European Securities and Markets Authority

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	FIA European Principal Traders Association
Activity	Other Financial service providers
Are you representing an association?	☒
Country/Region	Netherlands

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CP_MIFID_NQT_1>

[The FIA European Principal Traders Association (FIA EPTA) represents 28 independent European Principal Trading Firms (PTFs) that deal on own account, using their own money for their own risk, to provide liquidity and immediate risk-transfer in exchange-traded and centrally-cleared markets for a wide range of instruments, including shares, options, futures, bonds and ETFs.

As market makers and liquidity providers, our members contribute to efficient, resilient, and high-quality secondary markets that serve the investment and risk management needs of end-investors and corporates throughout the EU. Our members are active participants on almost all European exchanges and platforms. Moreover, our members are important sources of liquidity for institutional investors accessing liquidity pools across Europe.

FIA EPTA supports transparent, robust and safe markets with a level playing field and appropriate regulation for market participants.

FIA EPTA members strongly support the transparency objectives targeted by MiFID II/MiFIR and welcome the opportunity to respond to the ESMA consultation on its review report on the transparency regime for non-equity instruments and the trading obligations for derivatives.

FIA EPTA members observe that there remain serious market structure deficiencies in the non-equity market in Europe. The root cause of these problems relate to persistent shortcomings in the pre- and post-trade transparency regime, with the inconsistent and liberal use of post-trade deferrals for non-equities effectively denying the market meaningful post-trade transparency. As ESMA points out, 85% of bond trades in Europe result in a trade reporting deferral, with full transaction details often absent when eventually published.

Currently, only 5% of off-venue trading activity in OTC derivatives is subject to post-trade transparency, due in large part to problems in the interpretation of the Traded on a Trading Venue (ToTV) concept. Furthermore, 90% of on-venue trading activity in OTC derivatives is being granted a four-week deferral and deferrals for listed derivatives are significantly longer than warranted. Data is widely dispersed amongst high numbers of APAs, venues, vendors and dealers and there is no consolidated tape providing a comprehensive view of the market. These deficiencies significantly hamper EU non-equity markets, leading to lower levels of liquidity and higher costs for end-investors.

Independent market makers would be very well suited to provide the necessary liquidity to non-equity markets but can only do so efficiently and effectively if pre- and post-trade transparency is significantly improved. MiFID II has so far failed to achieve its intention to create meaningful non-equity market transparency and the remaining legacy structures hamper our members' ability to price and trade such instruments, or derived instruments (such as derivatives or ETFs) correctly.

It is worth reiterating why these deficiencies matter for end-investors and for the wider market (including beyond non-equities proper): Greater transparency leads to greater competition which leads to better pricing for end investors. If trade information is subject to delays and deferrals it leads to information asymmetry amongst market participants. Participants in the market, wary of what they do not know, will respond by widening their prices in case their counterparty knows something they do not. This “adverse selection” risk is ultimately a cost on end-investors is not just a problem contained to the specific market itself deficiencies increasingly impact other related markets such as those for ETFs which are increasingly popular investment products for both retail and institutional investors alike.

Firstly, fixed income ETF market makers hold large portfolios of bonds as part of their regular market making as well as creation and redemption activities. ETF market makers need to hedge these portfolios by trading against other bond dealers and as a result may also suffer from this same adverse selection by trading against dealers with more information than they have. These additional costs borne by the ETF market maker are then passed on to ETF investors via wider quotes raising execution costs for these end-investors.

Secondly, pricing information relating to underlying fixed income instruments is essential for market makers to price fixed income ETFs tightly. Thus, non-equity transparency promotes stronger liquidity and effective price discovery for those ETF instruments.

For derivatives, it is worth noting that the most actively traded listed derivatives in the EU existed without limits to post-trade disclosure before MIFID II came into effect. Exchange participants were informed about every trade once it was crossed on the exchange. In this respect, deferred publication actually represents a decrease in post-trade transparency since the introduction of MiFID II.

