



European Securities and  
Markets Authority





## **Reply form for the Consultation 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 Consultation 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 **31 July 2017**.

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	WMBA
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Europe

## Introduction

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

<ESMA\_COMMENT\_MIFID\_TO\_0>

- i. The Wholesale Markets Brokers' Association welcomes the opportunity to respond to ESMA's consultation on the trading obligation for derivatives under MiFIR ['TO'].
- ii. **The Wholesale Markets Brokers' Association** (WMBA) and the London Energy Brokers' Association (LEBA) (jointly referred to in this document as the 'WMBA') are the European industry associations for the wholesale intermediation of 'Venue Traded' (MTF and OTF) and 'Over-the-Counter' (OTC) markets in financial, energy, commodity and emission markets and their traded derivatives. Our members, in addition to operating some twenty MTFs and nine swap executions facilities ['SEFs'], have all applied for either Variations on MTF permissions and/or new OTF permissions under MiFIR. They act solely as intermediaries in wholesale financial markets and do not undertake any proprietary trading. As a result, they are classified in the UK as Limited Activity and Limited Licence Firms in respect of the current Financial Conduct Authority classification. The WMBA originated in 1963 from market oversight in central banking, but is an independent industry body.
- iii. **Practicality.** First and foremost, the WMBA underline the fact that whilst the perimeter of MiFID II/R as described by 'Traded on a Trading Venue ['TOTV'] is both significant and important for trading venues in the EU; we understand that an TO has limited impact on the operation and effectiveness of the venues and indeed to the implementation of the G20 Pittsburgh mandate concerning venue trading.
  - a. This is because the processes and obligations for the arrangement of markets and the trading of instruments is identical. The benefits of venue trading should be apparent and should not require coercion.
  - b. The lessons learnt by our member firms in operating SEFs under a regime which obligated 'Required Products' to undergo a different transaction rule process to 'Permitted Products' have run deep. Any regulation adding concentric and overlapping perimeters within its scope leads to opaque processes, unintended outcomes and a marked increase in the cost burdens passed down to end users.
- iv. **Summary.** We wish to highlight the following points, which we elaborate on in the body of our response:
  - a. WMBA believe that the TO should, simply put be defined narrowly in relation to the Clearing Obligation under either EMIR, or any other third country equivalent and recognised regulation. If an instrument is mandated for clearing than it can be mandated to trade on a venue irrespective of other considerations such as liquidity determinations and transaction type and size, to support market transparency and integrity objectives
  - b. Trading obligations should be limited to the derivatives subject to the clearing obligation and as a direct consequence of that qualification they would consequently be limited to benchmark tenors for the market standard and most liquid contracts, in the most liquid currencies.
  - c. WMBA are concerned about the ever-increasing complexity of EU rule making concerning the trading and post-trading of financial instruments. Transparency regimes are proposed in terms of not only RTS2, but now also separately in respect of Reference Data, Clearing Obligation, Packages, Position limits and reporting, Best Execution, Energy Reporting, Treasury Instrument Reporting and Securities Financing. These all create additional costs and barriers to entry.
  - d. Therefore, an additional regime to define the TO is burdensome and without benefit, more-so when considered in a cross-border context where instrument definition is yet to be commonly established under the embryonic Unique Product Identifier codification of IOSCO and ISO.
  - e. WMBA understand that without a workable ISIN approach, resetting all derivatives daily or in T+1 backwardation by ISIN into the TO would cause considerable costs and confusion.
  - f. An example of unwelcome and burdensome additional rule-making is the proposal by ESMA that trades +/- 5 days from the benchmark tenor should be subject to the trading obligation to prevent firms from trading off-benchmark in order to avoid the trading obligation. A simple read across of the CO achieves all desired outcomes simply and effectively.

