esma European Securities and Markets Authority

Reply form for the Consultation Paper on draft RTS on package orders for which there is a liquid market

10 November 2016

European Securities and Markets Authority

Date: 10 November 2016

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_PO_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_PO_NAMEOFCOMPANY_NAMEOFDOCUMENT.

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

ESMA_MiFID_PO_ESMA_REPLYFORM or

ESMA_MiFID_PO_ESMA_ANNEX1

Deadline

Responses must reach us by **3 January 2017.**

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_PO_0>

The Global Foreign Exchange Division (GFXD) of the Global Financial Markets Association (GFMA) welcomes the opportunity to comment on behalf of its members on the Discussion Paper on the draft RTS on package orders for which there is a liquid market, launched by ESMA on 10 November 2016.

The GFXD was formed in co-operation with the Association for Financial Markets in Europe (AFME), the Securities Industry and Financial Markets Association (SIFMA) and the Asia Securities Industry and Financial Markets Association (ASIFMA). Its members comprise 25 global foreign exchange (FX) market participants,[1] collectively representing approximately 85% of the FX inter-dealer market.[2] Both the GFXD and its members are committed to ensuring a robust, open and fair marketplace and welcome the opportunity for continued dialogue with global regulators.

The FX market is the world's largest financial market. Effective and efficient exchange of currencies underpins the world's entire financial system. Many of the current legislative and regulatory reforms have had, and will continue to have, a significant impact upon the operation of the global FX market, and the GFXD wishes to emphasise the desire of our members for globally co-ordinated regulation which we believe will be of benefit to both regulators and market participants alike.

The GFXD is only providing comments in response to question 22, as this relates to FX.

We appreciate the opportunity to share our views on this Discussion Paper issued by ESMA. Please do not hesitate to contact Andrew Harvey on +44 (0) 203 828 2694, email aharvey@gfma.org, or Fiona Willis on +44 (0) 203 828 2739, email fwillis@gfma.org, should you wish to discuss any of the above.

< ESMA_COMMENT_MIFID_PO_0>

[1] Bank of America Merrill Lynch, Bank of New York Mellon, Bank of Tokyo Mitsubishi, Barclays, BNP Paribas, Citi, Credit Agricole, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Lloyds, Mizuho, Morgan Stanley, Nomura, RBC, RBS, Scotiabank, Société Générale, Standard Chartered Bank, State Street, UBS, Wells Fargo and Westpac.

[2] According to Euromoney league tables.

Q1. Do you agree with ESMA's proposal to apply the SI obligations at the package order level where the investment firm is an SI in at least one component instrument of the package order? If not, please explain why and propose an alternative.

<ESMA_QUESTION_MIFID_PO_1>
The GFXD has no comments in response to this question
<ESMA_QUESTION_MIFID_PO_1>

Q2. Do you agree with the proposed methodology based on qualitative criteria? Do you consider an alternative methodology as better suited for identifying liquid package orders as a whole?

<ESMA_QUESTION_MIFID_PO_2>
The GFXD has no comments in response to this question

<ESMA_QUESTION_MIFID_PO_2>

Q3. Do you agree with the general criteria for identifying package orders that may be eligible for being liquid as a whole? Do you consider necessary to add further criteria or to remove any of the criteria proposed? Please explain.

<ESMA_QUESTION_MIFID_PO_3>
The GFXD has no comments in response to this question

<ESMA_QUESTION_MIFID_PO_3>

Q4. Do you consider it necessary to further specify the first criterion on the standardisation of components? If yes, which characteristics should be considered to specify the standardised components of packages?

<ESMA_QUESTION_MIFID_PO_4>
The GFXD has no comments in response to this question

<ESMA_QUESTION_MIFID_PO_4>

Q5. Do you agree with the proposed interest rate derivatives specific criteria? If not, please explain why and present your preferred approach. Do you consider it necessary to add further criteria? If yes, please explain.

<ESMA_QUESTION_MIFID_PO_5>
The GFXD has no comments in response to this question

<ESMA_QUESTION_MIFID_PO_5>

Q6. Do you consider that derivative components in other currencies (e.g. other EEA currencies, JPY) should be included? If yes, which ones?

<ESMA_QUESTION_MIFID_PO_6>
The GFXD has no comments in response to this question

<ESMA_QUESTION_MIFID_PO_6>

Q7. Do you agree that only packages with derivative components with the above mentioned benchmark dates should be considered liquid? If not, please explain. Which other or additional benchmark dates do you suggest?

<ESMA_QUESTION_MIFID_PO_7>
The GFXD has no comments in response to this question

<ESMA_QUESTION_MIFID_PO_7>

Q8. Do you consider that for certain types of packages derivative components that have broken dates (e.g. invoice spreads) or which are traded on IMM and MAC dates (e.g. rolls) have a liquid market?