FIA EPTA members are convinced that improving transparency in the non-equity markets will increase fairness, competition and investor confidence in these and related markets.

FIA EPTA members believe the following key points require immediate attention and we provide further detail on these in our response below:

- **Removing the ToTV concept** such that there is a level playing field between trading venues and SIs, which establishes a comprehensive transparency framework supporting the creation of a consolidated tape.
- **Simplifying the pre-trade transparency framework**, including by removing the SSTI waiver, increasing the number of instruments subject to the requirement and increasing LIS levels for derivatives and calibrating appropriate LIS levels for the type and liquidity profile of bonds.
- **Maximising real-time post-trade transparency**, so that it becomes the norm rather than the exception, by limiting the scope of existing deferrals and materially shortening the length of any deferral to more closely reflect existing US rules and the post-trade regime for equities.
- **At minimum, recalibrating the existing approach for waivers and deferrals** that are based on liquidity assessments; this should take into account data quality issues, the lack of comprehensive market-wide data, and Brexit. At the very least, qualitative criteria should be added, such as ensuring that all OTC derivatives subject to the clearing obligation are considered liquid for transparency purposes.
- **Accelerating the creation of a post-trade consolidated tape for non-equities** so that market participants will finally be able to have a full view of the European market.

Further with respect to the DTO, we consider that ESMA should take steps to ensure that all market participants can access the trading venues where these instruments are listed. At the moment, the continued use of the practice of post-trade name give-up violates non-discriminatory access requirements and impedes the ability of non-bank liquidity providers to join certain MTFs and OTFs. We recommend that ESMA issue additional guidance to prohibit this practice.

Finally, FIA EPTA members remain concerned about certain listed structured products that are insufficiently transparent and deliver sub-optimal results for retail investors such as sprinters, turbos, speeders, warrants, funds and CFDs. These products suffer from significant conflicts of interest: quotes are provided by only one market maker which is normally affiliated with the issuer of the product. In the absence of competition by other liquidity providers, these market makers have full discretion to set spreads and pricing rules in a manner that disadvantages retail clients. Consequently, we would ask ESMA to investigate how to open up this essentially closed market structure, which violates multilateral systems requirements, to more participants so as to ensure non-discriminatory access and better outcomes for end-investors.]

<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>

[FIA EPTA members agree, with the market participants cited in the consultation paper, that the current pre-trade transparency regime is not providing sufficient transparency due to the high number of instruments unduly deemed illiquid and the high level of trading volume subject to waivers. FIA EPTA members support a market structure where the trading of non-equity instruments takes place to the greatest extent in a transparent trading environment which is subject to calibrated transparency requirements. As set out in MiFIR, the transparency waivers should only be available in certain limited cases rather than being the norm. However, non-deferred transparency is currently the exception as the waivers significantly overstep their objectives to the detriment of non-equity markets quality.

FIA EPTA members believe that the calibration of the waivers should be modified so as to allow for more pre-trade transparency and that, as long as hedging risks can be appropriately minimised, increased pre-trade transparency will not have a negative impact on non-equity markets.

FIA EPTA members are in favour of a material increase in the level of pre-trade transparency in the non-equity markets and consider the benefits will be increased liquidity and more efficient pricing, as investors will have more knowledge of trading interest in advance of placing orders and consequently will have more confidence to trade.

The Level 1 text sets out that the pre-trade transparency requirements for trading venues can be waived in the following circumstances:

1. For orders that are large in scale (LIS);
2. For orders held in an OMF pending disclosure;
3. For actionable indications of interest above SSTI in RFQ and voice trading systems (although the venues are required, in this case, to make public indicative pre-trade bid and offer prices which are close in price to the active interest);
4. For instruments not subject to the trading obligation and for illiquid instruments (ILQ);
5. For ‘hedging’ orders of non-financial counterparties, where they are reducing risks directly related to commercial or treasury financing activity.

