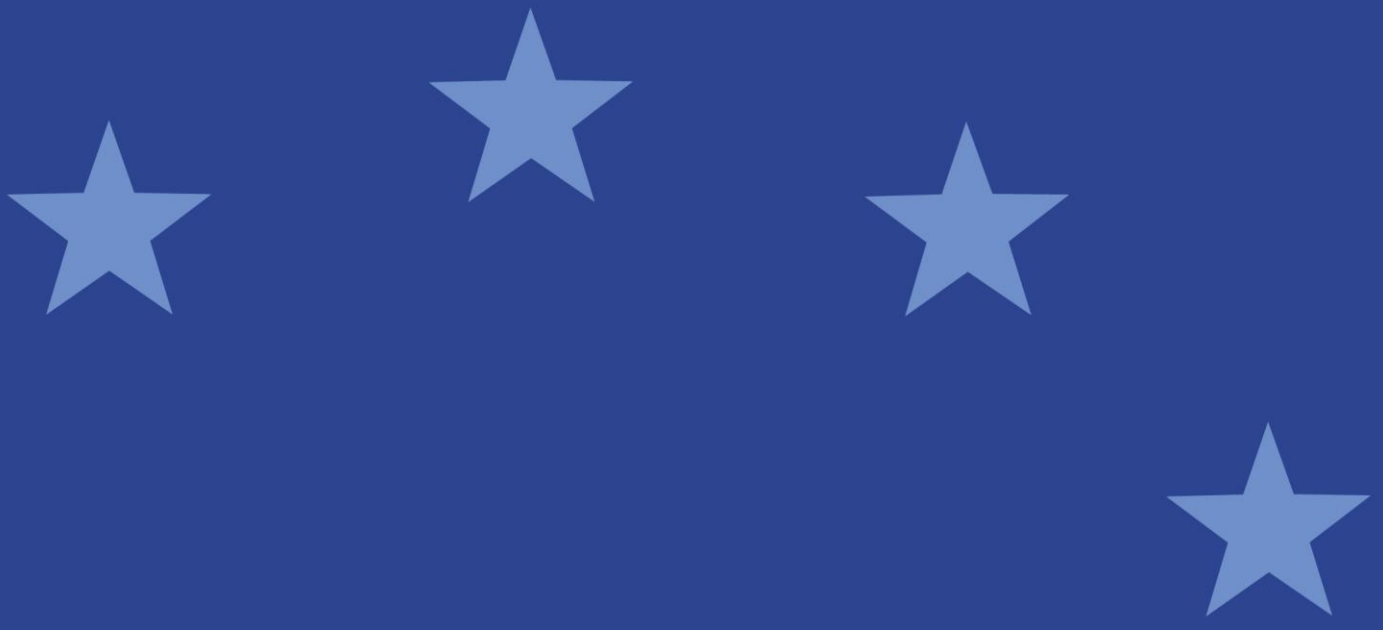




European Securities and
Markets Authority





Reply form for the Discussion 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 Discussion 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 **21 November 2016**.

All contributions should be submitted online at 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 under the headings 'Legal notice' and 'Data protection'.



Introduction

Please make your introductory comments below, if any:

< ESMA_COMMENT_MIFID_TO_0 >

ICI Global appreciates the opportunity to provide feedback on the discussion paper on the trading obligation for derivatives under the Markets in Financial Instruments Regulation (“MiFIR”) issued by the European Securities and Markets Authority (“ESMA”) (“Discussion Paper”). We commend ESMA for initiating a dialogue on the process that it may use to consider whether to require one or more classes of derivatives to be traded on a regulated venue.

As the international arm of the Investment Company Institute, ICI Global serves a fund membership that includes investment companies that are registered under the Investment Company Act of 1940 and other regulated funds in jurisdictions around the world (collectively, “regulated funds”), with combined assets of US\$20.1 trillion. ICI Global seeks to advance the common interests and promote public understanding of regulated investment funds, their managers, and investors. Its policy agenda focuses on issues of significance to funds in the areas of financial stability, cross-border regulation, market structure, and pension provision. ICI Global has offices in London, Hong Kong, and Washington, DC.

Regulated funds use derivatives in a variety of ways. Derivatives are a particularly useful portfolio management tool in that they offer regulated funds considerable flexibility in structuring their investment portfolios. Uses of derivatives include, for example, hedging positions, equitising cash that a regulated fund cannot immediately invest directly in securities, managing a regulated fund’s cash positions more generally, adjusting the duration of a regulated fund’s portfolio, or managing a regulated fund’s portfolio in accordance with the investment objectives stated in a regulated fund’s prospectus.