- v. **Clearing Obligation ['CO'];** Currently, EMIR mandates clearing for the following types of derivatives:
- a. **Interest Rate Derivatives denominated in the G4 Currencies;** These include certain classes of OTC interest rate derivatives contracts denominated in the G4 currencies (EUR, GBP, USD and JPY). These classes are set out in the Annex to the Delegated Regulation (<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2205&from=EN>), and include the following types of contract:
    - i. fixed to-float interest rate swaps (IRS)
    - ii. basis swaps
    - iii. forward rate agreements
    - iv. overnight index swaps
  - b. **Credit default derivative contracts;** The specific classes that are within scope are set out in the Annex to the Delegated Regulation (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R2205>) and include the following types of contracts:
    - i. untranching iTraxx Index credit default swaps (Europe Main, 5-year tenor, series 17 onwards, with EUR as the settlement currency)
    - ii. untranching iTraxx Index credit default swaps (Europe Crossover, 5-year tenor, series 17 onwards, with EUR as the settlement currency)
  - c. **Interest Rate Derivatives denominated in the non-G4 Currencies;** These include certain classes of OTC interest rate derivatives contracts denominated in some non-G4 currencies (SEK, PLN and NOK). These classes are set out in the Annex (<http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-3446-EN-F1-1-ANNEX-1.PDF>) to the Delegated Regulation, and include the following types of contract:
    - i. Fixed to-float interest rate swaps (IRS)
    - ii. Forward Rate Agreements
- vi. **Commencement.** We share widespread industry and NCA concerns about the proposed start date of the trading obligation should there not be equivalence agreements in place with all relevant third-country jurisdictions.
- a. One-way equivalence determinations would be feasible. We note however that the limited jurisdiction of these arrangements only to the TO, and perhaps the CO, together with their transitory nature simply adds to the costs and complexity of the tasks in hand to implement and comply with the MiFID II/R entirety.
  - b. Even with equivalence agreements in place, there are material risks in implementing the trading obligation on 3 January 2018, as opposed to slightly later in Q1 2018.
  - c. If third-country venues, particularly SEF 's, are not considered third party equivalent, our understanding is this execution would not be considered compliant and therefore would put this liquidity at serious risk.
  - d. In the case of no such multilateral recognition being in place, it would then be important to defer the introduction of any trading obligation until either the proposals are operable, or a significant transaction set of the instruments under TO consideration become safely executed outside the MiFIR perimeter.
- vii. **Packages.** WMBA are very sympathetic to the suggested principal that if just one component being subject to the trading obligation could mean that the complete package should be traded on venue.
- a. However, in practice, we understand that there are a great number of cases where this would not be appropriate.
  - b. Rather, we endorse a far more straightforward approach that if the Package is under the CO, and therefore able to be standardised and priced as a cleared instrument, then it should be accepted under the TO.
  - c. This accords to our general approach towards straightforward regulation.
- viii. **Temporary suspension.** Under the EC legislative proposal on the EMIR review, there is a proposal to grant ESMA and the EC powers to suspend the clearing obligation under EMIR. The WMBA does indeed welcome this, and in accordance with our views above, endorses a corresponding competence for ESMA to suspend the mandatory trading obligation under MiFIR.
- a. We understand the close and intimate linkage between the capacity of any trading obligation to be effective were the clearing obligation be suspended.

