider that a prudent approach to potential amendments to the Level 1 text on the transparency regime for non-equity instruments would be to first allow the full suite of rules to apply (inc. those which have been pushed back) and, thereafter, to undertake further analysis of the operation of the regime in full view of the data. Implementing changes to the regime without a reliable view of the operation of certain market segments could bring about unintended consequences and negatively impact market liquidity, thus increasing the principal risk of affected asset classes.

However, despite the limitations highlighted by ESMA, our experience in the market since the introduction of the MiFID II/MiFIR framework indicates that certain elements of the pre-trade transparency regime for non-equity instruments would benefit from targeted simplification and optimisation. We provide further details of such amendments herein.

<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>

Generally, as outlined in our response to Q1, we believe that a prudent approach to considering potential amendments to the broader transparency regime for non-equity instruments would be to first allow the full suite of rules to apply (inc. those which have been pushed back) and, thereafter, to undertake further analysis of the operation of the regime in full view of the data.

However, as we also alluded to in our response to Q1, and have outlined in our responses to subsequent questions, we believe that particular elements of the pre-trade transparency regime would benefit from targeted simplification and optimisation, for example deleting the pre-trade SSTI waiver and, at the same time, lowering the pre-trade LIS threshold proportionately across all asset classes.

<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>

Invesco agrees with ESMA’s assertion in the first subparagraph of paragraph 73 of the consultation that the SSTI-waiver adds further complexity to an already complex pre-trade transparency regime in representing another threshold to be assessed. As such, we agree with ESMA’s recommendation to delete the pre-trade SSTI waiver and lower the pre-trade LIS threshold proportionately.

<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>

So as to ensure regulatory coherence and consistency, Invesco agrees with ESMA’s Option 2 – to remove the SSTI-concept for the SI-quoting obligation and to replace it with a reference to the LIS.

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

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

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

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

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

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

We agree with ESMA that innovation with respect to trading systems is important and can be beneficial to market participants and, ultimately, end-investors. We also agree that the relevant rules should provide sufficient flexibility to accommodate such innovation and related market developments. However, we believe that the current definitions of trading systems and their respective transparency requirements, as set out in Annex 1 of RTS 2, are sufficient in respect of the systems used to trade in fixed income instruments. Therefore, we do not agree with ESMA’s proposal as set out in paragraph 94 of the consultation.

<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>

In line with our response to Q6, we believe that the current definitions of trading systems and their respective transparency requirements, as set out in Annex 1 of RTS 2, are sufficient in respect of the systems used to trade in fixed income instruments. Therefore, we do not agree with ESMA’s proposal as set out in paragraph 95 of the consultation.

<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>

In line with our responses to the July 2019 ESMA consultation on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments and the February 2020 European Commission consultation on the MiFID II/MiFIR framework, we agree with ESMA’s conclusion (paragraph 105 of this consultation) that market participants challenge the assertion that vendors are providing data on a reasonable commercial basis (RCB) and that some trading venues and APAs are potentially not complying with their regulatory obligations to make pre-trade data available free of charge 15 minutes after publication. We also agree with ESMA’s conclusion that the absence of a common standard results in a patchwork of pre-trade information that is difficult to read and compare.

As such, we would agree with ESMA’s proposal to require SIs to make data relating to quotes available free of charge 15 minutes after publication, in a standardised, comparable format.

<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>

Invesco strongly encourages regulatory clarity, coherence and consistency at all levels of policymaking and, therefore, we can see some merit in further standardising pre-trade transparency information in order to increase the usability and comparability of said information. We believe that simplifying the regime, as set out in our response to Q3 for example, will help to achieve this objective.

<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>

As outlined in our response to the February 2020 European Commission consultation on the MiFID II/MiFIR framework, in our experience, the current post-trade transparency deferral rules have been key to protecting the competitive liquidity and pricing of bonds. As such, we believe that any amendments, including for example the shortening the current deferral periods, could be detrimental to execution. However, where discrepancies exist in Member States’ transposition, application or enforcement of the post-trade transparency rules, we would encourage the ESMA to pursue harmonisation so as to reduce complexity and ensure the integrity of the Single Market.

<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>

In line with our response to Q3, Invesco supports ESMA’s intention to simplify the post-trade transparency regime. As such, we agree with the recommendation to delete the concept of SSTI for the deferral regime and lower the post-trade LIS threshold proportionately across all asset classes. Beyond simplifying the regime, we believe this would help to harmonise post-trade reporting.

<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>

Invesco supports the recommendations put forward under Option 3.

<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>

Invesco supports the recommendations put forward under Option 3.

<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>

As alluded to in our response to Q10, we agree with ESMA’s proposals to issue further guidance and put a stronger focus on enforcement to improve the quality of post-trade data. In particular, where discrepancies exist in Member States’ transposition, application or enforcement of the post-trade transparency deferral rules, we would encourage ESMA to pursue harmonisation so as to reduce complexity and ensure the integrity of the Single Market.

<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>

In our response to the European Commission’s February 2020 consultation on the MiFID II/MiFIR framework, we set out in detail how we believe an EU CT can be realised.

