European Securities and Markets Authority

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

10 March 2020

Date: 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 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'.

General information about respondent

Name of the company / organisation	Global Foreign Exchange Division (GFXD) of the Global Financial Markets Association (GFMA)
Activity	Investment Services
Are you representing an association?	☒
Country/Region	International

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CP_MIFID_NQT_1>

The Global Foreign Exchange Division (‘GFXD’) of the Global Financial Markets Association (‘GFMA’) welcomes the opportunity to provide comments to the ESMA on its Consultation Paper on MiFID II/ MiFIR review re-port on the transparency regime for non-equity and the trading obligations for derivatives, published on 10 March 2020.

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 24 global FX market participants,[1] collectively representing the majority of the FX inter-dealer market.[2]

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.

<ESMA_COMMENT_CP_MIFID_NQT_1>

[1] Bank of America, Bank of New York Mellon, Barclays, BNP Paribas, Citi, Credit Agricole, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Lloyds, Mizuho, Morgan Stanley, MUFG Bank, NatWest Markets, Nomura, Northern Trust, RBC, Standard Chartered Bank, State Street, UBS, Wells Fargo and Westpac.
[2] According to Euromoney league tables.

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>
As an asset class, FX is currently illiquid due to the lack of availability of data for a granular assessment[3], which is noted in the consultation paper. As such, no pre-trade transparency obligations currently apply to FX transactions. We suggest that the benefits of a pre-trade transparency regime for FX are reassessed once a new liquidity determination has been made for FX and pre-trade obligations have been in place for a representative period.

In relation to the reassessment of FX liquidity, we request that this is performed in consultation with the industry to ensure an accurate result. We note the challenges that have been experienced in other asset classes, as outlined in the consultation response submitted by the Association for Financial Markets in Europe (AFME).

Furthermore, we strongly suggest that the reassessment does not take place until data from after the UK's withdrawal from the EU can be used. According to the BIS 2019 triennial FX survey[4], the UK accounts for approximately 84% of EU FX volumes[5]. The UK's withdrawal will therefore have a significant impact on EU volumes and as such, no reassessment should be performed until a suitable data set is available from after this event.

<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>
As noted in our response to Q1, FX is currently illiquid due to the lack of availability of data for a granular assessment, with no pre-trade transparency obligations currently applying. We suggest that the operation of a pre-trade transparency regime for FX is reassessed once a new liquidity determination has been made for FX and pre-trade obligations have been in place for a representative period. We note the challenges that have been experienced in other asset classes, as outlined in the consultation response submitted by AFME.
<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>

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[3] https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-esma-1464_-_final_report_-_draft_rts_and_its_on_mifid_ii_and_mifir.pdf - see Page 109
[4] https://www.bis.org/statistics/rpfx19_fx.htm
[5] Note: data includes both FX Spot and FX Derivatives

As noted in our response to Q1, FX is currently illiquid due to the lack of availability of data for a granular assessment, with no pre-trade transparency obligations currently applying. As such, the SSTI and LIS thresholds that have been published to date for FX are in effect 'placeholders' and not representative of FX trading volumes in the EU. Building on the experience from other asset classes, were some FX instruments considered liquid, it is likely that the LIS and SSTI thresholds would be significantly different from their current levels, with a larger gap between them. However, without this experience in FX, it is difficult to assess what the impact on transparency would be with a single LIS threshold, even if set at a lower level than LIS would be if SSTI were also to be retained.

It is therefore not possible at this time for the GFXD to comment on ESMA's proposal to remove the pre-trade SSTI waiver and lower the LIS threshold. We suggest that this is reassessed for FX once a new liquidity determination has been made and pre-trade obligations have been in place for a representative period.

Furthermore, we note that FX is a global asset class, with 56% of transactions occurring cross-border[6]. It is therefore imperative that the level of pre-trade transparency set for FX within the EU is comparable to that in other major jurisdictions in order to avoid regulatory arbitrage. We suggest that ESMA takes this into account when reassessing pre-trade transparency obligations for FX.

<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>
As noted in our response to Q1, FX is currently illiquid due to the lack of availability of data for a granular assessment, with no pre-trade transparency obligations currently applying. As such, the SSTI and LIS thresholds that have been published to date for FX are in effect 'placeholders' and not representative of FX trading volumes in the EU.