- b. Whilst this may not currently be within the legal competencies of ESMA, we believe this is an important issue that policymakers and regulators should consider addressing. This could be addressed as part of the EMIR review without requiring any change to the MiFID II/R.
  - c. Any capability to suspend the TO should empower ESMA all necessary flexibility to act quickly and appropriately, if liquidity systemically or periodically disappears.
  - d. Given the extraterritorial impact and reach of MiFID II/R on trading venues global operations, this could involve coordination with those equivalent third-country regulators.
- ix. **Post Trading Risk Reduction Services.** WMBA would like to take the opportunity to re-state our concern that PTRR services and their components are not excluded from the trading obligation.
- a. The MIFIR level 1 text explicitly states under Recital 27, that “the [trading] obligation (...) should not apply to the components of non-price forming post-trade risk reduction services which reduce non-market risks in derivatives portfolios (...)”, and as such, implies that PTRR services should not be included in the trading obligation. However, this recital has not been given effect in the text of the trading obligation RTS.
  - b. To further our argument for this clarification, it is noted in paragraph 141 of the trading obligation Discussion Paper (September 2016) that ESMA differentiates between PTRR and transactions i.e. “It appears that about 90-95% of the global volume of FRAs are related to post-trade risk reduction services, whereas only about 5% of the global volume refers to actual transactions.” This again implies, but does not clarify that PTRR are not price forming transactions, and therefore not within scope of the trading obligation. In line with the treatment of compression trades, these PTRR trades would nevertheless be reportable to allow full visibility for market participants and competent authorities.
  - c. It is our view that in the absence of such clarification there is a risk that there will be a negative impact on PTRR activities and services that align with the policy objective of lowering counterparty credit, operational and systemic risk in the financial system.
  - d. In a similar way that the regulatory technical standards for the clearing obligation [(EU) 2015/2205 of 6 August 2015 supplementing Regulation (EU) No 648/2012] set out in Article 1(2) OTC derivatives that were and were not covered, it is our proposal that the trading obligation uses the same approach for PTRR serves.
- x. Suggested text is set out below as Article 1:
- a. 1. The classes of derivatives set out in Annex I shall be subject to the trading obligation.
  - b. 2. The classes of OTC derivatives set out in the Annex shall not include the components of non-price forming post-trade risk reduction services which reduce non-market risks in derivatives portfolios provided these services satisfy the following conditions:
    - i. Risk reduction is market risk neutral for each participant portfolio (market directional position remains unchanged)
    - ii. Reduces secondary order portfolio risks - operational, counterparty, basis risks
    - iii. PTRR service cycles are non-continuous, non-real-time and non-price forming and performed on basis of existing portfolios submitted by participants
    - iv. Multilateral calculation of risk reduction opportunities
    - v. A single multilateral compound transaction

TYPE YOUR TEXT HERE  
<ESMA\_COMMENT\_MIFID\_TO\_0>

**Q1. Do you agree with ESMA’s assessment and proposed way forward for the criteria assessing the number and types of active market participants? If not, please explain your position and how you would integrate these elements into the liquidity test.**

<ESMA\_QUESTION\_MIFID\_TO\_1>

- xi. No, the WMBA disagrees with ESMA’s assessment and proposed way forward in general because the TO should simply be based upon the CO. This would negate the specific requirements as set out in paragraphs 58-79 for a tertiary framework solely for the TO. Under our position therefore the liquidity test would already have been posed and answered.
- xii. The WMBA recommendation is far simpler and more straightforward. It would ensure far fewer ‘false positives’.
- xiii. Consequent to a reliance upon the CO, for any given market to be considered liquid, it should be supported by a sufficient segment of the clearing member community. Given there are, for instance 106 clearing members currently at the LCH-SwapClear, we would support adding a criterion of 50 clearing members validating any existing CO with the instruments defined by the EMIR classification reliant on the CFI from the ISDA taxonomy.
- xiv. WMBA note that ESMA’s decision to consider certain MTF data in addition to the very poor DTCC repository data in the analysis underpinning the consultation is far from realistic as it excludes almost all relevant traded data. In practice, we see that the data has little relevance to the venues our members operate. Given the exclusions of traded data sets for the transparency RTS also, the WMBA can only advocate that any calibrations are made with the year one data set submitted under MiFIR through 2018 and set for transparency analysis from April of 2019.
- xv. Considerations around the number of tenor points and the number of currencies in scope fall away when the CO threshold is preferred. TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_1>

**Q2. Do you agree with the revised proposal not to exempt post-trade LIS transactions? If not, please explain and present your proposal.**

<ESMA\_QUESTION\_MIFID\_TO\_2>

- xvi. Yes, the WMBA does agree that the LIS threshold should have no bearing on the TO.
- xvii. Since it is expected pre-negotiated block trades may be executed on venue and therefore will be subject to the venue or regulated market rule book, so it follows that a prescribed exemption from the rulebook would be a non-sequitur because the LiS (or SSTI where appropriate) threshold would form the lower bound to such eligibility.
- xviii. Any trades above the relevant thresholds would be protected by the transparency deferrals. WMBA notes and emphasises the importance therefore of maintaining the “flexibility of trade execution” provided for in MiFIR. It therefore follows that not allowing counterparty participants to negotiate the trade off-venue will be extremely problematic as it is highly unlikely that liquidity would be available on-venue for large trades. TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_2>

**Q3. Do you agree with this proposal? If not, please explain why and provide an alternative proposal for ESMA to populate and maintain the register.**

<ESMA\_QUESTION\_MIFID\_TO\_3>

- xix. WMBA welcomes the proposal to maintain a register, alongside that of qualifying CCPs, of both instruments and trading venues, including third-country trading venues. Whilst recognizing that unlike CCP recognition third-country trading venues are not required to be assessed by ESMA, and hence ESMA may not have this information readily available, it would be extremely useful and efficient for market participants and stakeholders.
- xx. WMBA notes that any such list would need to be updated regularly, presumably to the frequency of daily [overnight].