ICI Global supports regulatory efforts in the European Union and other jurisdictions worldwide to improve the transparency and efficiency of the derivatives markets. Given the importance of derivatives as a portfolio management tool, regulated funds have a vested interest in ensuring that the derivatives markets remain competitive. We encourage ESMA to account for the global nature of the derivatives markets as it considers how the MiFIR trading obligation will apply to classes of derivatives. Specifically, ESMA should keep in mind that once a trading obligation applies to a class of derivatives in the European Union and a third country, cross-border transactions in those derivatives would have to be conducted on a trading venue that satisfies the regulatory requirements applicable to both counterparties. We therefore urge EU regulators to work closely with international regulators as soon as possible (before the implementation of any trading obligation) to ensure that counterparties to cross-border derivatives transactions can satisfy applicable trading obligations in the European Union and a third country. Absent a regulatory solution, cross-border derivatives activity will cease in instruments subject to a trading obligation in more than one jurisdiction and liquidity will potentially fragment along national or regional boundaries because execution can occur in only one location. We hope that the lessons learned from the lengthy and difficult experience of finding equivalence of clearinghouses between the EU and the US Commodity Futures Trading Commission (“CFTC”) will facilitate a resolution that would ensure that counterparties can continue to engage in cross-border transactions.

With respect to the Discussion Paper, as a general matter, we are gravely concerned about the data on which ESMA proposes to base its trading obligation determinations. ESMA itself questions the usefulness of the data available through trade repositories in the Discussion Paper. Given the significant data quality issues, we urge ESMA (at least until the data quality has improved) to use a high threshold in making the trading obligation determinations to ensure that the trading obligation is imposed only on the most liquid classes of derivatives to avoid harming liquidity in less liquid classes. As data quality improves over time, ESMA can further refine the liquidity assessment to extend the trading obligation to additional classes of derivatives.

Our detailed comments address three themes raised in the Discussion Paper. First, we address questions concerning the relationship between liquidity assessments for the trading obligation and the transparency regime. Second, we set out recommendations for the compliance schedule for the trading obligation. Third, we explain the importance of package transactions to regulated funds and suggest steps that ESMA



should take to ensure that regulated funds and other market participants can continue to use these valuable strategies.

< ESMA_COMMENT_MIFID_TO_0 >

Q1. Do you agree that the level of granularity for the purpose of the trading obligation should apply at the same level as the one used for calibrating the transparency regime of non-equity instruments? If not, which level of granularity for the TO would you recommend and why? Would that differ by asset class and type of instrument?

<ESMA_QUESTION_MIFID_TO_1>

ICI Global generally agrees with the analysis in Section 5 of the Discussion Paper. We believe that the discussion paper draws appropriately from ESMA’s work on the transparency regime while at the same time correctly treating these two requirements as distinct. Although the regulatory criteria required to apply the transparency regime have some commonalities with those applicable to the trading obligation, a higher bar should apply for determining the classes of derivatives that should be subject to the trading obligation. Applying the trading obligation to a class of derivatives that lacks adequate liquidity to support venue-based trading likely would exacerbate the illiquidity of that class, making it difficult or impossible for market participants to close their existing positions or open new ones. For example, we support ESMA’s proposal to consider applying the trading obligation only to contracts falling on benchmark dates—and a number of days around those dates—because this measure will ensure that the trading obligation focuses, at least initially, on the most commonly traded instruments in a particular class of derivatives. If ESMA believes in the future that its data support extending the trading obligation to contracts not falling on benchmark dates, it could re-evaluate the instruments at that time.

We believe that establishing a higher bar for the trading obligation also will better balance the operational and compliance workloads of market participants. The burdens associated with subjecting a class of derivatives to the full requirements of the transparency regime will fall mainly on trading venues or systemic internalisers, entities that have the capacity and operate systems that are well equipped to fulfil the obligations associated with the transparency regime.* By contrast, a vast range of market participants will face operational and compliance burdens to establish the trading relationships and operational capacity necessary to satisfy the trading obligation.