<ESMA_QUESTION_MIFID_PO_8>
The GFXD has no comments in response to this question

<ESMA_QUESTION_MIFID_PO_8>

Q9. Do you consider it necessary to specify criteria for non-derivative components of packages? If yes, which criteria would you suggest and why?

<ESMA_QUESTION_MIFID_PO_9>
The GFXD has no comments in response to this question

<ESMA_QUESTION_MIFID_PO_9>

Q10. Do you agree with the proposed equity derivatives specific criteria? If not, please explain why and present your preferred approach. Do you consider it necessary to add further criteria? If yes, please explain.

<ESMA_QUESTION_MIFID_PO_10>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_10>

Q11. Do you consider that derivative components in other currencies (e.g. other EEA currencies, JPY) should be included? If yes, which ones?

<ESMA_QUESTION_MIFID_PO_11>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_11>

Q12. Do you consider it necessary to specify that all components of the package order should have the same underlying? If yes, please explain.

<ESMA_QUESTION_MIFID_PO_12>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_12>

Q13. Do you agree with the proposed credit derivatives specific criteria? If not, please explain why and present your preferred approach. Do you consider it necessary to add further criteria? If yes, please explain.

<ESMA_QUESTION_MIFID_PO_13>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_13>

Q14. Do you agree that derivative components in USD, EUR or GBP should be considered sufficiently liquid for the purpose of this RTS? Do you consider that derivative components in other currencies (e.g. other EEA currencies, JPY) should be included? If yes, which ones?

<ESMA_QUESTION_MIFID_PO_14>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_14>

Q15. Do you consider it necessary to further specify the indices that are eligible? If yes, please specify which specific indices should be included. Do you consider it necessary to specify the maturity dates of the underlying indices?

<ESMA_QUESTION_MIFID_PO_15>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_15>

Q16. Do you agree with the proposed commodity derivatives specific criteria? If not, please explain why and present your preferred approach. Do you consider it necessary to add further criteria? If yes, please explain.

<ESMA_QUESTION_MIFID_PO_16>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_16>

Q17. Do you consider that derivative components in other currencies (e.g. other EEA currencies, JPY) should be included? If yes, which ones.

<ESMA_QUESTION_MIFID_PO_17>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_17>

Q18. In which types of contracts do package orders in commodity derivatives mostly occur? Do you consider it necessary to provide for asset class specific criteria that take option and future/forward contracts into account? If yes, please explain.

<ESMA_QUESTION_MIFID_PO_18>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_18>

Q19. Do you consider it necessary to develop criteria at a more granular level (e.g. energy derivatives, agricultural derivatives) to better reflect the particularities of package orders in the different sub-asset classes? If yes, please explain.

<ESMA_QUESTION_MIFID_PO_19>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_19>

Q20. Do you consider it necessary to specify that all components of the package order should have the same underlying? If yes, please explain at which level this concept of "same underlying" should apply (e.g. same asset class, same sub-asset class, same sub-class – as per Annex III of RTS 2 – or at or more granular level).

<ESMA_QUESTION_MIFID_PO_20>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_20>

Q21. Are there package orders in other derivative asset classes that are in your view standardised and frequently traded and which should be eligible for having a liquid market as a whole? If yes, what asset class specific criteria do you suggest for those?

<ESMA_QUESTION_MIFID_PO_21>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_21>

Q22. Do you agree with the approach proposed for FX derivatives or do you consider it necessary to include an asset-class specific approach for FX derivatives?

<ESMA_QUESTION_MIFID_PO_22>

The GFXD agrees with the assessment previously made by ESMA that there is not sufficient data available to determine the liquidity of FX derivatives at this time, and that the asset class should be considered illiquid until quality data is available. Therefore, we also agree with the proposal make by ESMA in this Discussion Paper that it is not currently appropriate to develop an approach to FX derivative package transactions. At such time as the liquidity determination for FX is revised, we would be ready to provide input into an amendment to RTS 2 to cover FX package transactions.

<ESMA_QUESTION_MIFID_PO_22>

Q23. How should ESMA deal with cross-asset class package orders? Should ESMA develop cross-asset class specific criteria? If yes, please specify those. Alternatively, should cross-asset class package orders be allocated to only one asset class? If yes, how?

<ESMA_QUESTION_MIFID_PO_23>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_23>

Q24. Do you agree that package orders where all components are subject to the trading obligation for derivatives should be considered to have a liquid market as a whole? If not, please explain.

<ESMA_QUESTION_MIFID_PO_24>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_24>

Q25. Do you consider that package orders where at least one component is subject to the trading obligation and all other components are subject to the clearing obligation should be considered to have a liquid market as a whole? If not, please explain.

<ESMA_QUESTION_MIFID_PO_25>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_25>

Q26. Do you agree that the categories of packages above should be considered as standardised and frequently traded for the purpose of this RTS empowerment? If not, please explain.