- xxi. Regarding the proposed register of classes or sub-set of classes of derivatives subject to the trading obligation, the WMBA notes that under our suggestion of adherence to the CO, so this list would be a global list if instruments that must be cleared and as such would best be kept as a master copy in IOSCO, to whom any ESMA list would refer.
  - xxii. TYPE YOUR TEXT HERE
- <ESMA\_QUESTION\_MIFID\_TO\_3>

**Q4. Do you agree with this proposal? Would you add other parameters e.g. day count convention of the floating leg, notional type (constant vs. variable), fixed rate type (MAC vs. MAC)? If yes, please explain why and provide the parameters.**

- <ESMA\_QUESTION\_MIFID\_TO\_4>
- xxiii. No, the WMBA disagrees with ESMA’s assessment and proposed way forward in general because the TO should simply be based upon the CO. In this way, the addition of further parameters becomes irrelevant and moot because the instruments are already described to an adequate level of detail. This approach would similarly deal with the requirement for of additional details, including business days (Holiday calendar) and Business Day convention.
  - xxiv. The position of the WMBA is that the ESMA approach as set out, simply attempts to build a tertiary liquidity framework on top of RTS2, by with presumably adding RTS 23 instrument definitions which themselves are replete with problems of overlap and inadequacies of differentiation.
  - xxv. The proposal to require instruments +/- 5 days of the benchmark to be subject to the trading obligation is a further example of the addition of complications for no added benefit. In proposing criteria that are time and fixed term dependent, the outcome is an addition daily set of calculations, calibrations and communications which will only serve to move liquidity away from the MiFIR perimeter and add to both opacity and costs for end users in the EU.
  - xxvi. WMBA note the reliance in this section on wholly inadequate data sets [TR data and a minority of MTFs], and the inclusion of only a small part of even those data sets. This invalidates the arguments in this section and requires adequate data once MiFIR has a year of operation.
  - xxvii. We note that the reference to ICE Swap rate and concomitant order level data is irrelevant and illogical, not only because ESMA seeks to infer a continuous 24-hour obligation based on a 5-minute measurement window onto venues which are not themselves the primary liquidity locations but principally because that reading does not rely on transactions.
  - xxviii. We remind however that the data failure in these proposals become irrelevant under the WMBA proposed approach. TYPE YOUR TEXT HERE
- <ESMA\_QUESTION\_MIFID\_TO\_4>

**Q5. For each Case, specify if you agree with the proposal of qualifying the sub-classes as liquid for the purpose of the trading obligation and if not, please explain why and provide an alternative proposal**

- <ESMA\_QUESTION\_MIFID\_TO\_5>
- xxix. No, the WMBA disagrees with ESMA’s assessment and proposed way forward in general because the TO should simply be based upon the CO. In taking the approach set out in cases A1 through to D4, ESMA is adding an unnecessary layer of complication. We set out below the CO determination as per annex 1 of Commission Delegated Regulation (EU) 2015/2205 of 6 August 2015.

Interest rate OTC derivatives classes subject to the clearing obligation [<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2205&from=EN>]

id	Type	Reference Index	Settlement Currency	Maturity	Settlement Currency Type	Optionality	Notional Type
<b>Basis swaps classes</b>							
A.1.1	Basis	Euribor	EUR	28D-50Y	Single currency	No	Constant or variable
A.1.2	Basis	LIBOR	GBP	28D-50Y	Single currency	No	Constant or variable

