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| Response Form to the Consultation Paper on the clearing and derivative trading obligations in view of the benchmark transition |
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**Responding to this paper**

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions. 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 **2 September 2021.**

**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. Use this form and send your responses in Word format (**pdf documents will not be considered except for annexes**);
3. Please do not remove tags of the type <ESMA\_QUESTION \_RFRS\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
4. 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.
5. When you have drafted your response, name your response form according to the following convention: ESMA\_RFRS\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_RFRS\_ABCD\_RESPONSEFORM.
6. Upload the form containing your responses, **in Word format**, to ESMA’s website (www.esma.europa.eu under the heading “Your input – Open Consultations” -> Consultation Paper on the clearing and derivative trading obligations in view of the benchmark transition”).

**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 publically 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**

All interested stakeholders are invited to respond to this consultation paper. In particular, responses are sought from counterparties of OTC derivatives transactions which are subject to the clearing obligation or to the derivative trading obligation as well as from CCPs and Trading Venues.

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**General information about respondent**

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| Name of the company / organisation | IHS Markit |
| Activity | Other Financial service providers |
| Are you representing an association? |  |
| Country/Region | International |

**Questions**

**General comments**

1. **: Are there any general comments you would need to raise?**

<ESMA\_QUESTION\_RFRS\_1>

IHS Markit, a global information company with offices in 10 EU member states is a leader in critical information, analytics and solutions for the major industries and markets that drive economies worldwide. The company delivers next-generation information, analytics and solutions to customers in business, finance and government, improving their operational efficiency and providing deep insights that lead to well-informed, confident decisions.

IHS Markit’s derivatives trade processing platform, MarkitSERV plays an important role in UK, EU, US and global derivatives markets. The platform offers processing and reporting facilities, enables risk mitigation and supports market connectivity and entry. Among the specific services offered by MarkitSERV are trade confirmation, trade affirmation, allocations, submission of matched (confirmed or affirmed) trades to clearing, as well as a standard connectivity solution with customer risk systems. Globally, over 3,000 firms (more than 30,000 entities) use MarkitSERV which processes an average of 90,000 derivatives transaction events every day. This position provides us with unparalleled access to data on the OTC derivatives market.

On 1 September, CME Group and IHS Markit combined post-trade services into a new joint venture known as OSTTRA. OSTTRA incorporates CME Group’s optimisation businesses – Traiana, TriOptima and Reset – and IHS Markit’s MarkitSERV. The combination of these complementary offerings will provide its clients with enhanced platforms and services for global OTC markets across interest rate, FX, equity and credit asset classes. Market participants will benefit from a more efficient front-to-back workflow with enhanced connectivity and improved trading certainty. As a result, OTC market participants will be able to improve risk management and streamline post-trade operations. More details can be found at [www.osttra.com](http://www.osttra.com).

As IHS Markit and now also OSTTRA, we strongly support the G20 commitments to increase the amount of OTC derivatives that are traded on regulated venues and cleared. This has been one of the key successes of the regulatory reform agenda that followed the financial crisis and has made a significant contribution to global and European financial stability. The application of the Derivatives Clearing Obligation (CO) and the Derivatives Trading Obligation (DTO) have been important parts of this success and we welcome the proactive approach of ESMA in anticipating the changes in market activity around interest rate benchmark reform and acting to manage the risks associated with it. We would like to make the following general remarks.

1. ESMA should prioritise removing inappropriate obligations over implementing new obligations

It is vital to ensure that the DTOs and COs are removed as soon as possible from instruments that no longer have the appropriate volume and liquidity. The removal of a CO should automatically (as far as possible in the current legal regime) lead to the removal of the related DTO.

ESMA should be cognisant that imposing a DTO or CO too narrowly would never prevent trades being cleared or executed on a venue. Market participants often trade on a venue and clear for reasons unrelated to a DTO and CO. This can be seen by the fact that new risk free rates (RFRs) are already often traded on venues and cleared even when there are no obligations. Removing the element of choice through an obligation imposed too broadly could harm liquidity and adoption of the new RFRs.

