



European Securities and  
Markets Authority

# **Reply form for the Consultation Paper on MiFID II/ MiFIR review report on the transparency re- gime for non-equity and the trading obligations for derivatives**



10 March 2020

## Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation Paper on the transparency regime for non-equity instruments and the trading obligations for derivatives MiFID II/ MiFIR review report published on the ESMA website.

### **Instructions**

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA\_QUESTION\_CP\_MIFID\_NQT\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

- if they respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

### **Naming protocol**

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

ESMA\_CP\_MIFID\_NQT\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

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

ESMA\_CP\_MIFID\_NQT\_ESMA\_REPLYFORM or

ESMA\_CP\_MIFID\_NQT\_ANNEX1

### **Deadline**

Responses must reach us by **19 April 2020**.

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



### ***Publication of responses***

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA's Board of Appeal and the European Ombudsman.

### ***Data protection***

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the headings 'Legal notice' and 'Data protection'.



## General information about respondent

Name of the company / organisation	THE SWEDISH INVESTMENT FUND ASSOCIATION
Activity	Investment Services
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Sweden

## Introduction

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

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

The Swedish Investment Fund Association ("SIFA") believes that transparency is essential for a well-functioning non-equity market. We have recently experienced that even though the market could be called fairly ok, at best, in non-distressed markets, it does not work in distressed situations. We believe that now there could be a window of opportunity to make improvements in the transparency and the market functioning.

Overall SIFA supports the ESMA initiative to enhance transparency by adjusting limits and waivers and also working towards greater supervisory convergence.

Even though pre-trade transparency can be seen separate from post-trade transparency they are interconnected. With the existing extensive deferral regime for post-trade, pre trade information could be used as a source in for example valuation of bonds. Hence a better functioning pre trade transparency could for example help to mitigate the problem with late/non-existing post-trade data.

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

**Q1. What benefits or impacts would you see in increased pre-trade transparency in the different non-equity markets? How could the benefits/impacts of such pre-trade transparency be achieved/be mitigated via changes of the Level 1 text?.**

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

From the view-point of investment funds and investment fund savers, a lot could be benefitted from greater transparency. A better price formation for bond leads to improved possibilities to enhance important actions for investment funds like best execution, valuation and liquidity analysis.

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

**Q2. What proposals do you have for improving the level of pre-trade transparency available? Do you believe that the simplification of the regime for pre-trade transparency waivers would contribute to the improvement of the level of pre-trade transparency available?**

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_2>

SIFA believes that ESMA's suggestions are a step in the right direction. Today almost all corporate bonds on the Swedish market are deemed illiquid according to MiFIR and a lowering of the thresholds for determining the liquidity status would be welcomed. We also support the suggestion to make the Level 1 less complex and reduce the amount of waivers.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_2>

**Q3. Are you supportive of ESMA's proposal to delete the pre-trade SSTI-waiver? Would you compensate for this by lowering the pre-trade LIS-thresholds across all asset classes or only for selected asset classes? What would be the appropriate level for such adjusted LIS-thresholds? If you do not support ESMA's proposal to delete the pre-trade SSTI-waiver, what should be the way forward on the SSTI-waiver in your view?**

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_3>

We are positive to delete a waiver (SSTI) that is complex and rarely used. We are however sceptical to compensate this with lowering LIS-thresholds. In our view there is no need for compensation.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_3>

**Q4. What are your views on the use of the SSTI for the SI-quoting obligations. Should it remain (Option 1) or be replaced by linking the quoting obligation to another threshold (e.g. a certain percentage of the LIS-threshold) (Option 2)? Please explain.**

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

We support Option 2. This would take away a lot of complexity in the rules.

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

**Q5. Would you support turning the hedging exemption into a limited negotiated trade waiver? If so, would you support Option 1 or Option 2? If not, please explain why.**

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

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

**Q6. Do you agree with ESMA’s observations on the emergence of new trading systems and the proposed way forward requiring a Level 1 change and ESMA to issue an Opinion for each new trading system defining its characteristics and the transparency requirements? Would you have suggestions for the timeline and process of such Opinions? Please explain.**

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_6>  
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**Q7. Do you agree with the proposal for the definition of hybrid system? Are there in your view trading systems currently not or not appropriately covered in RTS 2 on which ESMA should provide further guidance? Please explain.**

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_7>  
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**Q8. Do you agree with ESMA’s proposal to require SIs to make available data free of charge 15 minutes after publication? Please explain.**

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_8>  
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**Q9. Would you see value in further standardising the pre-trade transparency information to increase the usability and comparability of the information? Please explain.**

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_9>  
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**Q10. Do you agree with ESMA’s assessment of the level of post-trade transparency and with the need of a more streamlined and uniform post-trade regime which does not include options at the discretion of the different jurisdictions? If not, please explain why and, where available, support your assessment with data.**

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_10>  
We agree with ESMA’s assessment and the description of the market. We can confirm that our experiences is in line with the report by the Swedish FCA, hence the transparency has gone down on the Swedish market post MiFID 2. We strongly agree with the aim to support a more streamlined and uniform post-trade regime across jurisdictions.  
<ESMA\_QUESTION\_CP\_MIFID\_NQT\_10>