We also support ESMA’s proposal to use the classes of derivatives identified for the purposes of the clearing obligation as a guide for assessing whether or not a class of derivatives should be subject to the trading obligation. Using the derivatives classification work undertaken for the clearing obligation to inform trading obligation determinations appears to be an efficient and sensible regulatory approach. Any class of derivatives not subject to the clearing obligation would be unsuitable for the trading obligation, and we support ESMA’s decision not to examine those classes.

*With respect to the transparency obligation, we request that ESMA confirm that when a third-country venue is recognised as equivalent to a regulated venue in the European Union, the reporting obligation is not transferred to the EU counterparty. We urge ESMA in those situations either to require the third-country venue to report under EMIR as a condition of equivalence or permit reporting to another regulator to satisfy the reporting obligations under EMIR.

<ESMA_QUESTION_MIFID_TO_1>

Q2. Do you agree that all derivatives currently subject to or considered for the CO are admitted to trading or traded on at least one trading venue? If not, please explain which classes of derivatives are not available for trading on at least one trading venue.

<ESMA_QUESTION_MIFID_TO_2>

Article 32(2)(a) of MiFIR requires ESMA to conduct a “venue test” as part of the analysis for determining whether to apply the trading obligation to a particular class of derivatives. The venue test provides that a class of derivative subject to the clearing obligation (or a relevant subset of such class) “must be admitted



to trading or traded on at least one” regulated market, multilateral trading facility, organised trading facility, or a third-country trading platform recognised as equivalent by the European Commission.* The venue test is factual—either a class of derivatives is admitted to trading or traded on a particular venue or it is not—and ESMA should obtain a concrete answer to this question.

To ensure that ESMA obtains accurate information concerning the classes of derivatives that satisfy the venue test, ESMA should ensure that it has up-to-date information directly from registered—or recognised—trading venues or from national competent authorities. To further enhance clarity about the classes of derivatives that satisfy the venue test, we suggest that ESMA encourage each registered or recognised trading venue to list publicly the classes of derivatives admitted to trading on its facilities. ESMA could then take further steps to determine whether trading actually occurs on the venues on which the class is admitted, which we believe should be a pre-condition to any trading obligation. ESMA must have both sets of information to determine unambiguously whether a particular class satisfies the MiFIR standard.

In response to Q5 and Q6 we suggest a number of factors that ESMA should consider in applying the venue test.

*We note that Article 32(4) of MiFIR empowers ESMA on its own initiative to identify classes of derivatives that should be subject to the trading obligation even if they are not subject to the clearing obligation or are not admitted to trading or traded on a venue. We strongly support ESMA’s decision not to exercise its authority under Article 32(4) of MiFIR at this time. Classes of derivatives that fail the venue test in Article 32(2) of MiFIR (or not subject to the clearing obligation) are not sufficiently liquid to support the trading obligation.

<ESMA_QUESTION_MIFID_TO_2>

Q3. How should ESMA determine the total number of market participants trading in a class of derivatives? Do you consider it appropriate to carry out this assessment with TR data or would you recommend other data sources?

<ESMA_QUESTION_MIFID_TO_3>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_MIFID_TO_3>

Q4. In your view, what should be the minimum total number of market participants to consider the following classes of derivatives as sufficiently liquid for the purpose of the trading obligation? i) OTC interest rate derivatives denominated in EUR, USD, GBP and JPY; ii) OTC interest rate derivatives denominated in NOK, PLN and SEK; iii) Credit default swaps (CDS) indices? Should you consider that this assessment should be done on a more granular level, please provide your views on the relevant subsets of derivatives specified in 1.-3.

<ESMA_QUESTION_MIFID_TO_4>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_MIFID_TO_4>

Q5. Do you agree with this approach? Do you consider alternative ways to identify the number of trading venues admitting to trading or trading a class of derivatives as more appropriate?

<ESMA_QUESTION_MIFID_TO_5>



ICI Global fully supports ESMA's interpretation that the MiFIR venue test establishes a minimum requirement that ESMA can enhance through regulatory technical standards ("RTS"). As described in more detail in our response to Q6 below, we urge ESMA to require that a class be actively traded on at least two trading venues that provide access on fair and reasonable terms to all market participants (as direct participants of the trading venues and through intermediaries) before subjecting that class to the trading obligation. We do not believe a trading venue admitting an instrument to trading (without actual trading occurring on that trading venue) would make that instrument liquid. Nor should ESMA consider a class of derivatives to be more liquid merely because more trading venues offer the class for trading.