A.1.3	Basis	LIBOR	JPY	28D-30Y	Single currency	No	Constant or variable
A.1.4	Basis	LIBOR	USD	28D-50Y	Single currency	No	Constant or variable
<b>Fixed-to-float interest rate swaps classes</b>							
A.2.1	Fixed-tofloat	Euribor	EUR	28D-50Y	Single currency	No	Constant or variable
A.2.2	Fixed-tofloat	LIBOR	GBP	28D-50Y	Single currency	No	Constant or variable
A.2.3	Fixed-tofloat	LIBOR	JPY	28D-30Y	Single currency	No	Constant or variable
A.2.4	Fixed-tofloat	LIBOR	USD	28D-50Y	Single currency	No	Constant or variable
<b>Forward rate agreement classes</b>							
A.3.1	FRA	Euribor	EUR	3D-3Y	Single currency	No	Constant or variable
A.3.2	FRA	LIBOR	GBP	3D-3Y	Single currency	No	Constant or variable
A.3.3	FRA	LIBOR	USD	3D-3Y	Single currency	No	Constant or variable
<b>Overnight index swaps classes</b>							
A.4.1	OIS	EONIA	EUR	7D-3Y	Single currency	No	Constant or variable
A.4.2	OIS	FedFunds	USD	7D-3Y	Single currency	No	Constant or variable
A.4.3	OIS	SONIA	GBP	7D-3Y	Single currency	No	Constant or variable

- xxx. WMBA notes that this specification does not deal with the following attributes suggested by ESMA: Floating reference rate with term; Fixed leg payment frequency; Fixed rate day count; Floating leg reset frequency; Benchmark tenor +/- 5D. Given that these terms are almost ways the same set of variables it would be a simpler approach to either ignore these, on the understanding that once inside a CCP clearing obligation and daily process, so the perimeters become obsolete.
- xxxi. Notwithstanding this approach, ESMA could simply set out the below parameters to delineate a “standardised swap”

<b>Floating</b> reference rate with term	<b>Benchmark 3m</b>				Benchmark
Fixed leg payment frequency	Quarterly	Semi-annual	Annual		
Fixed rate day count	30/360	Act/360	Act/365	Act/Act	
Floating leg reset frequency	Quarterly	Semi-annual	Annual		

- xxxii. There needs to be scope for periodic revision, particularly focused on the cross-border efficacy, and together with a fixed review. However, the WMBA would underline the key point here as to be fact that CCP clearing and ongoing process and legal standardisation are particularly symbiotic and self-reinforcing. Therefore, the inclusive set of instruments will act together and should be treated as a single set. Any approach other than that suggested herewith would lead to a growing basis gap between the CO and the TO rather than convergence.

TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_TO\_5>

**Q6. Would you also consider any of these possible sub-classes as liquid? Which other combinations of fixed leg payment frequency and floating leg reset frequency specifically would you consider to be sufficiently liquid?**

<ESMA\_QUESTION\_MIFID\_TO\_6>

- xxxiii. No, the WMBA disagrees with ESMA’s assessment and proposed way forward in general because the TO should simply be based upon the CO. In taking the approach set out in cases A1 through to C8, ESMA is adding an unnecessary layer of complication. We set out below the CO



determination as per annex 1 of Commission Delegated Regulation (EU) 2015/2205 of 6 August 2015. Please see answer to question 5. TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_6>

**Q7. For each Case, specify if you agree with the proposal of qualifying the sub-classes as liquid for the purpose of the trading obligation and if not, please explain why and provide an alternative proposal.**

<ESMA\_QUESTION\_MIFID\_TO\_7>

xxxiv. No, the WMBA disagrees with ESMA's assessment and proposed way forward in general because the TO should simply be based upon the CO. In taking the approach set out in cases A1 through to C8, ESMA is adding an unnecessary layer of complication. We set out below the CO determination as per annex 1 of Commission Delegated Regulation (EU) 2015/2205 of 6 August 2015. Please see answer to question 5 TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_7>

**Q8. Would you also consider any of these possible sub-classes as liquid? Which other combinations of fixed leg payment frequency and floating leg reset frequency specifically would you consider to be sufficiently liquid?**

<ESMA\_QUESTION\_MIFID\_TO\_8>

xxxv. In the case of USD denominated derivatives, the WMBA disagrees with ESMA's assessment and proposed way forward. Rather the approach towards the TO for USD should simply be based upon the CO as determined by the CFTC and recognised in the EU.