**Q11. Do you agree with this proposal? What would be the appropriate level of such a revised LIS-threshold in your view?**

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_11>

We believe that ESMA's suggestions go in the right direction. Today almost all corporate bonds on the Swedish market are deemed illiquid according to MiFIR and a lowering of the thresholds for determining the liquidity status would be welcomed. We are sceptical on lowering the LSI threshold, and if it shall be done it must differentiate levels depending on asset class.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_11>

**Q12. In your view, should the real time publication of volume masking transactions apply to transactions in illiquid instruments and above LIS waiver (Option 1) or to transactions above LIS only (Option 2 and Option 3). Please elaborate. If you support another alternative, please explain which one and why.**

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_12>

We support Option 2. Option 1 would have almost no effect on the Swedish market where illiquid makes up the majority. Option 3 makes it more complex adding a new threshold.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_12>

**Q13. Do you agree with the publication of the price and volume of all transactions after a certain period of time, such as two calendar weeks (Option 1 and 2) or do you support the two-steps approach for LIS transactions (Option 3)? Please explain why and provide any alternative you would support. Which is the optimal option in case a consolidated tape would emerge in the future?**

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_13>

We support Option 2. A two-step approach is more complicated.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_13>

**Q14. Do you agree with ESMA's proposed way forward to issue further guidance and put a stronger focus on enforcement to improve the quality of post-trade data? Are there any other measures necessary at the legislative level to improve the quality of post-trade data? What changes to the transparency regime in Level 1 could lead to a substantial improvement of data quality?**

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_14>

Yes we agree with the ESMA description of the current state and with support the efforts to move forward.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_14>



**Q15. What would be the optimal transparency regime to help with the potential creation of a CTP?**

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

A reduction and unification of deferrals and waivers is the right way to go. This will make the data more valuable and hence increase the likelihood of a CTP to emerge. Having said that, from an investment fund view even post-trade data at t+2 is of limited value. For a CTP to contribute with valuable data, end-of-day data would be necessary. We understand that this is sensitive but if the CTP could aggregate data on instrument level (for example sum of transactions volumes, average prices) and publish aggregated data this could be more realistic for trade reporters and still of value for users of the data.

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

**Q16. Do you agree with ESMA's above assessment? If not, please explain.**

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

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

**Q17. Are you of the view that the interpretation of TOTV should remain aligned for both transparency and transaction reporting? If not, please explain why.**

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

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

**Q18. Which of the three options proposed, would you recommend (Option 1, Option 2 or Option 3)? In case you recommend an alternative way forward, please explain.**

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

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

**Q19. What is your view on the proposal to delete the possibility for temporarily suspending the transparency provisions? Please explain.**

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_19>

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<ESMA\_QUESTION\_CP\_MIFID\_NQT\_19>

**Q20. Do you have any remarks on the assessment of Article 28 of MiFIR? Please explain.**

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_20>

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<ESMA\_QUESTION\_CP\_MIFID\_NQT\_20>



**Q21. Do you have any views on the above-mentioned criteria and whether the criteria are sufficient and appropriate for assessing the liquidity of derivatives? Do you consider it necessary to include further criteria (e.g. currency)? Do you consider that ESMA should make use of the provision in Article 32(4) for asset classes currently not subject to the trading obligations? Please explain.**

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_21>  
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**Q22. Do you agree that a procedure for the swift suspension of the trading obligation for derivatives is needed? Do you agree with the proposed procedure? Please explain.**

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_22>  
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**Q23. Do you have a view on this or any other issues related to the application of the DTO?**

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_23>  
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**Q24. Do you have any views on the functioning of the register? Please explain.**

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_24>  
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**Q25. Do you agree that the current quarterly liquidity calculation for bonds is appropriate or would you be of the view that the liquidity determination of bonds should be simplified and provide for more stable results? Please explain.**

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_25>  
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**Q26. Do you agree with ESMA proposal to move to stage 2 for the determination of the liquidity assessment of bonds? Please explain.**

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



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

**Q27. Do you agree with ESMA proposal not to move to stage 2 for the determination of the pre-trade SSTI thresholds for all non-equity instruments except bonds? Please explain.**

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_27>  
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**Q28. Do you agree with ESMA proposal to move to stage 2 for the determination of the pre-trade SSTI thresholds for bonds (except ETCs and ETNs)? Please explain.**

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_28>  
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**Q29. What is your view on the current calibration of the ADNA and ADNT for commodity derivatives? Are there specific sub-asset classes for which the current calibration is problematic? Please justify your views and proposals with quantitative elements where available.**

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_29>  
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**Q30. In relation to the segmentation criteria used for commodity derivatives: what is your view on the segmentation criteria currently used? Do you have suggestions to amend them? What is your view on ESMA's proposals SC1 to SC3? In your view, for which sub-asset classes the "delivery/cash settlement location" parameter is relevant.**

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_30>  
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**Q31. What is your view on the analysis and proposals related to the pre-trade LIS thresholds for commodity derivatives? Which proposal to mitigate the counterintuitive effect of the current percentile approach do you prefer (i.e. keep the current methodology but modify its parameters, or change the methodology e.g. using a different**



**metric for the liquidity criteria)? Please justify your views and proposals with quantitative elements where available.**

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_31>  
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