



European Securities and  
Markets Authority

## **Reply form for the Consultation Paper on the trading obligation for derivatives under MiFIR**



## Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Consultation Paper on the trading obligation for derivatives under MiFIR, 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\_MIFID\_TO\_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;
- contain a clear rationale, including on any related costs and benefits; and
- describe any alternatives that ESMA should consider.

### **Naming protocol**

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA\_MiFID\_TO\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

e.g. if the respondent were ESMA, the name of the reply form would be:

ESMA\_MiFID\_TO\_ESMA\_REPLYFORM or

ESMA\_MiFID\_TO\_ESMA\_ANNEX1

### **Deadline**

Responses must reach us by **31 July 2017**.

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

Name of the company / organisation	Eurex as part of Deutsche Börse Group
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	<input type="checkbox"/>
Country/Region	Germany



## Introduction

**Please make your introductory comments below, if any:**

<ESMA\_COMMENT\_MIFID\_TO\_0>

Eurex as part of Deutsche Börse Group (DBG) welcomes the introduction of the Trading Obligation for OTC derivatives under MiFIR and supports ESMA in its efforts to further specify the conditions and procedures for making the trading obligation provisions applicable to derivatives.

We strongly appreciate that ESMA has revised its initial proposal to systematically exempt transactions above a certain size from the trading obligation. **We agree with ESMA's view as outlined in paragraph 95 that trading venues avail of an appropriate toolkit of waivers and deferrals to ensure that information leakage is efficiently avoided; hence, we share ESMA's opinion that there is no need to generally exempt large trades from the trading obligation.** Cutting out LIS trades from the picture would result in a misrepresentation of the potential products that could be traded on trading venues in principle and hinder the trading obligation to unfold in its full potential in Europe. With its revision ESMA acknowledged that it is crucial to thoroughly design the interplay between the transparency regime and trading obligation requirements. We are of the view that for the determination of liquidity the whole universe of trades and the degree of development of an asset class to be traded on trading venues should be taken into account; once the liquidity of asset classes has been determined accordingly, it should be combined with meaningful transparency LIS thresholds to allow for pre-trade transparency to be waived where appropriate.

Having said this and in order to achieve an optimal outcome for the market and legislative intentions, we would like to raise a critical aspect to ESMA. To our view, it is imperative for ESMA to take into account the interplay of the trading obligation for OTC derivatives and the adjacent transparency requirement that would apply to trading venue offering the trading eligible instruments in the future. Hence, **we disagree with ESMA's current approach not to further investigate if and how the transparency regime and the trading obligation should be better aligned.**

The interplay between transparency and trading obligation requirements should be carefully designed and discrepancies between the two regimes should be aligned to the best extent possible. Misalignment would otherwise lead to complexity in implementation and application of the trading obligation provisions for derivatives, unnecessary confusion, and ultimately a sub-par achievement of the legislative objective to increase trading on multilateral trading platforms.

Thus, we would consider a combination of trading obligation and adequate transparency regime in the following way to be ideal:

- First, ESMA to define which asset classes are generally appropriate for trading on trading venues (i.e. trading eligible under the MiFIR trading obligation);
- Moreover, trading venues to assess the application of pre- and/or post- trade transparency exemptions in order to mitigate any adverse effects, and consequently to apply for waivers and deferrals with competent authorities once the legislation is applicable.

ESMA has already put a lot of effort in designing thresholds for pre and post trade LIS in OTC derivatives. This effort has resulted in various threshold levels that allow trading venues to waive pre and post trade transparency where meaningful but allow the market structure to evolve in a way that the trading obligation sets the tone for the asset class to be traded on trading venues in the first place.

We will revert back to that general remark in our response to Question 3 and abstain from further comments.  
<ESMA\_COMMENT\_MIFID\_TO\_0>



**Q1. Do you agree with ESMA's assessment and proposed way forward for the criteria assessing the number and types of active market participants? If not, please explain your position and how you would integrate these elements into the liquidity test.**

<ESMA\_QUESTION\_MIFID\_TO\_1>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_TO\_1>

**Q2. Do you agree with the revised proposal not to exempt post-trade LIS transactions? If not, please explain and present your proposal.**

<ESMA\_QUESTION\_MIFID\_TO\_2>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_TO\_2>

**Q3. Do you agree with this proposal? If not, please explain why and provide an alternative proposal for ESMA to populate and maintain the register.**

<ESMA\_QUESTION\_MIFID\_TO\_3>

Eurex generally agrees with the proposal. However, we are concerned about the statements made in paragraph 101 in the Consultation paper. It is Eurex view that transparency obligation should be closely aligned with a trading obligation. Eurex is of the opinion that the discrepancies between the two regimes will cause unnecessary confusion and uncertainty in the implementation and application of the regulation. An alignment reduces complexity considerably. Hence, Eurex proposes to both align the approach and the thresholds to remove inconsistencies. The liquidity measure will then determine uniformly whether products are subject to transparency and trading obligation.