FIA EPTA members consider that these scenarios enabling the application of pre-trade transparency waivers are too broadly defined and should be significantly narrowed. As ESMA has highlighted in its consultation paper, the LIS and ILQ waivers are most predominately used. Consequently, policy efforts at improving non-equity transparency should be targeted at these two waivers in particular.

FIA EPTA members would recommend excluding certain instruments currently classified as illiquid from the ILQ pre-trade transparency waiver, removing the SSTI waiver as suggested by ESMA and, at Level 2, increasing the LIS thresholds for derivatives. For bonds, a more granular liquidity-based LIS should be calibrated to take into account the varying level of liquidity for different types of fixed income instruments (sovereign, corporate, covered, convertible, high-yield, etc.).

Specifically for derivatives listed on a regulated trading venue, we believe that there is no requirement for the ILQ pre-trade waiver at all. Where a trading venue has chosen to list a derivative and has actively engaged market maker(s) to support these contracts, excluding pre-trade transparency is counterintuitive to MiFID II's objectives. Market making obligations are in place to ensure a minimum level of liquidity during all market conditions, including when stressed, and providing this transparency will promote end investor interest resulting in enhanced liquidity. By its very nature, permitting pre-trade transparency to be waived for illiquid instruments stifles the natural growth of liquidity in those instruments as investors do not have an accurate view of the depth of interest in those products.

Consequently, FIA EPTA members would recommend modifying Article 9(1)(c) to state "derivatives which are not subject to the trading obligations specified in Article 28 and other financial instruments for which there is not a liquid market *with the exception of derivatives listed on a regulated trading venue"* to support this change.

In addition, FIA EPTA members believe that LIS thresholds for exchange-traded derivatives should be raised where possible as further detailed in our response to Question 2. Many market participants and trading venues have found ways to circumvent Article 8 MiFIR requirements and market quality has suffered as a result. In particular, FIA EPTA members consider that an ADNA approach to calculating LIS thresholds is warranted for a wider range of interest rate derivatives including, at least, bond futures and options. Also, FIA EPTA members agree with classifying more instruments, in particular bonds and interest rate derivatives, as liquid in order to become subject to pre-trade transparency requirements.

By way of concluding summary, FIA EPTA members believe that the following three concrete measures to improve non-equity market transparency would most directly benefit end-investors:

1. The universe of bonds deemed to be liquid needs to be rapidly and vastly expanded to capture sufficiently liquid bonds (we give an example of how this might be achieved in our response to Question 25);
2. Removal of SSTI as a pre-trade waiver as this is an uncalled-for waiver with no added benefits while causing complexity and further clouding the pre-trade transparency picture in fixed income;
3. To deal with the market fragmentation in pre-trade transparency, we suggest that all below LIS trades move to multilateral trading venues and SIs which would improve meaningful pre and post trade transparency.

Jointly, these changes would also lead to more competition, better price formation, and increased liquidity provision by our members (i.e. non-traditional electronic market makers), as also requested by many buy-side participants (given that incumbent dealers have needed to withdraw their market making activities to more complex transactions due to new prudential and regulatory requirements)[1].

In our view, the pre-trade transparency regime for non-equities markets should consequently evolve in the following manner (by asset class), as set out in Table 1 below:

Table 1

Pre-trade waiver type	**Listed derivatives**	**OTC derivatives**	**Fixed Income**

[1] Cf. ICMA's February 2020 report "Time to Act", notably pages 11, 18-23, 30 and 40. Available at https://www.icmagroup.org/assets/documents/Regulatory/Secondary-markets/Time-to-act-ICMAs-3rd-study-into-the-state-and-evolution-of-the-European-investment-grade-corporate-bond-secondary-market-040320.pdf