More specifically, a DTO should only be imposed on the most liquid of trades subject to the CO. These will be plain vanilla trades on the most liquid tenor points (typically 2 year, 5 year and 10 year) in the most liquid currencies (USD, EUR, GBP). It is important market participants, and their clients, can customise transactions to meet their risk management needs. Customised trades are typically not liquid and should not be subject to the DTO. We have unparalleled access to data on OTC derivatives markets and, from this position, believe that some original decisions around the application the DTO under MIFID2 were made based upon with incomplete information from EMIR reporting.

Given that clearing and trading on venue is likely to increase for reasons unrelated to the CO and DTO and the risk of market disruption that an inappropriate application of a DTO or CO could cause, we would urge ESMA to prioritise removing the requirement where it is no longer appropriate over introducing new requirements. Furthermore, new obligations mean new compliance burdens. At a time when firms are dedicating resources to the challenge of transitioning to RFRs, additional burdens could risk undermining LIBOR transition. Given the balance of risks and benefits, we would, therefore, encourage ESMA to take a cautious approach to the application of new obligations. We would also be happy to share anonymised and aggregated data and analysis with ESMA if it would be helpful.

1. ESMA should consider the potential impact a CO or DTO might have on post-trade risk reduction services

ESMA should also consider the potential impact a CO or DTO might have on post-trade risk reduction services. Such services reduce non-market risks by optimising bilateral and cleared derivatives portfolios to minimise the build-up of risk – systemic risk is also reduced. These tools are also widely used for IBOR transition, including “benchmark conversion”, which compresses trade portfolios referencing legacy rates and replaces the risk with transactions on the reformed benchmarks. A DTO or CO can affect these services and ESMA should be cognisant of the potential impact obligations might have on risk reduction and transition.

<ESMA\_QUESTION\_RFRS\_1>

**State of progress with the transition**

1. **: Are there any other aspects of the transition that need to be taken into account? Please share any data that would help qualify further the progress with the transition or any other aspects that you think should be considered.**

<ESMA\_QUESTION\_RFRS\_2>

Using data from the MarkitWire platform, we have undertaken analysis of the how the market share of RFR interest rate swaps (IRS) in multiple currencies. ESMA may be interested in this and we would be happy to discuss what we are seeing on OTC derivatives markets if ESMA would find it helpful.

The analysis is available here:

<https://ihsmarkit.com/research-analysis/ibor-reform-global-transition-update-gbp-sonia-roaring-ahead-w.html>

<ESMA\_QUESTION\_RFRS\_2>

**General approach**

1. **: Are there any other aspects that you think that ESMA should take into account or that might justify a different approach?**

<ESMA\_QUESTION\_RFRS\_3>

We welcome ESMA’s proactive approach to this matter, anticipating and making reasonable assumptions around the benchmark transition. We strongly agree with the proposal to remove the CO and DTO from instruments referencing benchmark rates that will be discontinued. Maintaining a CO or DTO on instruments where conditions have become inappropriate risks causing market disruption and raising costs for market users and, ultimately, those firms seeking to hedge risk.

We also welcome that ESMA is dealing with the CO and DTO together. We believe that the DTO should be automatically removed when the equivalent CO is removed. Although we appreciate that it is not for ESMA to create a legislative link, it could be clearer that the DTO should be considered a subset of the relevant CO and, therefore, when the CO is removed, ESMA will recommend that any related DTO is removed as soon as possible.

In respect of new CO and DTOs, we agree with ESMA’s general conclusions that liquidity is likely to shift to the replacement rates identified and also that current volumes remain relatively low for certain asset classes referencing some RFRs. While we think that ESMA’s proposed approach generally is balanced, there is no reason why ESMA could not wait until it has demonstrable evidence that the relevant conditions have been met. This is particularly true as a number of ESMA’s assumptions are based on periods of market turbulence and uncertainty that have been caused by the COVID-19 pandemic and the end of the transition period for the UK’s withdrawal from the EU and so it might be hard to draw firm conclusions from them.

Such an approach would provide the market participants flexibility while presenting very limited risks against G20 objectives and would be highly unlikely to lead to any significant build up of uncleared positions. This is because, as mentioned in our response to Question 1 above, there are now significant incentives to clear within market and regulatory frameworks (particularly uncleared margin requirements) and this can be seen in the current levels of clearing without COs. This includes derivatives linked to RFRs and also foreign exchange non-deliverable forwards where, despite there being no CO in any jurisdiction, the combination of uncleared margin requirements and the risk management benefits of clearing have driven widespread adoption of clearing over the last 5 years. Therefore, the risks from inappropriately calibrated COs and DTOs are far outweigh the risks to the G20 commitments under the current market and regulatory frameworks.