Thus, we would consider a combination of trading obligation and adequate transparency regime in the following way to be ideal:

First, ESMA to define which asset classes are generally appropriate for trading on trading venues (i.e. trading eligible under the MiFIR trading obligation);

Moreover, trading venues to assess the application of pre- and/or post- trade transparency exemptions in order to mitigate any adverse effects, and consequently to apply for waivers and deferrals with competent authorities once the legislation is applicable.

<ESMA\_QUESTION\_MIFID\_TO\_3>

**Q4. Do you agree with this proposal? Would you add other parameters e.g. day count convention of the floating leg, notional type (constant vs. variable), fixed rate type (MAC vs. MAC)? If yes, please explain why and provide the parameters.**

<ESMA\_QUESTION\_MIFID\_TO\_4>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_TO\_4>

**Q5. For each Case, specify if you agree with the proposal of qualifying the sub-classes as liquid for the purpose of the trading obligation and if not, please explain why and provide an alternative proposal**

<ESMA\_QUESTION\_MIFID\_TO\_5>  
TYPE YOUR TEXT HERE



<ESMA\_QUESTION\_MIFID\_TO\_5>

**Q6. Would you also consider any of these possible sub-classes as liquid? Which other combinations of fixed leg payment frequency and floating leg reset frequency specifically would you consider to be sufficiently liquid?**

<ESMA\_QUESTION\_MIFID\_TO\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_6>

**Q7. For each Case, specify if you agree with the proposal of qualifying the sub-classes as liquid for the purpose of the trading obligation and if not, please explain why and provide an alternative proposal.**

<ESMA\_QUESTION\_MIFID\_TO\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_7>

**Q8. Would you also consider any of these possible sub-classes as liquid? Which other combinations of fixed leg payment frequency and floating leg reset frequency specifically would you consider to be sufficiently liquid?**

<ESMA\_QUESTION\_MIFID\_TO\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_8>

**Q9. For each case, specify if you agree with the proposal of qualifying the sub-classes as liquid for the purpose of the trading obligation and if not, please explain why and provide an alternative proposal.**

<ESMA\_QUESTION\_MIFID\_TO\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_9>

**Q10. Would you also consider the possible sub-classes here below as liquid? Which other combinations of fixed leg payment frequency and floating leg reset frequency specifically would you consider to be sufficiently liquid?**

<ESMA\_QUESTION\_MIFID\_TO\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_10>

**Q11. Do you agree with this proposal? If not, please explain why and provide an alternative proposal.**



<ESMA\_QUESTION\_MIFID\_TO\_11>  
 TYPE YOUR TEXT HERE  
 <ESMA\_QUESTION\_MIFID\_TO\_11>

**Q12. Do you agree with this proposal? If not, please explain why and provide an alternative proposal**

<ESMA\_QUESTION\_MIFID\_TO\_12>  
 TYPE YOUR TEXT HERE  
 <ESMA\_QUESTION\_MIFID\_TO\_12>

**Q13. Do you agree to the proposed timeline? If not, please explain why and present your proposal.**

<ESMA\_QUESTION\_MIFID\_TO\_13>  
 TYPE YOUR TEXT HERE  
 <ESMA\_QUESTION\_MIFID\_TO\_13>

**CBA QUESTIONS**

**Q14. This first question aims at identifying the category of firm/entity you belong to. Please provide the total notional amount traded in derivatives (trading venues + OTC) in 2016 in thousands euros and the related total number of trades in the relevant boxes**

<ESMA\_QUESTION\_MIFID\_TO\_14>

Category	Number of employees	Total Notional traded 2016 (in thousands euros)	Total number of trades 2016
<b>EMIR Category 1</b>	[1-50]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[51-250]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[251-1000]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	>1000	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
<b>EMIR Category 2</b>	[1-50]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[51-250]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[251-1000]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE



	>1000	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
<b>EMIR Category 3</b>	[1-50]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[51-250]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[251-1000]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
		TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
<b>EMIR Category 4</b>	[1-50]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[51-250]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[251-1000]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	>1000	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
<b>Trading Venue</b>	[1-50]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[51-250]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[251-1000]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	>1000	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_14>