ILQ	No longer available	Reduced coverage (increased number of instruments deemed liquid)	Reduced coverage (increased number of instruments deemed liquid)
LIS	Increased thresholds	All < LIS on trading venues	All < LIS on trading venues
SSTI	No longer available	No longer available	No longer available

]
<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>
[In addition to the changes recommended in our response to Question 1, FIA EPTA members would like to propose the following changes (covered in detail below) to improve the level of pre-trade transparency available:

1. Standardising the method of determining LIS thresholds for all non-equity instruments;
2. Accelerating the thresholds for bonds to S4;
3. Including a trading volume component in the classification of bond liquidity;
4. Removing ToTV;
5. Recalibrating the liquidity determinations;
6. Increasing the LIS thresholds for listed derivatives.

1. Standardising the method of determining LIS thresholds for non-equity instruments

FIA EPTA members believe that standardisation for derivatives as well as fixed income instruments would make them more tradable and comparable, removing unnecessary obscuring factors. For example, the model used for determining the LIS threshold value for fixed income options is substantially different to the approach taken for index and equity options.

For derivatives, using the 70th percentile approach for fixed income options has almost the opposite effect to using the ADNA number for index and equity options. This discrepancy has created a current situation in the Bund and the Schatz options where the less liquid Schatz options have a LIS block trade size of 1250 lots, compared to 100 lots for Bund options which trade 225% more than Schatz options.

By using the percentile approach, products with an active order book will have a *lower* block trade threshold as a higher number of smaller trades get executed in the order book. Further, less liquid products tend to trade more off-order book in a larger trade size resulting in a larger LIS block trade threshold using the percentile approach. FIA EPTA members believe that the more active and liquid products should have a higher LIS threshold for derivatives.

It is FIA EPTA members' opinion that the percentile approach does not reflect the market for these instruments and would value a review of the appropriateness of the 70th trade size percentile over the ADNA method for fixed income options, as in practice this method results in less transparency than intended with the introduction of MiFID II.

For fixed income, given the large variety of instruments and differences in liquidity profile, a more granular/bespoke LIS determination would be recommended, distinguishing between type (sovereign, corporate, high-yield, convertible, covered etc.) and liquidity profiles – see under 3. below.

2. **Accelerating the thresholds in RTS 2 for bonds to S4**
   FIA EPTA members believe that one of the key impediments to transparency in the fixed income markets is the determination of 'liquid' versus 'illiquid'. As ESMA points out only a tiny fraction of bonds are determined to be 'liquid' while a much larger number of bonds is included in relevant indices, which are relevant for fixed income ETFs. This is a fundamental problem as pre-trade transparency for illiquid bonds is essentially non-existent.

   FIA EPTA believe more bonds should be determined liquid and that the current methodology is not fit for purpose. We have set out more on this point in our response to Question 25. But in any event should the percentile phased approach for bond transparency be maintained, FIA EPTA members would advocate a move to the highest percentile level in an effort to capture at least 80% of the tradeable bond universe including leading indices (such as the Bloomberg Barclays indices for aggregate, corporate and high-yield bonds) as sufficiently liquid. FIA EPTA members believe real- time transparency is critical to an efficiently operating market and that ambitious steps should be taken to increase transparency to the greatest effect.

   In addition, many bonds currently have characteristics that preclude them to become highly liquid. Issue size is normally kept small. This could be addressed by re-opening existing issuances as is more common in the US. Terms and conditions differ across products, as do maturity and coupons. Of note, many instruments (even if affixed with an ISIN and a pro-forma listing) are non-tradable in practice: either because they are deposited with the ECB, or the registration is effectively a shelf while the bonds are kept on-book by dealers and others. In order to promote bond liquidity, standardisation and increasing issuance size should be targeted as this would have a significant impact on improving inherent tradability and liquidity.