Instead, ESMA should consider the volume and frequency of transactions in the classes of derivatives listed by trading venues as well as how the price of those transactions corresponds to the bid-ask spread at the time of the trade. If trading occurs frequently and within a narrow bid ask spread, we believe those factors could suggest there may be sufficient liquidity on that venue. We urge ESMA to find sufficient liquidity on at least two trading venue before requiring all transactions in that instrument to occur on regulated trading venues.

<ESMA_QUESTION_MIFID_TO_5>

Q6. On how many trading venues should a derivative or a class of derivatives be traded in order to be considered subject to the TO?

<ESMA_QUESTION_MIFID_TO_6>

We urge ESMA to propose a more rigorous venue test in its draft RTS implementing the trading obligation than the minimum criteria set forth in Article 32(2)(a) of MiFIR. The minimum criteria in MiFIR provide that a class of derivative be subject to the clearing obligation (or a relevant subset of such class) and "must be admitted to trading or traded on at least one" regulated market, multilateral trading facility, organised trading facility, or a third-country trading platform recognised as equivalent by the European Commission. Merely applying the literal language of the MiFIR test could give a trading venue an unfair competitive position to the detriment of market participants and the market itself. ICI Global believes that a class of derivatives should not be subject to the trading obligation until the class is actively traded on at least two trading venues that provide access on fair and reasonable terms to all market participants. We explain each of these criteria below.

The Class Must Be Actively Traded, Not Just Admitted To Trading

We urge ESMA to require that a class of derivatives be actively traded on trading venues—rather than merely being admitted to trading—to ensure that market participants can, in fact, transact on a venue when the trading obligation takes effect. A trading venue has a great incentive to list a product for trading, even if little or no volume actually develops on the venue, if admission to trading could lead to mandatory trading of the product on that venue. ESMA cannot assume that a liquid market will develop on a venue once the trading obligation is imposed because the venue might not be able to support the immediate development of a liquid market in the class or market participants might be unable or unwilling to connect to the venue for a variety of reasons, including concerns about the venue's operations or information security program.

Active Trading Should Occur on At Least Two Trading Venues

We urge ESMA to propose RTS that would require—as part of the test to determine whether a class of derivatives must be traded on a regulated trading venue—that the class be traded actively on at least two trading venues. If ESMA allows a class of derivatives to become subject to the trading obligation when a single venue offers the class for trading, that venue would potentially monopolize trading in that class. Market participants that wish to trade derivatives of that class would have no choice but to connect to the trading venue and pay whatever fees the venue charges for its services. If the trading venue lacks capac-



ity to onboard a significant number of new users, some market participants might be unable to trade derivatives in the class for an extended period of time while the venue upgrades its capabilities. Preventing some participants from trading these instruments could cause the liquidity characteristics of the class to change in ways inconsistent with the trading obligation. Moreover, a service outage at the single venue authorised to offer trading in the class of derivatives would halt trading in the class for the entire market to the great detriment of regulated funds and other market participants. Accordingly, we believe that requiring a class of derivatives to be actively traded on at least two trading venues would improve market quality and resilience.

Trading Venues Must Offer Access on Fair and Reasonable Terms to All Market Participants

The trading obligation operates simply: Any market participant subject to the trading obligation that wishes to trade an instrument subject to the trading obligation must do so on one of the venues specified in Article 28(1) of MiFIR. No exception exists for market participants that are unable to execute, directly or indirectly, on one of the specified venues. Therefore it is critically important that ESMA not adopt a trading obligation until it verifies that the rules of the trading venues that market participants will need to use to satisfy this mandate grant all market participants access on fair and reasonable terms. We would be particularly concerned if the rules of a trading venue allowed access only to certain classes of market participants either expressly or by imposing onerous conditions that effectively limit access to the venue. Such provisions would prevent those market participants that are denied access from trading derivatives in the class subject to the trading obligation. This result would be grossly unfair and could reduce liquidity in the class of derivatives as a whole. We therefore recommend that any RTS to implement the trading obligation require a trading venue to offer its services to all market participants on fair and reasonable terms.

<ESMA_QUESTION_MIFID_TO_6>

Q7. What would be in your view the most efficient approach to assess the total number of market makers for a class of derivatives? Where necessary, please distinguish between: i) The phase prior to the application of MiFID II (i.e. before January 2018); ii) The phase after the application of MiFID II (i.e. after January 2018).

