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| Response Form to the Consultation Paper |
| MiFIR review report on the obligations to report transactions and reference data |

**Responding to this paper**

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in the Annex. Comments 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.

ESMA will consider all comments received by **20 November 2020.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

**Instructions**

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_CP\_TRRF\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_TRRF\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_TRRF\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open Consultations” 🡪 “Consultation paper on MiFIR review report on the obligations to report transactions and reference data”).

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. 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 not to disclose the response 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 heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should read this paper?**

This document will be of interest to all stakeholders involved in the securities markets. It is primarily of interest to competent authorities and firms that are subject to MiFID II and MiFIR – in particular, investment firms and credit institutions performing investment services and activities and trading venues. This paper is also important for trade associations and industry bodies, institutional and retail investors and their advisers, and consumer groups, as well as any market participant because the MiFID II and MiFIR requirements seek to implement enhanced provisions to ensure the transparency and orderly running of financial markets with potential impacts for anyone engaged in the dealing with or processing of financial instruments.

**General information about respondent**

|  |  |
| --- | --- |
| 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\_TRRF\_1>

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<ESMA\_COMMENT\_CP\_TRRF\_1>

**Questions**

1. : Do you foresee any challenges for UCITS management companies and AIF managers in providing transaction reports to NCAs? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_1>

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<ESMA\_QUESTION\_TRRF\_1>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_2>

No, this simply serves to clarify the existing requirement in Article 26(5).

<ESMA\_QUESTION\_TRRF\_2>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_3>

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<ESMA\_QUESTION\_TRRF\_3>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_4>

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<ESMA\_QUESTION\_TRRF\_4>

1. : Do you envisage any challenges in increasing the scope including derivative instruments traded through an SI as an alternative to the expanded ToTV concept? Please justify your position and if you disagree please suggest alternatives.

<ESMA\_QUESTION\_TRRF\_5>

We strongly support ESMA extending reference data reporting, transaction reporting, and transparency to include derivatives traded with an SI.

At the moment, ~95% of off-venue trading activity in interest rate OTC derivatives is currently not considered ToTV.[[1]](#footnote-2) We agree with ESMA’s conclusion in the *MiFID II/MiFIR review report on the transparency regime for non-equity instruments* that this was not the intention of the co-legislators.[[2]](#footnote-3) The status quo approach not only undermines market transparency but also hinders regulatory oversight and supervision of SI trading activity. We note that, based on feedback to the non-equity transparency consultation, this view is shared by a broad and diverse coalition of market participants (including buy-side trade associations, trading venues, proprietary trading firms, and technology providers), with the notable exception of bank SIs and bank SI trade associations.

Including derivatives traded with an SI has several benefits compared to solely revising the definition of ToTV:

* **Levels the playing field between trading venues and non-equities SIs.** At the moment, there is an unlevel regulatory playing field in favour of non-equities SIs, which incentivizes non-equities 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.
* **Establishes a comprehensive post-trade transparency regime**. This approach seeks to ensure that all off-venue derivatives traded with an SI are subject to post-trade transparency, closing a significant gap in the current regime. 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.
* **Supports the implementation of a post-trade consolidated tape**. A post-trade CT should provide market participants with a consolidated view of all trading activity in a particular instrument (both on-venue and off-venue). The current lack of data relating to derivatives traded off-venue undermines the benefits of a post-trade CT, including being able to use the post-trade CT for transaction cost analysis and best execution assessments.
* **Minimal operational and compliance costs**. Operational costs associated with the change should be minimal, as SIs have already established the necessary reporting infrastructure under MiFID II and will simply leverage these existing systems to report transactions. As a result, the inclusion of derivatives traded with an SI should not create new reporting parties or a need to establish new reporting arrangements. In addition, instead of assessing each SI transaction against a ever-changing ToTV standard, SIs will simply be required to report all transactions, reducing internal compliance costs.
* **Provides sufficient time to hedge**. Including derivatives traded with SIs does not mean that all off-venue transactions will be 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. We support ESMA’s recommendations in the *MiFID II/MiFIR review report on the transparency regime for non-equity instruments* setting forth a more streamlined deferral regime. 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 competition and liquidity.
* **Increases harmonisation with other jurisdictions**. The post-trade transparency frameworks implemented in the US for non-equities asset classes, including OTC derivatives, 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. Expanding MiFID II transparency regime to cover derivatives traded with an SI will increase harmonisation with those frameworks.
* **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. Including derivatives traded with SIs for transaction reporting provides more comprehensive data regarding off-venue transactions to policymakers. 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.