For example, we believe an EU CT should cover the full suite of asset classes listed in the Commission consultation (i.e. shares, ETFs, corporate bonds, government bonds, interest rate swaps and credit default swaps) in terms of post-trade data. With respect to pre-trade data, we believe a more targeted approach is necessary, and that the EU CT should cover shares and all ETPs. We believe that sharing disproportionate levels of pre-trade data in respect of other asset classes, such as bonds, could have a detrimental impact of market liquidity for those asset classes, and thus increase the principal risk of those asset classes.

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

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

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

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

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

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

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

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

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

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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>

We note ESMA’s statement that no EU national competent authority (NCA) has yet used, or considered using, powers to suspend transparency obligations as provided for under Articles 9(4), 11(2) and 21(4) of MiFIR. However, we believe that regulatory flexibility is important to ensuring the continued functioning of financial markets, in particular during periods of stress, as has been proven during recent market volatility brought about by the Covid-19 pandemic. As such, we do not support ESMA’s recommendation to remove the possibility to temporarily suspend the transparency obligations, and instead would advise that the supervisory powers provided under Articles 9(4), 11(2) and 21(4) of MiFIR are retained.

<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>

Invesco is a strong advocate of policymaking which contributes towards fair, efficient, transparent and liquid financial markets. We therefore acknowledge the policy intention underpinning the trading obligation for derivatives (DTO) – to ensure more trading takes place on regulated trading venues, MTFs and OTFs

In line with our response to Q80 of the February 2020 European Commission consultation on the MiFID II/MiFIR framework, in principle, we would agree with the assessment of Article 28 of MiFIR as set out in the consultation, in particular as regards the need to adjust the DTO regime to align it with the changes introduced by EMIR REFIT as regards the scope of counterparties subject to the clearing obligation (CO).

<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 believe that use of the provisions under Article 32(4) with respect to non-standard date derivatives or off-the-runs could detrimentally impact the liquidity of those instruments. However, we believe there would be less of a detrimental impact on the liquidity of standard on-the-run and IMM date swaps. There may be some merit in considering aligning EU rules, in this respect, with the US SEF ‘Made Available to Trade’ (MAT) requirements.

<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>

In line with our response to Q19, we believe that regulatory flexibility is important to ensuring the continued functioning of financial markets, in particular during periods of stress, as has been proven during recent market volatility brought about by the Covid-19 pandemic. We therefore agree with the ESMA recommendation to establish a provision within MiFIR which would allow for the temporary suspension of the DTO under certain criteria.

<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>

In line with our response to Q78 of the February 2020 European Commission consultation on the MiFID II/MiFIR framework, in the context of the UK’s withdrawal from the EU and the UK’s subsequent ‘onshoring’ of the MiFIR Article 28 trading obligation, we believe that, in the absence of an appropriate cross-border solution, cross-border capital flows and market activities could be restricted, and liquidity pools fragmented, for firms trading in certain derivative contracts.

Given that the vast majority of trading volume in derivatives contracts subject to the EU DTO currently takes place on UK venues, we believe that such a situation would be suboptimal, not just for market participants, but also for end-investors who could ultimately be faced with fragmented liquidity and higher costs when transacting in the market. Investors’ ability to hedge could also be compromised. This would serve to undermine the policy intention behind the MiFID II/MiFIR framework.

To avoid such a situation arising, policymakers in the EU and UK should explore every avenue available to avoid competing regulatory obligations for investment firms operating cross-border, and minimise potential implications such as those outlined previously. This would include assessing the equivalence of, and determining as equivalent where appropriate, each other’s regulatory and supervisory frameworks as foreseen under the MiFID II/MiFIR framework (such as that which has been agreed with Singapore and the US).

We believe that this approach would prove most effective in contributing towards fair, efficient, transparent and liquid financial markets, and would help to achieve the EU’s stated aim of ensuring that more trading takes place on regulated trading venues, MTFs and OTFs. It would also help to avoid unnecessary market fragmentation and, ultimately, detriment to end-investors and users of financial services.

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

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

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

We agree with ESMA’s assessment that the publication and maintenance of a register on its website, specifying the derivatives subject to the DTO, the venues where they are admitted to trading or traded, and the dates from which the obligation takes effect, remains valid and that there should be no amendment to Article 34 of MiFIR in this regard.

<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>

Invesco finds the current quarterly liquidity calculation for bonds to be unrepresentative of the true liquidity of bonds, and we would welcome the introduction of a simpler framework, with a more frequent calculation of bond liquidity.

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

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

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

Please refer to our response to Q25.

<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>

We agree with ESMA’s assessment, as set out in paragraph 293 of the consultation, that “considering that ESMA will provide the first annual transparency calculation for all non-equity instruments other than bonds in the following months, it is considered premature to assess whether it is appropriate to move to stage 2 for those instruments at this point in time.”

<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>

Noting that we have highlighted the need to reconsider the appropriateness and effectiveness of provisions relating to SSTI, we would not advocate to move to stage 2 for the determination of the pre-trade SSTI thresholds for bonds (except ETCs and ETNs) at this point. Instead, we encourage ESMA to consider provisions relating to SSTI holistically.

<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>