3. **Including a trading volume component in the classification of bond liquidity**
   For all relevant classes of bonds, we would welcome a table that clarifies whether an instrument is liquid, depending on average turnover and other factors included in RTS 2. A sensible threshold is reflected in RTS 2 although, as per point 3 above, we believe many more instruments should be deemed liquid than currently the case (i.e. use the determinants identified for phase 4 (S4)).

   Subsequently, a sensible threshold (per type of fixed income instrument and per liquidity band) should be designed for pre-trade and post-trade transparency and available waivers (LIS) and deferrals (for trading above LIS).

   We suggest incorporating a trading volume component into the pre-trade thresholds in order to ensure that a minimum amount of total trading activity (by notional) is subject to pre-trade transparency. As this level should be lower than the corresponding levels for post-trade transparency, we suggest that the pre-trade LIS threshold for each sub-class should be the greater of (a) the 60th percentile by trade count and (b) the 50th percentile by volume. At the moment, excluding 40% of trades could easily exclude over 75% of trading volume (by notional).

4. **Removing ToTV**
   At the moment, ~95% of OTC derivatives are completely excluded from the MiFID II transparency framework due to not being considered ToTV, even though in many cases the instruments are extremely similar to instruments listed on regulated trading venues. In relation to pre-trade transparency for non-equity SIs, instead of seeking to redefine ToTV, it should be removed in order to ensure a level playing field between on-venue and off-venue trading activity.

5. **Recalibrating the liquidity determinations**

Data quality issues, a lack of comprehensive data due to ToTV, the potential loss of data related to UK trading venues and SIs, and mis-calibrated liquidity criteria have all combined to create a situation where the liquidity assessments by ESMA do not accurately reflect market conditions. Far too many non-equities instruments are considered to be illiquid for transparency purposes. ESMA must either recalibrate the thresholds and add qualitative criteria (such as ensuring OTC derivatives subject to the EMIR clearing obligation are always considered liquid for transparency) or remove waivers and deferrals that directly depend on a liquidity assessment.

6. Increasing LIS thresholds for listed derivatives to more appropriate levels by using data provided by regulated markets

It is FIA EPTA members' view that broadly speaking the LIS thresholds for listed derivatives are too low and do not accurately reflect the liquidity present in the market. In this regard, we refer to our analysis presented in Table 2 below which provides an aggregated summary of all equity options traded on EU orderbooks from January 2018 to December 2019). From this table it is clear that the LIS thresholds are sub-optimal for stock options, as 56% of orderbook trades in stock options with a notional value below €5 million are above the ESMA LIS level and 15% for the next ADNA tier.

Table 2

	ADNA upper threshold	**Current ESMA LIS**	**UNDER ESMA Level**	**OVER ESMA Level**
Equity options	< € 5 mil	25000	44%	56%
Equity options	€5 Mil < ADNA< €10 Mil	300000	85%	15%
Equity options	€10 Mil< ADNA < €20 Mil	550000	94%	6%
Equity options	>€20 Mil	1500000	95%	5%

It is FIA EPTA members' belief that orders that are below on-screen liquidity levels, as set out per the below proposal, should be traded in a central limit order book (CLOB) and that, therefore, LIS levels should be set above those levels. Such a change will result in enhanced transparency and create a true on-screen liquidity pool resulting in greater competition and better pricing for end investors.

The current LIS levels result in an adverse situation whereby far fewer orders are pre-trade transparent. Specifically for index and single stock options, the liquidity present in the CLOB in the vast majority of cases is above the current LIS thresholds. The purpose of the LIS thresholds is to enable fair and orderly trading by protecting large orders from adverse market impact and, in FIA EPTA members' opinion, as long as the CLOB can handle the size of a trade with no disruption there is no justification for a pre-trade transparency waiver.

FIA EPTA used the following measures to quantify the liquidity available in the orderbook for the purposes of this analysis:

a) Minimum quote size;
b) Aggregation of the minimum quote sizes;
c) The maximum onscreen trade size executed.