Furthermore, we would encourage jurisdictions to only apply DTO or COs to instruments where the primary market jurisdictions have already applied their equivalent obligations. For example, the EU should not introduce COs or DTOs for USD instruments when no equivalent obligations exist in the USA.

<ESMA\_QUESTION\_RFRS\_3>

**Clearing obligation**

1. **: Do you agree with the assessment of the EMIR criteria and with the proposed classes (except for USD which is dealt with in a dedicated Question 5)? If not please detail how the assessment could differ and please also provide data and information to justify a different assessment.**

<ESMA\_QUESTION\_RFRS\_4>

We would agree with ESMA’s proposal to remove the COs on classes referencing EONIA, GBP LIBOR and JPY LIBOR as these benchmarks will cease to be produced at the end of the year.

We think that the assumptions made about the conditions that should be in place at the end of 2021 are not unreasonable, and, therefore the proposals are not unreasonable. However, it should be noted that, for the reasons outlined above, there would be little risk to regulatory objectives of a delay to assess the actual conditions at that time. It is highly unlikely that a delay would lead to any significant build up of uncleared positions.

<ESMA\_QUESTION\_RFRS\_4>

1. **: Will the transition regarding USD have made sufficient progress by this Autumn to decide on whether to maintain or remove USD LIBOR classes. Will there be sufficient liquidity to introduce SOFR OIS to the CO and for which maturity range? Please provide the relevant data and information to explain your assessment, in accordance with the EMIR framework.**

<ESMA\_QUESTION\_RFRS\_5>

While we think it is not unreasonable to expect that there could be sufficient liquidity for the introduction of a CO on SOFR OIS with short-term maturities, we would also repeat the points made above that there is little risk to regulatory objectives in delaying the CO and the flexibility provided for market participants may actually help build liquidity. It is highly unlikely that a delay imposing a CO would lead to any significant build up of uncleared positions. Therefore, the risks of inappropriately calibrated CO and DTOs are far outweigh the risks to the G20 commitments under the current market and regulatory frameworks.

Furthermore, we would encourage jurisdictions to only apply DTO or COs to instruments where the primary market jurisdictions have already applied their equivalent obligations. For example, the EU should not introduce COs or DTOs for USD instruments when no equivalent obligations exist in the USA.

<ESMA\_QUESTION\_RFRS\_5>

1. **: Do you agree with the proposed implementation of the changes? If not please provide details that could justify a different implementation.**

<ESMA\_QUESTION\_RFRS\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RFRS\_6>

**Derivatives trading obligation**

1. **: Do you agree with the proposal to not include OIS referencing €STR, SONIA nor SOFR to the DTO at this point in time? In case you disagree with ESMA’s proposal, please justify and support your assessment with qualitative and quantitative data.**

<ESMA\_QUESTION\_RFRS\_7>

We would agree with this proposal.

<ESMA\_QUESTION\_RFRS\_7>

1. **: Do you consider that IRS referencing USD LIBOR should continue to be subject to the DTO?**

<ESMA\_QUESTION\_RFRS\_8>

ESMA is clear in its analysis that it expects liquidity to move from USD LIBOR to SOFR by the end of 2021. Given this assumption, the relativley limited activity on EU trading venues and the potential length of time it would take to remove the DTO at a future date (much of which ESMA acknowledges is outside its control), ESMA should propose to remove the DTO on USD LIBOR. As explained above, it is important to ensure that the DTO is not maintained inappropriately as this could cause market difficulties and the risks against regulatory objectives appear insignificant.

<ESMA\_QUESTION\_RFRS\_8>

**Cost Benefit Analysis**

1. **: Are there other elements that should be taken into account and that would impact the outcome of the cost-benefit analysis? Please provide quantitative and qualitative details.**

<ESMA\_QUESTION\_RFRS\_9>

ESMA should be cognisant that 2020 was a period characterised by periods of market turbulence and uncertainty linked to the COVID-19 pandemic and the end of the transition period for the UK’s withdrawal from the EU. ESMA should be cautious drawing firm conclusions about market activity based on this period.

<ESMA\_QUESTION\_RFRS\_9>