xxxvi. In the cases C5-C8 set out by ESMA, all are liquid enough to be cleared when admitted to trading on SEFs and this leads to a pair of self-evident outcomes in the EU:

- a. Any TO is dependent upon equivalence determinations for both CCPs and for Trading Venues on a multilateral basis (since any currency, particularly USD, is used and deployed extraterritorially)
- b. The TO outcome in the EU for USD derivatives should not be divergent to that in the US (otherwise empowering 'EU SEFs' and 'US FBOT-MTFs' would become complex.) TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_8>

**Q9. For each case, specify if you agree with the proposal of qualifying the sub-classes as liquid for the purpose of the trading obligation and if not, please explain why and provide an alternative proposal.**

<ESMA\_QUESTION\_MIFID\_TO\_9>

xxxvii. No, the WMBA disagrees with ESMA's assessment and proposed way forward in general because the TO in the case of GBP denominated instruments should simply be based upon the CO. In taking the approach set out in cases A1 through to C8, ESMA is adding an unnecessary layer of complication. We set out below the CO determination as per annex 1 of Commission Delegated Regulation (EU) 2015/2205 of 6 August 2015. Please see answer to question 5 TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_9>

**Q10. Would you also consider the possible sub-classes here below as liquid? Which other combinations of fixed leg payment frequency and floating leg reset frequency specifically would you consider to be sufficiently liquid?**

<ESMA\_QUESTION\_MIFID\_TO\_10>

- xxxviii. It follows from Q5 above that both a semi-annual Fixed leg payment frequency; and a Quarterly Floating leg reset frequency are simply and efficiently able to be TOTV if, and when, they are offered for clearing. Should these swaps be mandated for clearing, it follows that they can be added to the TO.
- xxxix. WMBA adds that the cases of D3 and D4 are good examples of the proposed process becoming too complicated and burdensome relative to the value of the outcome. TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_10>

**Q11. Do you agree with this proposal? If not, please explain why and provide an alternative proposal.**

<ESMA\_QUESTION\_MIFID\_TO\_11>

- xi. No, the WMBA disagrees with ESMA's assessment and proposed way forward in general because the TO in the case of JPY denominated instruments should simply be based upon the CO which holds in Japan or elsewhere if appropriate. This avoids any requirement for ESMA to prognosticate on the quality and ephemeral nature of JPY liquidity available on MiFIR venues which is a capability that ESMA would never have the data granularity, nor competence to achieve. TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_11>

**Q12. Do you agree with this proposal? If not, please explain why and provide an alternative proposal**

<ESMA\_QUESTION\_MIFID\_TO\_12>

- xli. No, the WMBA disagrees with ESMA's assessment and proposed way forward for the treatment of classes of credit derivatives under a proposed TO. Rather the WMBA believe that the relevant instruments should simply be based upon the CO which already holds in the EU. See answer to Q5.
  - a. The specific classes of Credit default derivative contracts that are within scope are set out in the Annex to the Delegated Regulation (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R2205>) and include the following types of contracts:
    - i. untranched iTraxx Index credit default swaps (Europe Main, 5-year tenor, series 17 onwards, with EUR as the settlement currency)
    - ii. untranched iTraxx Index credit default swaps (Europe Crossover, 5-year tenor, series 17 onwards, with EUR as the settlement currency)

B.1.1	Index CDS	Untranched Index	Europe	iTraxx Europe Main	EUR	17 onwards	5Y
B.1.2	Index CDS	Untranched Index	Europe	iTraxx Europe CrossOver	EUR	17 onwards	5Y