Looking at each of these in turn:

- In FIA EPTA members' opinion the **minimum quote size should be the absolute lower bound** below which no trades should be able to avail of a pre-trade transparency waiver. These minimum quote sizes are set independently by exchanges with feedback from market participants and our members believe they are a fair indicator of the level of liquidity that an individual market maker is prepared to show. It is counter-intuitive that the LIS threshold can be lower than an exchange's minimum quote size and avail of a pre-transparency waiver.

Column 2 of Tables 3 and 4, below, shows the number of options on each exchange where that exchange's minimum quote size exceeds the ESMA LIS threshold. The number of names in excess of this threshold demonstrate that the existing LIS thresholds are not reflective of actual liquidity available in the orderbook. For example, under the current regime the minimum quote size for more than half of all equity option names and almost all index option names traded on Eurex exceeds the current LIS threshold. This discrepancy is even starker when one looks at equity options on ICE Futures Europe (IFEU) and OMX where the minimum quote sizes for practically all names exceed the current LIS threshold.

- The second measure is **the aggregation of the minimum quote sizes across all market makers in the orderbook**. Aggregation is more representative of available liquidity for each instrument in the orderbook than the minimum quote size as it represents all available liquidity as displayed by market makers. As shown in column 3 of Tables 3 and 4 below, however, the current LIS pre-trade transparency requirements capture very little of this liquidity. For Eurex, the available liquidity for 79% of equity option names exceeds the current LIS thresholds. This measure of liquidity on Euronext also exceeds the current LIS thresholds. It is clear that the current LIS thresholds do not capture a significant amount of the available liquidity for the vast majority of the products included in the below analysis.

- The third measure we view as a key relevant reflection of liquidity is the **maximum screen trade size**. As this measure reflects a trade size that can be absorbed by an orderly regulated market, arguably only orders above this size should be large in scale. A LIS threshold calibrated to this level would represent a very robust level of transparency. Column 4 of Tables 3 and 4, below, shows that the maximum screen trade size in practically all names for both equity and index options exceed the current LIS threshold.

Table 3 (Single stock options)

Exchange	**Total unique ISIN's**	**Min Quote size > LIS Threshold**	**Screen Liquidity > LIS Threshold**	**Max Screen trade > LIS Threshold**
Eurex	300	164	237	291
Euronext Belgian	17	2	5	16
Euronext French	46	20	27	42
ICE	71	71	*	71
Nasdaq OMX	78	70	*	76
Euronext Dutch	47	20	33	43
Borsa Italiana	43	24	*	39
LSE	5	5	*	5
MEFF	28	11	*	24
Oslo Børs	10	10	*	10
Total	**645**	**397**	**302**	**617**

Table 4 (Index options)

Exchange	**Total unique ISIN's**	**Min Quote size > LIS threshold**	**Screen Liquidity > LIS threshold**	**Max Screen trade > LIS threshold**
EUX	64	59	33	49
MNP	1	0	0	1
IFEU	2	0	*	2
OMX	3	3	*	3
EOE	2	1	0	2
IDEM	1	0	*	1
OBX	1	1	*	1

Total	**74**	**64**	**33**	**59**

*****For these exchanges, data on the number of market makers was not available. ESMA would have access to this data from the relevant exchanges and could complete this analysis.

Based on the analysis and considerations set out above, FIA EPTA members would like to propose that one way to determine more appropriate LIS levels is to quantify a fair and reasonable orderbook (screen) liquidity measure for listed derivatives. FIA EPTA members' proposal to ESMA would be that LIS threshold for each relevant sub-asset class should be the greater of the aggregation of the minimum quote size multiplied by the number of registered market makers (**'Min QS * number of MM'**), as described above, and a **Screen Liquidity Indicator Metric (SLIM)** as set out below.

