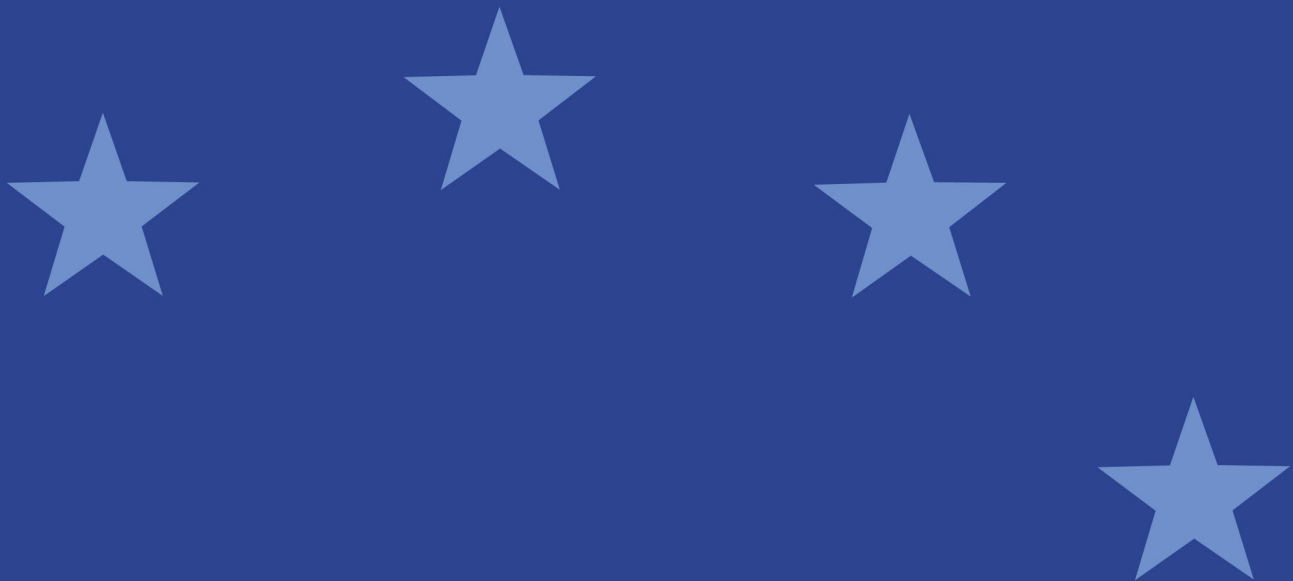


## **Reply form for the Consultation Paper on MiFID II/ MiFIR review report on the transparency re- gime for non-equity and the trading obligations for derivatives**



## 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   | GFMA                                |
| Activity                             | Banking sector                      |
| Are you representing an association? | <input checked="" type="checkbox"/> |
| Country/Region                       | Europe                              |

### Introduction

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

<ESMA\_COMMENT\_CP\_MIFID\_NQT\_1>  
TYPE YOUR TEXT HERE  
<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>

GFMA members consider that it is important to recognise that commodity markets have specific characteristics and therefore should not be treated in the same manner as other asset classes.

GFMA supports industry calls for the hedging exemption in MiFIR Article 8(1) to be extended to cover all market participants managing risks arising from activity in the physical market, including financial counterparties. Such a measure would support the continued development of European commodities markets while ensuring the market intermediaries are able to fulfil their function. GFMA also supports proposals to extend the “negotiated transaction waiver” for equities instruments (Article 4(1)(b) of MiFIR) to bilaterally negotiated commodity derivative transactions.

Additionally, GFMA also supports further clarity within Level 2 to ensure that the pre and post trade transparency regimes are appropriately calibrated to the specific characteristics of commodities markets. We set these out in our responses to Questions 29-31.

Finally, given that most commodity markets remain relatively illiquid due to their specific characteristics (as iterated above) and in building on the theme of clarity, the GFMA would also welcome guidance around an appropriately designed Block Trading Policy for transactions that do not benefit from a relevant waiver (Article 9(1), 9(3) of MiFIR) as an essential part of continued European commodities markets development.

<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>

TYPE YOUR TEXT HERE

<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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<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>  
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**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>  
GFMA supports industry calls for the hedging exemption in MiFIR Article 8(1) to be extended to cover all market participants managing risks arising from activity in the physical market, including financial counterparties. Such a measure would support the continued development of European commodities markets while ensuring the market intermediaries are able to fulfil their function. GFMA also supports proposals to extend the “negotiated transaction waiver” for equities instruments (Article 4(1)(b) of MiFIR) to bilaterally negotiated commodity derivative transactions.

However, we do not believe that turning the hedging exemption into a limited negotiated trade waiver (with the same scope) would be an efficient change for commodities markets. GFMA members would share broader industry concerns that such a change would create additional administrative burden for market stakeholders without any benefit.