<ESMA_QUESTION_MIFID_TO_7>
[TYPE YOUR TEXT HERE]
<ESMA_QUESTION_MIFID_TO_7>

Q8. How many market makers and other market participants under a binding written agreement or an obligation to provide liquidity should be in place for a derivative or a class of derivatives to be considered subject to the TO?

<ESMA_QUESTION_MIFID_TO_8>
[TYPE YOUR TEXT HERE]
<ESMA_QUESTION_MIFID_TO_8>

Q9. Do you agree with the proposed approach or do you consider an alternative approach as more appropriate?

<ESMA_QUESTION_MIFID_TO_9>
[TYPE YOUR TEXT HERE]
<ESMA_QUESTION_MIFID_TO_9>



Q10. Do you agree that the criterion of average size of spreads, in particular in case of absence of information on spreads, should receive a lower weighting than the other liquidity criteria? If not, please specify your reasons

<ESMA_QUESTION_MIFID_TO_10>
[TYPE YOUR TEXT HERE]
<ESMA_QUESTION_MIFID_TO_10>

Q11. Which sources do you recommend for obtaining information on the average size of spreads by asset class?

<ESMA_QUESTION_MIFID_TO_11>
[TYPE YOUR TEXT HERE]
<ESMA_QUESTION_MIFID_TO_11>

Q12. What do you consider as an appropriate proxy in case of lack of information on actual spreads?

<ESMA_QUESTION_MIFID_TO_12>
[TYPE YOUR TEXT HERE]
<ESMA_QUESTION_MIFID_TO_12>

Q13. Do you agree with the suggested approach? If not, what approach would you recommend?

<ESMA_QUESTION_MIFID_TO_13>
[TYPE YOUR TEXT HERE]
<ESMA_QUESTION_MIFID_TO_13>

Q14. Do you agree that trades above the post-trade large in scale threshold should not be subject to the TO? If not, what approach would you suggest? Should transactions above the post-trade LIS threshold meet further conditions in order to be exempted from the TO?

<ESMA_QUESTION_MIFID_TO_14>

We agree with ESMA’s proposal to exempt from the trading obligation any transaction that qualifies for a deferral from post-trade transparency because it is above the large-in-scale (“LIS”) threshold for the instrument. The LIS threshold is designed to ensure that derivatives markets function in an orderly fashion by protecting dealers from the risk that rapid post-trade dissemination of a large trade will enable other traders to profit—at the dealer’s expense—from the knowledge that the dealer has assumed a significant, presently unhedged exposure. Without a deferral for LIS transactions, transaction costs would rise for regulated funds and other end users of derivatives because dealers would either stop accepting orders of LIS size or charge more for providing this service. We believe that applying the trading obligation to transactions that satisfy the LIS threshold would essentially eviscerate the protections offered by the deferral from post-trade transparency if the execution protocols of regulated venues allow participants to learn about the existence of a transaction above the LIS threshold. An additional benefit of using the LIS threshold as a mechanism to exempt a derivatives transaction from the trading obligation is that it would



ensure—as indicated in the Discussion Paper—“pretty close” alignment with the US trading obligation for swaps.

<ESMA_QUESTION_MIFID_TO_14>

Q15. How highly should ESMA prioritise the alignment of the TO with transparency? What would be the main consequences for the market if some instruments are covered by transparency and not by the TO or vice versa? If the two are not fully aligned, would a broader scope for the TO or for transparency be preferable, and why? In case of a broader or narrower scope for the TO (compared with transparency), how should the two liquidity thresholds relate to each other?

<ESMA_QUESTION_MIFID_TO_15>

We do not believe that an instrument that is sufficiently liquid for transparency purposes is necessarily liquid enough to be mandated for trading on a regulated venue. We therefore recommend that ESMA establish a liquidity test for purposes of the trading obligation that is more stringent than the test used for the transparency regime; all instruments subject to the trading obligation should be subject to the transparency regime, but not all instruments that must comply with the transparency regime should be subject to the trading obligation.

Section 6 of the Discussion Paper discusses the unfortunate discrepancy in MiFIR that does not provide national competent authorities with the power to suspend temporarily a trading obligation but does allow them to suspend temporarily the transparency obligation if the liquidity in a class of derivatives falls below a specified threshold. ICI Global has urged that this discrepancy be addressed because suspending transparency requirements without also suspending the trading obligation could leave market participants in the untenable position of being forced to transact on venues on the basis of inadequate market data. A decrease in liquidity below the transparency threshold also would make trading such classes of instruments on a trading venue much more difficult, if not impossible. We believe such a requirement would harm liquidity in affected instruments and urge EU authorities to address this issue prior to the introduction of the trading obligation.