Solely revising the interpretation of ToTV, with the intent of broadening its scope, would fail to deliver the benefits detailed above, leaving a post-trade transparency regime that maintains an unlevel playing field between trading venues and non-equities SIs. Importantly, as long as market participants are subject to materially 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 vary across asset classes. As such, we recommend that ESMA include derivatives traded on an SI for reference data reporting, transaction reporting, and transparency purposes.

<ESMA\_QUESTION\_TRRF\_5>

1. : Do you agree that the extension should include all Systematic Internalisers regardless of whether they are SI on a mandatory or voluntary basis? Please justify your position.

<ESMA\_QUESTION\_TRRF\_6>

We agree that all SIs should be covered, including voluntary SIs. This is particularly important in the derivatives asset classes, where continuing data quality issues mean that the mandatory SI regime fails to capture many firms that are in practice acting as SIs in particular sub-asset classes. Opting-into the SI regime means that a firm is agreeing to comply with the requirements associated with being a registered SI, including any transaction reporting and transparency requirements.

<ESMA\_QUESTION\_TRRF\_6>

1. : Do you envisage any challenges with the approach described in paragraphs 45-46 on the scope of transactions to be covered by the extension? Please justify your position and indicate your preferred option for SIs under the mandatory regime explaining for which reasons. If you disagree with all of the outlined options, please suggest alternatives.

<ESMA\_QUESTION\_TRRF\_7>

Option 1 is the only option that will meaningfully increase transparency compared to the current status quo.

Options 2 and 3 suffer from two critical flaws:

* **Many investment firms have opted-in as an SI only for ToTV instruments**. As ESMA has indicated in Question 11a in *MiFID II and MiFIR transparency topics – Systematic internaliser regime*,[[3]](#footnote-4) firms can decide to opt-in as an SI solely for ToTV instruments. With continuing data quality issues limiting the scope of the mandatory SI regime for derivatives, voluntary SIs account for a significant trading volumes in derivatives.
* **The mandatory SI regime for derivatives is largely limited to ToTV instruments.** As ESMA has acknowledged in Question 11 in *MiFID II and MiFIR transparency topics – Systematic internaliser regime*,[[4]](#footnote-5) ESMA (and NCAs) do not have access to comprehensive data regarding non-ToTV instruments. As a result, ESMA is only publishing information on ToTV instruments for determining whether an investment firm meets the thresholds to be considered as an SI. While it is theretically possible for a firm to qualify as a mandatory SI in a non-ToTV instrument, in practice, the mandatory Si regime for derivatives is largely limited to ToTV instruments.

Given the above, if transparency and transaction reporting requirements were limited only to instruments for which an investment firm qualifies as an SI, in many cases, there would be little to no change from the current status quo, as only ToTV instruments would be covered. This limited scope would also be self-perpetuating, as there would be no mechanism for ESMA (or NCAs) to collect comprehensive data on non-ToTV instruments in order to increase to scope of the mandatory SI regime over time.

As a result, if the objective is to increase the scope of the reference data reporting, transaction reporting, and transparency requirements and level the playing field between non-equities SIs and trading venues, Option 1 must be selected. This approach will ensure regulators have access to more comprehensive data regarding SI trading activities and will also be easier to implement and supervise.

In addition to applying requirements on a sub-asset class level, we recommend specifying that all derivatives subject to the derivatives trading obligation (DTO) are automatically considered ToTV. By definition, these instruments are traded on trading venues and adding this qualitative criteria will ensure that, even if a counterparty is not subject to the DTO, and therefore is permitted to execute the transaction off-venue, that transaction will be subject to transparency and transaction reporting requirements. At the moment, this is not always the case for interest rate derivatives subject to the DTO, given the multiple ISINs often created for the same instrument.

<ESMA\_QUESTION\_TRRF\_7>

1. : Do you foresee any challenges with the proposal to replace the reference to the term “index” in Article 26(2)(c) with the term “benchmark” as defined under the BMR? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_8>

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<ESMA\_QUESTION\_TRRF\_8>

1. : Which of the three options described do you consider the most appropriate? Please explain for which reasons and specify the advantages and disadvantages of the outlined options. If you disagree with all of the outlined please suggest alternatives.