It is therefore not possible at this time for the GFXD to comment on the use of the SSTI for the SI-quoting obligation. We suggest that this is reassessed for FX once a new liquidity determination has been made and pre-trade obligations have been in place for a representative period. We note the challenges that have been experienced in other asset classes, as outlined in the consultation response submitted by AFME.
<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

[6] https://www.bis.org/statistics/rpfx19_fx.htm

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>
No, the GFXD does not agree with ESMA's proposal. Paragraph 105 states that APAs are not currently meeting their obligation to make data available free of charge after 15 minutes, which is having a significant impact on levels of transparency. We suggest that the enforcement of this existing obligation should be strengthened, rather than any new obligation placed on SIs.

<ESMA_QUESTION_CP_MIFID_NQT_8>

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>
As noted in our response to Q1, FX is currently illiquid due to the lack of availability of data for a granular assessment, with no pre-trade transparency obligations currently applying. However, we consider that further standardisation of pre-trade transparency information would be generally positive, provided that it does not expand existing obligations or compromise the anonymity of the data. Any new standards should be explicitly defined to avoid any need for interpretation. Where possible, they should be based on existing data standards, for example using fields that have already been defined under MiFID post-trade transparency or transaction reporting obligations.

<ESMA_QUESTION_CP_MIFID_NQT_9>

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>

As noted in our response to Q1, FX is currently illiquid due to the lack of availability of data for a granular assessment. Limited post-trade transparency obligations currently apply, making it difficult for GFXD to comment fully for FX.

However, we generally believe that a more streamlined and uniform post-trade regime would be possible, removing the option for jurisdictional discretion. Harmonised deferrals, provided that they are set at an appropriate level, would provide a more consistent level of transparency.

Furthermore, we note that FX is a global asset class, with 56% of transactions occurring cross-border[7]. In this respect, we believe it is important that the level of post-trade transparency set for FX within the EU is comparable to that in other major jurisdictions in order to avoid regulatory arbitrage. We suggest that ESMA takes this into account when reassessing post-trade transparency obligations for FX.

<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>
As noted in our response to Q3, FX is currently illiquid due to the lack of availability of data for a granular assessment. Limited post-trade transparency obligations currently apply. As such, the SSTI and LIS thresholds that have been published to date for FX are in effect 'placeholders' and not representative of FX trading volumes in the EU. Building on the experience from other asset classes, were some FX instruments considered liquid, it is likely that the LIS and SSTI thresholds would be significantly different from their current levels, with a larger gap between them. However, without this experience in FX, it is difficult to assess what the impact on transparency would be with a single LIS threshold, even if set at a lower level than LIS would be if SSTI were also to be retained.

It is therefore not possible at this time for the GFXD to comment on ESMA's proposal for post-trade transparency thresholds. We suggest that this is reassessed for FX once a new liquidity determination has been made and pre-trade obligations have been in place for a representative period.

<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>
As noted in our response to Q1, FX is currently illiquid due to the lack of availability of data for a granular assessment. Limited post-trade transparency obligations currently apply. As such, the SSTI and LIS thresholds that have been published to date for FX are in effect 'placeholders' and not representative of FX trading volumes in the EU.

[7] https://www.bis.org/statistics/rpfx19_fx.htm

It is therefore difficult at this time for the GFXD to comment on ESMA's proposal for post-trade transparency publication. We suggest that this is reassessed for FX once a new liquidity determination has been made and pre-trade obligations have been in place for a representative period.

The key factor for any deferred transparency should be the protection of market participants' ability to hedge their exposures effectively, thereby ensuring the best prices for clients and the ongoing provision of liquidity. In this respect, we support ESMA's consideration of how to provide the a harmonised regime for deferred transparency.

However, we note that volume is a key factor in pricing for FX. This is likely to mean that a solution based on volume masking may not deliver the desired transparency for FX. ESMA may wish to consider a regime similar to that used in the US (Dodd Frank Part 43), in which the notional amounts of transactions are rounded for reporting purposes to provide some anonymity, and capped at a maximum amount. The CFTC has also recently consulted on a harmonised regime for delayed transparency, proposed at 48 hours for block trades (for FX, the threshold for which differs depending on the liquidity of the currency in the US market).

If ESMA does wish to pursue volume masking, we suggest that Option 1, in which it is applied both to large trades and to illiquid instruments, would be optimum, in order to protect hedging ability.
<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>
As noted in our response to Q1, FX is currently illiquid due to the lack of availability of data for a granular assessment. Limited post-trade transparency obligations currently apply. As such, the SSTI and LIS thresholds that have been published to date for FX are in effect 'placeholders' and not representative of FX trading volumes in the EU.