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_12>

**Q13. Do you agree to the proposed timeline? If not, please explain why and present your proposal.**

<ESMA\_QUESTION\_MIFID\_TO\_13>

- xlii. The WMBA appreciates that there is political tide to ensure that the trading obligation comes into force as soon as possible, and to that end we have reasonable endorsed a 'one way equivalence' outcome whereby the EU determines third country regimes who have not made the reverse determination. That said, we remain holding very significant concerns that the proposed timeline could risk not only effective implementation, but also material damage to the functioning of global markets for reasons that broadly fall in to two categories – operational issues and equivalence. At risk here, is that liquidity fleeing an uncertain regime will never return.
- xliii. Operational issues revolve around the late in the day creation of OTFs and revised VOP MTFs. Without deeper elaboration, it remains clear to all parties that with new and untested permissions, protocols and rulebooks coming into force January 2018, a coincident obligation would appear foolhardy.
  - a. We also note that for existing trading venues as well as new trading venues, the straight through processing rules require trading venues to establish connectivity to CCPs in ways different to existing practices, and may require significant technological build and legal documentation before investment firms can become active members of the trading venue.
  - b. Not all dealers, specifically smaller ones such as Category 2 firms who are generally less equipped and ready; will be members of the relevant but still to launch, trading venues. It will take some time for these counterparties to obtain terms of business, membership and CCP clearing protocol connectivity with those appropriate venues, or otherwise to put in place agreements with dealers that are already members.
- xliv. Equivalence decisions would need to be multilateral, unequivocal and made in sufficient time prior to Q4 of this year. They would also need to permanence and longevity (i.e. the 'foundations') to underpin trades remaining in force for over half a century. These considerations, even accepting single-side equivalence and a narrow scope pertaining to the TO and the CO, remain highly unlikely.
- xlv. WMBA defer to the more detailed considerations made by ISDA on this topic, but we would emphasise the changing laws and rules in the US under CEA Dodd-Frank which will materially affect the scope and obligations from pre-trade to post-trade ['KISS' project by the CFTC]. It appears difficult to timely put into place sufficient agreements to cover the prospective changes.

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_13>

**CBA QUESTIONS**

**Q14. This first question aims at identifying the category of firm/entity you belong to. Please provide the total notional amount traded in derivatives (trading venues + OTC) in 2016 in thousands euros and the related total number of trades in the relevant boxes**

<ESMA\_QUESTION\_MIFID\_TO\_14>

Category	Number of employees	Total Notional traded 2016 (in thousands euros)	Total number of trades 2016
EMIR Category 1	[1-50]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[51-250]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

	<b>[251-1000]</b>	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	<b>&gt;1000</b>	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
<b>EMIR Category 2</b>	<b>[1-50]</b>	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	<b>[51-250]</b>	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	<b>[251-1000]</b>	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	<b>&gt;1000</b>	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
<b>EMIR Category 3</b>	<b>[1-50]</b>	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	<b>[51-250]</b>	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	<b>[251-1000]</b>	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
		TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
<b>EMIR Category 4</b>	<b>[1-50]</b>	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	<b>[51-250]</b>	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	<b>[251-1000]</b>	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	<b>&gt;1000</b>	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
<b>Trading Venue</b>	<b>[1-50]</b>	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	<b>[51-250]</b>	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	<b>[251-1000]</b>	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	<b>&gt;1000</b>	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_14>



**Q15. Based on the draft RTS, which percentage of your derivative trading (notional amount and number of trades) do you expect to be captured by the TO? Please provide the data for derivatives globally, and then for interest rate derivatives and for credit default swaps, using 2016 trading data?**

<ESMA\_QUESTION\_MIFID\_TO\_15>

<b>% of trading captured by the TO</b>	<b>Year 2016</b>
% of total notional amount traded in derivatives captured by the TO	TYPE YOUR TEXT HERE
% of total number of transaction in derivatives captured by the TO	TYPE YOUR TEXT HERE
% of total notional amount traded in interest rate derivatives captured by the TO	TYPE YOUR TEXT HERE
% of total number of transactions in interest rate derivatives captured by the TO	TYPE YOUR TEXT HERE
% of total notional amount traded in credit default swaps captured by the TO	TYPE YOUR TEXT HERE
% of total number of transactions in credit default swaps captured by the TO	TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_15>

CBA Questions 16 and 17 are to be answered by investment firms and significant non-financial counterparties

**Q16. Out of the trading activity expected to be captured by the TO, as identified under Q2, which % is already traded on an EU regulated market, an EU Multilateral Trading Facility (MTF), a US Swap Execution Facility (SEF) or another third-country trading venue?**