<ESMA\_QUESTION\_TRRF\_9>

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<ESMA\_QUESTION\_TRRF\_9>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_10>

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1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_11>

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1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_12>

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1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_13>

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1. : Did you experience any difficulties with the application of the defined list concept? If yes, please explain.

<ESMA\_QUESTION\_TRRF\_14>

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<ESMA\_QUESTION\_TRRF\_14>

1. : Do you foresee any challenges with the approach as outlined in the above proposal? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_15>

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<ESMA\_QUESTION\_TRRF\_15>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_16>

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<ESMA\_QUESTION\_TRRF\_16>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_17>

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<ESMA\_QUESTION\_TRRF\_17>

1. : Do you foresee any challenges with the approach outlined in paragraphs 75 and 76? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_18>

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<ESMA\_QUESTION\_TRRF\_18>

1. : Do you foresee any difficulties with the implementation of an additional code generated by the trading venue to be disseminated down the transaction chain in order to link all transactions pertaining to the same execution? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_19>

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<ESMA\_QUESTION\_TRRF\_19>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_20>

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<ESMA\_QUESTION\_TRRF\_20>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_21>

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<ESMA\_QUESTION\_TRRF\_21>

1. : Which of the two approaches do you consider the most appropriate? Please explain for which reasons.

<ESMA\_QUESTION\_TRRF\_22>

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<ESMA\_QUESTION\_TRRF\_22>

1. : Do you foresee any challenges with the outlined approaches? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_23>

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<ESMA\_QUESTION\_TRRF\_23>

1. : Do you foresee any challenges with the outlined approach to pre-trade waivers? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_24>

We agree that both trading venues and SIs should indicate whether a pre-trade waiver (or post-trade deferral) has been applied to a specific transaction.

<ESMA\_QUESTION\_TRRF\_24>

1. : Have you experienced any difficulties with providing the information relating to the indicators mentioned in this section? If yes, please explain and provide proposals on how to improve the quality of the information required.

<ESMA\_QUESTION\_TRRF\_25>

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<ESMA\_QUESTION\_TRRF\_25>

1. : Do you foresee any challenges with this proposal? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_26>

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<ESMA\_QUESTION\_TRRF\_26>

1. : Do you agree with this approach? If not, please clarify your concerns and propose alternative solutions

<ESMA\_QUESTION\_TRRF\_27>

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<ESMA\_QUESTION\_TRRF\_27>

1. : Do you agree with this analysis? If not, please clarify your concerns and propose alternative solutions.

<ESMA\_QUESTION\_TRRF\_28>

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1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_29>

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1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_30>

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<ESMA\_QUESTION\_TRRF\_30>

1. : Are there any specific aspects relating to the ISIN granularity reported in reference data which need to be addressed? Is the current precision and granularity of ISIN appropriate or is (for certain asset classes) a different granularity more appropriate?

<ESMA\_QUESTION\_TRRF\_31>

We are concerned that current ISIN granularity continues to result in serious data quality issues, even where additional ESMA guidance has been provided.

For example, ESMA helpfully clarified that the field “Delivery Type” is only to be populated with “Cash” for interest rate derivatives when the settlement currency amounts are paid in a currency other than the reference currency. However, analysis by ANNA-DSB shows that market practice continues to be inconsistent (see <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/>).

Referencing international standards and/or identifiers when possible may alleviate existing data quality issues under MiFID II.

<ESMA\_QUESTION\_TRRF\_31>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_32>

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<ESMA\_QUESTION\_TRRF\_32>

1. : Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.

<ESMA\_QUESTION\_TRRF\_33>

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<ESMA\_QUESTION\_TRRF\_33>

1. <https://www.clarusft.com/what-we-need-to-do-to-fix-mifid-ii-data/>. [↑](#footnote-ref-2)
2. <https://www.esma.europa.eu/sites/default/files/library/esma70-156-3329_mifid_ii_mifir_review_report_on_the_transparency_regime_for_non-equity_instruments.pdf> at Paragraph 221. [↑](#footnote-ref-3)
3. https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-35\_qas\_transparency\_issues.pdf [↑](#footnote-ref-4)
4. https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-35\_qas\_transparency\_issues.pdf [↑](#footnote-ref-5)