To alleviate some of these concerns, ESMA should use a high threshold to impose the trading obligation on a narrower group of instruments until this issue is resolved. We recognize, however, that it may be difficult for ESMA to predict which instruments may decrease in liquidity, so we urge EU authorities to find a permanent solution to this problem.

<ESMA_QUESTION_MIFID_TO_15>

Q16. Do you agree with the proposed methodology to eliminate duplicated trades or would you recommend another approach? Do you agree with selecting Option 2?

<ESMA_QUESTION_MIFID_TO_16>

ICI Global agrees that the trade repository data upon which ESMA proposes to rely is flawed in many respects and requires extensive cleaning before it can provide an accurate impression of market liquidity. We further believe that the transactions comprising a cleared derivative should be considered only once in the evaluation of whether derivatives of that class should be subject to the trading obligation.

A cleared derivatives transaction comprises at least three distinct trades and often more when clients of clearing members are involved in a trade as in the case of transactions involving regulated funds. The first trade, known as the alpha, occurs between market participants that seek exposure to the relevant



product. If the alpha counterparties are clearing members of a central counterparty (“CCP”), they can clear the trade by submitting it to the CCP. The process of clearing the alpha results in its termination or novation and the creation of two new trades, a beta trade—between one party to the alpha and the CCP—and a gamma trade—between the other party to the alpha and the CCP. Additional transactions can arise if one of the alpha counterparties is not a clearing member of the CCP or if the CCP nets a beta or gamma trade with an existing position. Regardless of the number of transactions created during the clearing process, for purposes of assessing the liquidity of a class of derivatives, ESMA should consider only alpha transactions. The transactions that arise as a result of the acceptance of the alpha for clearing do not represent new trading interest and should play no role in the liquidity assessment.

Given the quality of data collected under the current reporting regime, we do not believe that ESMA’s proposal to exclude only cleared trades where one of the counterparties is a CCP or a clearing member will remove all duplicative trades from the dataset. ESMA acknowledges that the only way to determine whether a clearing member is a counterparty to a trade is to rely on a voluntary “clearing member ID” field. Because the field is not mandatory, it is probable that certain cleared trades involving clearing members would remain in the data set causing ESMA to overestimate the liquidity of a particular class of derivatives.

Relying on data that artificially inflate liquidity could have devastating consequences for the market and market participants that seek to transact in those instruments, particularly if the data are so inaccurate that an illiquid class of derivatives becomes subject to the trading obligation. Imposing this obligation on an illiquid class of derivatives could further impair liquidity in the class and make it difficult or impossible for market participants to transact in that class.

We are deeply concerned by ESMA’s suggestion that the quality of data from trade repositories does not allow the identification of alpha trades. The trading obligation as laid out in MiFIR requires ESMA to conduct a rigorous data-based liquidity assessment before subjecting any class of derivatives to the trading obligation. If the data quality is as poor as the Discussion Paper implies, ESMA must be extremely cautious in imposing the trading obligation on any class of derivatives. We believe that the quality and accuracy of data stored in trade repositories likely would be improved if ESMA revised reporting requirements for derivatives to apply to only one side of a derivatives transaction. As data quality improves, ESMA would be better equipped to engage in the rigorous data analysis needed to make trading obligation determinations.

<ESMA_QUESTION_MIFID_TO_16>

Q17. Do you agree with the approach taken with regard to calculating tenors?

<ESMA_QUESTION_MIFID_TO_17>
[TYPE YOUR TEXT HERE]
<ESMA_QUESTION_MIFID_TO_17>

Q18. Do you agree with the reasons mentioned above or is there another explanation for the significant number of trades outside of benchmark dates?

<ESMA_QUESTION_MIFID_TO_18>
[TYPE YOUR TEXT HERE]
<ESMA_QUESTION_MIFID_TO_18>

Q19. Does this result reflect your assessment of liquidity in fixed-float IRS? If not, please explain on which subclasses you disagree and why.



<ESMA_QUESTION_MIFID_TO_19>
[TYPE YOUR TEXT HERE]
<ESMA_QUESTION_MIFID_TO_19>

Q20. What thresholds would you propose as the liquidity criteria? What minimum number of counterparties would you consider appropriate for introducing the TO?