It is therefore difficult at this time for the GFXD to comment on ESMA's proposal for post-trade transparency publication. We suggest that this is reassessed for FX once a new liquidity determination has been made and pre-trade obligations have been in place for a representative period.

However, if volume masking is to be pursued, we suggest that publication of certain details after two weeks would be appropriate, provided that the publication is limited to the standard set of post-trade transparency fields and maintains the anonymity of the counterparties.

<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>

As noted in our response to Q1, FX is currently illiquid due to the lack of availability of data for a granular assessment. Only deferred post-trade transparency obligations currently apply. It is therefore difficult at this time for the GFXD to comment on ESMA's analysis of post-trade transparency data quality. We suggest that this is reassessed for FX once a new liquidity determination has been made and pre-trade obligations have been in place for a representative period.

However, we strongly believe that changes to the Level 1 text are not an appropriate course of action at this time, given that the effectiveness of the obligations for FX cannot be assessed. Changes to Level 1 would entail a significant cost to the industry without the ability to assess the possible benefits. ESMA should instead review where the existing Level 2 requirements and Q&As leave ambiguity in relation to what should be reported and how. These areas should be addressed, in consultation with the industry, to ensure explicit requirements that are understood by all and harmonised across the EU,
<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>
As noted in our response to Q1, FX is currently illiquid due to the lack of availability of data for a granular assessment. No pre-trade transparency, and limited post-trade transparency obligations, currently apply. Furthermore, there is currently no demand for a Consolidated Tape in FX. Market participants are able to obtain pricing transparency from a variety of existing sources, partly driven by the highly electronic nature of the market compared to some asset classes (in 2019, 58% of trades were executed electronically - https://www.bis.org/publ/qtrpdf/r_qt1912g.pdf). This is split roughly evenly between single bank platforms, disclosed venues, anonymous venues and other venues. The fastest growth in electronification has been in the dealer-to-customer segment, reflecting the changing composition of market participants, with financial customers, such as hedge funds and PTFs, and lower-tier banks playing a more active role.

The mechanics of any such tape in the future would also need to be determined (e.g. format, publication delay etc.) before the usefulness of the transparency regime in its creation could be evaluated.

It is therefore not possible at this time for the GFXD to comment on what changes to the transparency regime would help with the potential creation of a CTP.
<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>
As noted in our response to Q1, FX is currently illiquid due to the lack of availability of data for a granular assessment. No pre-trade transparency, and limited post-trade transparency obligations, currently apply.

It is therefore not possible at the time for the GFXD to comment on the impact of TOTV on the transparency regime for FX.

<ESMA_QUESTION_CP_MIFID_NQT_16>

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

<ESMA_QUESTION_CP_MIFID_NQT_17>
As noted in our response to Q1, FX is currently illiquid due to the lack of availability of data for a granular assessment. No pre-trade transparency, and limited post-trade transparency obligations, currently apply.
It is therefore difficult at this time for the GFXD to comment on the impact of TOTV on the transparency regime for FX.

However, we note that FX does not rely on the concept of shared characteristics in the way that other asset classes do. This means that TOTV is generally a very broad concept for FX, which is likely to mean that no changes are required as the number of FX derivatives excluded from the TOTV definition is comparatively low.

Furthermore, firms have invested significant sunk costs in developing systems to determine what instruments are TOTV. Given that the effectiveness of the obligations for FX cannot be assessed, changes to Level 1 would entail a significant cost to the industry without the ability to assess the possible benefits.

<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>
As noted in our response to Q1, FX is currently illiquid due to the lack of availability of data for a granular assessment. No pre-trade transparency, and limited post-trade transparency obligations, currently apply.
It is therefore not possible at the time for the GFXD to comment on the impact of ToTV on the transparency regime for FX.

However, we note that FX does not rely on the concept of shared characteristics in the way that other asset classes do. This means that TOTV is generally a very broad concept for FX, which is likely to mean that no changes are required (per Option 1).

Furthermore, firms have invested significant sunk costs in developing systems to determine what instruments are TOTV. Given that the effectiveness of the obligations for FX cannot be assessed, changes to Level 1 would entail a significant cost to the industry without the ability to assess the possible benefits.

<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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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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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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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>
As noted in our response to Q1, FX is currently illiquid due to the lack of availability of data for a granular assessment. We therefore agree with ESMA's proposal for FX.

<ESMA_QUESTION_CP_MIFID_NQT_27>

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>
TYPE YOUR TEXT HERE
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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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