<ESMA_QUESTION_MIFID_PO_26>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_26>

Q27. Are there any categories of packages missing in the above asset classes that should be considered for the purpose of this RTS empowerment? Are there in your view categories of packages in other asset classes that ESMA should consider?

<ESMA_QUESTION_MIFID_PO_27>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_27>

Q28. Do you agree with the draft RTS in annex IV? If not, please explain.

<ESMA_QUESTION_MIFID_PO_28>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_28>

Q29. CBAQ1: Please identify, per asset class and per currency, the total nominal amount traded (including packages). Please also identify what % of this total trading is executed i) through packages (incl. EFPs) and ii) through packages (with only financial instruments as components), on trading venues and OTC. Reference period: September 2015–September 2016. If you are a trading venue, please fill in the trading venue columns only. If you are an investment firm, please fill in the trading venue and OTC columns as appropriate.

<ESMA_QUESTION_MIFID_PO_29>

	Total Nominal amount traded, including packages (in euros) Sept 2015-Sept 2016		**% of packages (including EFPs)**		**% of packages (with only financial instruments as components)**	
	Trading venues	OTC	Trading venues	OTC	Trading venues	OTC
Interest rate derivatives						

Euro						
USD						
GBP						
Other currencies (please specify)						
Equity derivatives						
Euro						
USD						
GBP						
Other currencies (please specify)						
Credit derivatives						
Euro						
USD						
GBP						
Other currencies (please specify)						
Commodity derivatives						
Euro						
USD						
GBP						
Other currencies (please specify)						

<ESMA_QUESTION_MIFID_PO_29>

Q30. CBAQ2: Based on ESMA draft RTS, out of the package orders (comprised only of financial instruments) that you trade, which percentage of the volume traded do you expect to be considered as having a liquid market as a whole? Please confirm which category the package orders you trade fall under:

1= less than 10% of the volume of package orders traded;

2= from 10% to 25% of the volume of package orders traded;

3= from 25% to 50% of the volume of package orders traded;

4= from 50% to 75% of the volume of package orders traded; or,

5= more than 75% of the of the volume of package orders traded.

<ESMA_QUESTION_MIFID_PO_30>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_30>

Q31. CBAQ3: In which area do you anticipate the costs of complying with ESMA' draft RTS to stem from (e.g. IT, training)?

<ESMA_QUESTION_MIFID_PO_31>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_31>

Q32. CBAQ4: Could you provide an indication of the expected implementation costs of ESMA' draft RTS (in euros) differentiating between (i) one-off costs and (ii) recurring costs (on an annual basis)?

<ESMA_QUESTION_MIFID_PO_32>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_32>

Q33. CBAQ5: In relation to the size of your business, do you expect those costs to be:

very low;

low;

medium; or,

high.

<ESMA_QUESTION_MIFID_PO_33>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_33>

Q34. CBAQ6: Do you expect any impact from ESMA's draft RTS on your business model/activity? If so, please explain the drivers and the expected changes to your business model/activity.

<ESMA_QUESTION_MIFID_PO_34>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_34>

Q35. CBAQ7: Do you expect you expect broader market changes from the draft RTS in the short or medium term TO?

<ESMA_QUESTION_MIFID_PO_35>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_35>

Q36. CBAQ8: If so, please explain

<ESMA_QUESTION_MIFID_PO_36>

Expected Impact on	Yes/No/NA	Positive Impact	Negative impact
Market structure (changes in trading models, in trading strat-egies…)			
Liquidity (please explain how you measure liquidity)			
End users			
Other (specify)			

<ESMA_QUESTION_MIFID_PO_36>

Q37. CBAQ9: Are their specific concerns regarding ESMA's draft RTS you would wish to highlight? Please be as specific as possible in your answer.

<ESMA_QUESTION_MIFID_PO_37>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_37>

Q38. CBAQ10; Are there specific benefits arising from ESMA's draft RTS you would wish to mention?

<ESMA_QUESTION_MIFID_PO_38>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_38>

For trading venues only

Q39. CBAQ11: Do you offer trading in packages?

<ESMA_QUESTION_MIFID_PO_39>
The GFXD has no comments in response to this question.

<ESMA_QUESTION_MIFID_PO_39>

Q40. CBAQ12: If so, please describe, per asset class, the categories of packages for which pre-trade transparency is currently provided. Please also state whether you consider those packages as liquid and the criteria taken into consideration (e.g. spreads, volume traded, number of transactions, number of market participants). If no sufficient space is available to respond, please provide the information in an annex.

<ESMA_QUESTION_MIFID_PO_40>

Package Categories with pre-trade transparency	Currency	Tenor	Reference index	Other characteristics (please identify)	Liquidity assessment (Y/N) and underlying criteria
Interest rate derivatives					
Equity derivatives					
Credit derivatives					
Commodity derivatives					
Others (please specify)					

<ESMA_QUESTION_MIFID_PO_40>