<ESMA_QUESTION_MIFID_TO_20>
[TYPE YOUR TEXT HERE]
<ESMA_QUESTION_MIFID_TO_20>

Q21. What further specifications (e.g. payment frequency, reset frequency, day count convention, trade start type) would you consider necessary for specifying the trading obligation for fixed-float IRS? How would you determine these additional specifications?

<ESMA_QUESTION_MIFID_TO_21>
[TYPE YOUR TEXT HERE]
<ESMA_QUESTION_MIFID_TO_21>

Q22. Does this result reflect your assessment of liquidity in OIS? If not, please explain on which subclasses you disagree and why.

<ESMA_QUESTION_MIFID_TO_22>
[TYPE YOUR TEXT HERE]
<ESMA_QUESTION_MIFID_TO_22>

Q23. What thresholds would you propose for the liquidity criteria? What minimum number of counterparties would you consider appropriate for introducing the TO?

<ESMA_QUESTION_MIFID_TO_23>
[TYPE YOUR TEXT HERE]
<ESMA_QUESTION_MIFID_TO_23>

Q24. What further specifications (e.g. payment frequency, reset frequency, day count convention, trade start type) would you consider necessary for specifying the trading obligation for OIS? How would you determine these additional specifications?

<ESMA_QUESTION_MIFID_TO_24>
[TYPE YOUR TEXT HERE]
<ESMA_QUESTION_MIFID_TO_24>

Q25. Do you agree that due to the specificities of the FRA-market, FRAs should not be considered for the TO? Do you agree that the majority of FRAs transactions serve post-trade risk reduction purposes rather than actual trades.



<ESMA_QUESTION_MIFID_TO_25>
[TYPE YOUR TEXT HERE]
<ESMA_QUESTION_MIFID_TO_25>

Q26. In case you consider FRAs should be considered for the TO, which FRA sub-classes are in your view sufficiently liquid and based on which criteria? How should a TO for FRAs best be expressed? Should it be based on the first (effective date) or the second period (reference date)? Apart from the tenor, which elements do you consider necessary for specifying the TO for FRAs and why?

<ESMA_QUESTION_MIFID_TO_26>
[TYPE YOUR TEXT HERE]
<ESMA_QUESTION_MIFID_TO_26>

Q27. Would you consider the two index CDS as sufficiently liquid for being covered by the TO?

<ESMA_QUESTION_MIFID_TO_27>

According to the Discussion Paper, trade repository data on credit default swap transactions does not provide enough information for ESMA to “carry out an initial liquidity assessment.” Despite this absence of data, ESMA indicates that two classes of credit default swaps “can be considered sufficiently liquid” for a trading obligation determination “based on discussions with selected stakeholders.” We disagree vigorously with this approach.

Article 32 of MiFIR requires ESMA to conduct an analysis of the liquidity of a class of derivatives before determining that the class or any subset of the class should be subject to the trading obligation. This analysis entails a thorough analysis of market data, not “discussions with selected stakeholders.” We encourage ESMA to use discussions with market participants to inform its proposed RTS, but these discussions should not replace an extensive, data-based assessment of liquidity. ESMA should not propose a trading obligation for any class of derivatives until it has obtained data concerning trading in that class, analysed the data, and determined based on that data that the class of derivatives meets the liquidity standards required by MiFIR.

<ESMA_QUESTION_MIFID_TO_27>

Q28. Do you agree that the TO for CDS should cover the on-the-run series as well as the first thirty working days of the most recent off-the run-series? If not, please explain why and propose an alternative approach.

<ESMA_QUESTION_MIFID_TO_28>
[TYPE YOUR TEXT HERE]
<ESMA_QUESTION_MIFID_TO_28>

Q29. Apart from the tenor, which elements do you consider indispensable for specifying the TO for CDSs and why?

<ESMA_QUESTION_MIFID_TO_29>



[TYPE YOUR TEXT HERE]
<ESMA_QUESTION_MIFID_TO_29>

Q30. Do you agree with the proposed application dates? If not, please provide an alternative and explain your reasoning.

<ESMA_QUESTION_MIFID_TO_30>

We believe it is important for all market participants to have adequate time to prepare for the application of the trading obligation following a determination that a class of derivatives will be subject to this mandate. For example, market participants will need time to update their systems, processes, and procedures to account for the trading obligation. Venues likely will need time to onboard additional participants and to make certain technological or operational changes to accommodate the trading obligation. Given the scope of changes necessary to implement the trading obligation, we recommend that ESMA require compliance no earlier than 90 days after the effective date of the determination for a particular class of derivatives.