**Q15. Based on the draft RTS, which percentage of your derivative trading (notional amount and number of trades) do you expect to be captured by the TO? Please provide the data for derivatives globally, and then for interest rate derivatives and for credit default swaps, using 2016 trading data?**

<ESMA\_QUESTION\_MIFID\_TO\_15>

% of trading captured by the TO	Year 2016
% of total notional amount traded in derivatives captured by the TO	TYPE YOUR TEXT HERE

% of total number of transaction in derivatives captured by the TO	TYPE HERE	YOUR	TEXT
% of total notional amount traded in interest rate derivatives captured by the TO	TYPE HERE	YOUR	TEXT
% of total number of transactions in interest rate derivatives captured by the TO	TYPE HERE	YOUR	TEXT
% of total notional amount traded in credit default swaps captured by the TO	TYPE HERE	YOUR	TEXT
% of total number of transactions in credit default swaps captured by the TO	TYPE HERE	YOUR	TEXT

<ESMA\_QUESTION\_MIFID\_TO\_15>

CBA Questions 16 and 17 are to be answered by investment firms and significant non-financial counterparties

**Q16. Out of the trading activity expected to be captured by the TO, as identified under Q2, which % is already traded on an EU regulated market, an EU Multilateral Trading Facility (MTF), a US Swap Execution Facility (SEF) or another third-country trading venue?**

<ESMA\_QUESTION\_MIFID\_TO\_16>

Trading activity expected to be captured by the TO	Traded on a regulated market	Traded on an EU MTF	Traded on a US SEF	Traded on another 3 <sup>rd</sup> country venue
% of total trading volume captured by the TO already traded on an EU trading venue, a US SEF or another third-country venue	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
% of total number of transactions captured by the TO already traded on an EU trading venue, a US SEF or another third-country venue	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_16>

**Q17. Compliance with the TO may require some further trading arrangements. Which of the following statement would you consider relevant regarding the steps you might be taking to that end? Please add any comment as appropriate.**

<ESMA\_QUESTION\_MIFID\_TO\_17>

Arrangements contemplated to comply with the TO	Yes	No	Comments
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1. Current membership/Direct Electronic Access (DEA) arrangements are sufficient to comply with the TO	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
2. I intend to become a member/ participant/client of one (or multiple) EU trading venues for the first time	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
3. I intend to become a member/participant/client of additional EU trading venues	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
4. I intend to seek access to EU trading venues through Direct Electronic Access (DEA)	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
5. I intend to combine membership (2.or 3) with DEA (4.)	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
6. I am considering other arrangements; Please explain those arrangements in the Comments section	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_17>

**CBA Question 18 is to be answered by trading venues**

**Q18. Question 5: Which of the derivatives subject to the TO, based on the draft RTS, are currently available for trading on your trading venue? Do you consider extending trading on your venue to other derivatives subject to the TO?**

<ESMA\_QUESTION\_MIFID\_TO\_18>

<b>Derivatives potentially subject to the TO currently available for trading on your venue</b>	<b>Derivatives potentially subject to the TO that may become available for trading on your venue</b>
TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_18>

**CBA Questions 19 to 22 are to be answered by all respondents**

**Q19. Based on the draft RTS, which impacts do you expect from the TO in the short and medium term? Please elaborate as appropriate under Positive or Negative impact.**

<ESMA\_QUESTION\_MIFID\_TO\_19>

TO Impact	Positive Impact	Negative impact
Impact on your business model/ organisation/ client relationship	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Impact on your revenues	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Impact on market structure (e.g. principal vs. agency trading etc).	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Impact on market liquidity and execution costs.	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Other impacts. Please elaborate	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_19>

**Q20. Is there any specific provision in the draft RTS that you would expect to be a source of significant cost? If so, please elaborate.**

<ESMA\_QUESTION\_MIFID\_TO\_20>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_20>

**Q21. Please provide an indication, even a rough one, of compliance costs (in thousands of euros).**

<ESMA\_QUESTION\_MIFID\_TO\_21>

Draft RTS on the TO	a. IT costs	b. Training costs	c. Staff costs	d. Other costs (please identify)	Total costs ( if a., b, c or d. are not available separately)
One-off costs	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Recurring costs (on an annual basis}	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_21>

**Q22. Taking into account the size of your firm, would you qualify overall compliance costs with the draft RTS as low, medium or high?**



<ESMA\_QUESTION\_MIFID\_TO\_22>

Please enter here "Low", "Medium" or "High"  
TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_22>