<ESMA\_QUESTION\_MIFID\_TO\_16>

<b>Trading activity expected to be captured by the TO</b>	<b>Traded on a regulated market</b>	<b>Traded on an EU MTF</b>	<b>Traded on a US SEF</b>	<b>Traded on another 3<sup>rd</sup> country venue</b>
% of total trading volume captured by the TO already traded on an EU trading venue, a US SEF or another third-country venue	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
% of total number of transactions captured by the TO already traded on an EU	TYPE YOUR	TYPE YOUR	TYPE YOUR	TYPE YOUR



trading venue, a US SEF or another third-country venue	TEXT HERE	TEXT HERE	TEXT HERE	TEXT HERE
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<ESMA\_QUESTION\_MIFID\_TO\_16>

**Q17. Compliance with the TO may require some further trading arrangements. Which of the following statement would you consider relevant regarding the steps you might be taking to that end? Please add any comment as appropriate.**

<ESMA\_QUESTION\_MIFID\_TO\_17>

Arrangements contemplated to comply with the TO	Yes	No	Comments
1. Current membership/Direct Electronic Access (DEA) arrangements are sufficient to comply with the TO	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
2. I intend to become a member/ participant/client of one (or multiple) EU trading venues for the first time	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
3. I intend to become a member/participant/client of additional EU trading venues	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
4. I intend to seek access to EU trading venues through Direct Electronic Access (DEA)	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
5. I intend to combine membership (2.or 3) with DEA (4.)	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
6. I am considering other arrangements; Please explain those arrangements in the Comments section	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_17>

**CBA Question 18 is to be answered by trading venues**

**Q18. Question 5: Which of the derivatives subject to the TO, based on the draft RTS, are currently available for trading on your trading venue? Do you consider extending trading on your venue to other derivatives subject to the TO?**

<ESMA\_QUESTION\_MIFID\_TO\_18>

Derivatives potentially subject to the TO currently available for trading on your venue	Derivatives potentially subject to the TO that may become available for trading on your venue
All TYPE YOUR TEXT HERE	All TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_18>

**CBA Questions 19 to 22 are to be answered by all respondents**

**Q19. Based on the draft RTS, which impacts do you expect from the TO in the short and medium term? Please elaborate as appropriate under Positive or Negative impact.**

<ESMA\_QUESTION\_MIFID\_TO\_19>

TO Impact	Positive Impact	Negative impact
Impact on your business model/ organisation/ client relationship	None. TYPE YOUR TEXT HERE	Complications, Cross-border difficulties and costs. TYPE YOUR TEXT HERE
Impact on your revenues	None. TYPE YOUR TEXT HERE	Complications, Cross-border difficulties and costs. TYPE YOUR TEXT HERE
Impact on market structure (e.g. principal vs. agency trading etc).	None. TYPE YOUR TEXT HERE	Likely trade migration away from MiFIR rulebooks. TYPE YOUR TEXT HERE
Impact on market liquidity and execution costs.	None. TYPE YOUR TEXT HERE	Likely removal of liquidity from standard tenors and higher marginal costs to venue participants. TYPE YOUR TEXT HERE
Other impacts. Please elaborate	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_19>

**Q20. Is there any specific provision in the draft RTS that you would expect to be a source of significant cost? If so, please elaborate.**

<ESMA\_QUESTION\_MIFID\_TO\_20>

Significant costs would arise from a further complicated transparency regime as proposed and the hasty implementation before 2020. A progression in tandem with the four-year transparency framework and the CO categories 3 and 4 [EMIR] towards the CO based adoption of a TO would mitigate these costs.

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_TO\_20>

**Q21. Please provide an indication, even a rough one, of compliance costs (in thousands of euros).**

<ESMA\_QUESTION\_MIFID\_TO\_21>

Draft RTS on the TO	a. IT costs	b. Training costs	c. Staff costs	d. Other costs (please identify)	Total costs ( if a., b, c or d. are not available separately)
One-off costs	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE			
Recurring costs (on an annual basis)	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE			

<ESMA\_QUESTION\_MIFID\_TO\_21>

**Q22. Taking into account the size of your firm, would you qualify overall compliance costs with the draft RTS as low, medium or high?**

<ESMA\_QUESTION\_MIFID\_TO\_22>

Please enter here "Low", "Medium" or "High" High TYPE YOUR TEXT HERE
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<ESMA\_QUESTION\_MIFID\_TO\_22>