As noted above, if the trading obligation adopted by ESMA will apply to a class of derivatives also subject to a trading obligation in a third country, ESMA and the third-country regulators will need to ensure that participants in the two markets can continue to trade with each other on venues that satisfy the counterparties' regulatory obligations. If no such venues exist, cross-border transactions will cease for participants in those two markets. We urge ESMA to provide ample time for international regulators to make an equivalence determination of each other's trading platforms in establishing compliance dates for the trading obligation to avoid severely harming liquidity and disrupting trading.

<ESMA_QUESTION_MIFID_TO_30>

Q31. Do you consider necessary to provide for an additional phase-in for the TO for operational purposes and to avoid bottlenecks? If yes, please provide a proposal on the appropriate length of such a phase-in for the different categories of counterparties and explain your reasoning.

<ESMA_QUESTION_MIFID_TO_31>
[TYPE YOUR TEXT HERE]
<ESMA_QUESTION_MIFID_TO_31>

Q32. Which types of package transactions are carried out comprising components of classes of derivatives that are assessed for the purpose of the TO, i.e. IRD and/or CDS? Please describe the package and its components as well as your view on the liquidity of those packages.

<ESMA_QUESTION_MIFID_TO_32>
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<ESMA_QUESTION_MIFID_TO_32>

Q33. Are there packages that only comprise components of classes of derivatives that are assessed for the purpose of the TO? Do you consider those package transactions to be standardised and sufficiently liquid?



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Q34. Do you agree that package transactions that are comprised only of components subject to the TO should also be covered by the TO or should the TO only apply to categories of package transactions that are considered liquid? If not, please explain.

<ESMA_QUESTION_MIFID_TO_34>

We believe that ESMA's RTS on the trading obligation should not prevent market participants from executing package transactions. The term "package transaction" refers to a transaction involving two or more components that is priced or quoted as one economic transaction with simultaneous or near simultaneous execution of all components and the execution of each component is contingent upon the execution of all other components. Regulated funds and other market participants rely on package transactions to carry out particular investment strategies that could be compromised if the trading obligation interferes with the execution of these trades. We believe that market participants, including regulated funds, must continue to be able execute these strategies after the trading obligation takes effect. Accordingly, we urge ESMA not to subject the components of a package transaction to the trading obligation until the market develops the infrastructure necessary to assure pricing and execution of the transaction as an entire package.

ESMA should not assume that package transactions composed entirely of components subject to the trading obligation also should be covered by the trading obligation. In assessing whether the trading obligation should apply to a package, ESMA should consider whether trading venues that offer the components for trading have the operational capability in place to support execution of the package. ESMA should assess, for example, whether trading venues allow participants to price or quote the components as a single transaction and whether the venues support the simultaneous or near simultaneous execution of all components. ESMA also should consider the adequacy of the liquidity on the venue for the package as a whole instead of looking merely at the components. Based on our members' experience with the trading obligation for swaps in the United States, we anticipate that it might take trading venues longer to build the operational capacity and develop the liquidity necessary to support the trading obligation for package transactions than individual instruments. To minimise disruption to the market, ESMA should provide trading venues adequate time to complete this work.

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Q35. How should the TO apply for package transactions that include some components subject to the TO, whereas other components are not subject to the TO?

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Consistent with our response to Q34, we urge ESMA not to apply the trading obligation to the components of a package transaction until the market develops the infrastructure necessary to assure pricing and execution of the transaction as an entire package. The infrastructure to execute these trades may be even less developed than for packages in which all of the components are subject to the trading obligation. We urge ESMA to allow the natural evolution of the market for package transactions, consistent with the treatment of these transactions in markets supervised by the CFTC. If ESMA does not provide relief from the trading obligation for components of package transactions where not all legs of the package are subject to the trading obligation, trading in these packages will effectively cease, as they cannot, for a variety of reasons, be executed consistent with the trading obligation.

We also believe that a package as a whole may be less likely to be liquid if certain components of the package are not sufficiently liquid to be subject to the trading obligation. Accordingly, we urge ESMA not



to consider subjecting an entire package transaction to the trading obligation if any component of the package is not itself subject to that obligation.

<ESMA_QUESTION_MIFID_TO_35>