Furthermore, consideration should also be given to the usefulness of amending the current approach (i.e. exemption vs a waiver for hedging) by ESMA, as ESMA does not address any of the potential consequential issues with regard to transaction reporting and non-equity deferrals. A shift from a right to an exemption to a waiver of pre-trade transparency for risk reducing commodity derivative transactions could potentially have a significant downstream impact to firms’ current transaction reporting arrangements for such trades. With ESMA not (within the consultation) addressing whether such hedging transactions would be: (i) entitled to a deferral; and (ii) if so for how long?

<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>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_MIFID\_NQT\_6>

**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>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_MIFID\_NQT\_7>



**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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>





GFMA supports Option 1. We believe that if there is appetite to amend the scope of what is determined to be TOTV, this should be considered at Level 1 with a full consultation of market stakeholders. Accordingly, GFMA does not support either Option 2 or Option 3.

<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>

TYPE YOUR TEXT HERE

<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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<ESMA\_QUESTION\_CP\_MIFID\_NQT\_21>

**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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_22>

**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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<ESMA\_QUESTION\_CP\_MIFID\_NQT\_23>



**Q24. Do you have any views on the functioning of the register? Please explain.**

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_24>  
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<ESMA\_QUESTION\_CP\_MIFID\_NQT\_24>

**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>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_CP\_MIFID\_NQT\_25>

**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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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  
<ESMA\_QUESTION\_CP\_MIFID\_NQT\_28>

**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>

GFMA members consider that it is important to recognise that commodity markets have specific characteristics and therefore should not be treated in the same manner as other asset classes. Commodity derivatives are often non-liquid and in order to achieve optimal execution, trades can be pre-negotiated away from trading venues according to the rules of a specific exchange, and concluded on-exchange with immediate clearing availability at the exchange's respective central counterparty (CCP). This approach ensures maximum transparency for these nascent contracts and also represents a vital option for commodities market participants whose chances of achieving optimal execution outcomes would be less likely on a central order book.

It is also important to note that commodities market participants utilise a broad range of contract types which are combined with variations relating to quality, location, delivery type, duration and size. These contracts are used to hedge risk relating to the production or consumption of an underlying physical commodity and require the identification of a counterparty, without incurring risk of market movement or disclosing sensitive information. GFMA members therefore believe that the transparency regime should be designed in an appropriate manner which allows for a bespoke approach for commodities markets.

In relation to the current calibration of Average Daily-Notional Amount (ADNA) and of Average Daily Number of Trades (ADNT), GFMA members consider that modifications are necessary.

Relating to ADNA, GFMA members support industry calls for trade frequency and standard size (excluding unrelated factors such as price and currency) to be measured in order to determine liquidity. We consider that these metrics represent a better liquidity indicator than volume.

Regarding ADNT, GFMA also supports industry calls for a review of the daily number of trades for a market to be determined as liquid. We consider that the current metric, set at 10 transactions per day is too low and accordingly merits recalibration. In order to establish appropriate ADNT liquidity benchmark thresholds, GFMA advocates support for ESMA to further consult with industry participants and trading venues (who are particularly impacted), regarding the required modifications.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_29>

**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>

GFMA members find that the segmentation criteria currently used for commodity derivatives lacks the appropriate level of granularity and subsequently causes certain commodity derivative contracts to be incorrectly classified as liquid or become subject to inappropriate Large in Scale thresholds.

<ESMA\_QUESTION\_CP\_MIFID\_NQT\_30>

**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>

GFMA supports industry calls for the hedging exemption in MiFIR Article 8(1) to be extended to cover all market participants managing risks arising from activity in the physical market, including financial counterparties. Such a measure would support the continued development of European commodities markets while ensuring the market intermediaries are able to fulfil their function. GFMA also supports proposals to extend the “negotiated transaction waiver” for equities instruments (Article 4(1)(b) of MiFIR) to bilaterally negotiated commodity derivative transactions.

The aforementioned Level 1 changes should be supplemented with amendments to RTS 2, removing the current methodology which has applied restrictive thresholds to nascent commodity derivative contracts which have been inappropriately identified as liquid (and are therefore subject to broader transparency requirements which are intended for developed markets). We support the following amendments:

- Excluding price from the calculation of IL and LIS thresholds – the inclusion of price in these thresholds can lead to a misrepresentation of liquidity for instruments that are not natively defined in notional value. In our view, liquidity should not be measured according to the notional value of transactions but instead by a normalised base quantity unit that is relevant to the asset class being traded (e.g. a unit of measure such as barrels, MWh, tonnes, etc).
- Removal of the percentile-based approach which produces low LIS thresholds for high liquidity instruments at the same time as high LIS thresholds are applied to low liquidity instruments. Setting LIS thresholds on the basis of standard trade size in either mean, median or mode terms is detrimental for the development of low liquidity markets. Instead, a more tailored approach is required.

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