While we believe that the aggregation of the minimum quote sizes is a reasonable measure of available liquidity, in the experience of FIA EPTA members, market makers will usually provide more liquidity than this aggregated number. The proposed SLIM measure reflects this excess liquidity by taking the actual size of the top 3 price levels in the orderbook. Based upon the experience of FIA EPTA's members on average there are 3 registered market makers who will take up top of book positions in the orderbook.

Therefore, for the reasons set out below, the most accurate measure of the liquidity present on the market would be the greater of the aggregation of the minimum quote sizes and the SLIM: **Max (SLIM, Min QS * number of MM)** and FIA ETPA members would recommend that the LIS threshold be set at this level. This approach would link the orderbook displayed transparent liquidity to relevant LIS values.

- As exchanges set the minimum quote size (QS) obligation and manage the market making registration process, calculation of **'Min QS * number of MM'** would therefore be very straightforward for exchanges. In our members' opinion, no trades with a size below this level should be able to avail of a pre-trade transparency waiver given the exchange requirements dictate that there will be at least that level of liquidity in the orderbook at any given time.

- Also, the **SLIM** would simply be a view of the actual liquidity available in the market as it is often the case that market makers provide more liquidity than the base requirements in the exchange market making schemes. In order to accurately quantify this excess liquidity, exchanges could calculate the average volume in the orderbook on the top 3 price points for relevant options. FIA EPTA members would consider relevant options to be all option contracts that expire between 30 and 360 days which are out of the money (OTM). The reason for selecting the OTM options is to narrow down a subset of option contracts and capture the level of volatility supply in the market. The rationale for the lower bound of 30 days for the expiry range is to avoid capturing liquidity changes around expiry which can behave differently to continuous trading. The upper bound represents what the typical market making requirement are for most listed options which is 1 year.

- Once in receipt of this information, LIS values could be set using the MAX (SLIM, QS * no. of MM) formula.

Derivative exchanges in Europe would be able to readily calculate this data and relay it to ESMA, on a quarterly basis, to determine relevant LIS thresholds for derivatives.]

<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>
[Yes, FIA EPTA members are supportive of ESMA's proposal to delete the pre-trade SSTI waiver. The SSTI metric is confusing and adds unnecessary complexity to the transparency regime for minimal added value.

However, for the reasons set out in response to Question 2, FIA EPTA members would strongly disagree with lowering the pre-trade LIS-thresholds in any way to compensate for deleting the SSTI waiver. Such lowering of the pre-trade LIS-thresholds would result in a significantly lower level of pre-trade transparency as the LIS waiver is applicable across all trading systems whereas the SSTI is only applicable to RFQ and voice trading systems. Any such compensation would be detrimental to the non-equity markets as it would increase information asymmetry, going against the MiFID II transparency objectives.]
<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>
[FIA EPTA members' preference, in line with our response to Question 3, is for SSTI for SI-quoting obligations to be removed and replaced by setting the quoting obligation at the LIS-threshold for derivatives, or a fitting threshold (e.g. specific percentages of LIS) for bonds as a result of analysing a more granular approach for fixed income instruments. This will level the playing field between trading venues and SIs.]
<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>

[We agree with Option 2 and would not be in favour of expanding this to any type of derivative.]
<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>
[Yes, FIA EPTA members agree with ESMA's proposal to require a Level 1 change and for ESMA to issue an Opinion for trading systems where the price determination process differs from existing systems as currently specified in the Annex (please see our response to Question 7 for further detail on this point). Given the continued innovation in the markets and the fact that each new trading system will have unique elements specifically to meet particular perceived 'trading gaps', FIA EPTA members believe it is imperative for ESMA to review and issue an Opinion on each new trading system as they are introduced so as to ensure both timely review and a level playing field through harmonisation and supervisory convergence across the Union. In the case of non-equity trading systems, there are some systems currently in operation that formally meet the transparency requirements as set out in the legislation but in practice result in less transparency than members believe is intended by MiFID II policy objectives. Consequently, a review by ESMA through the Opinion process would provide for necessary safeguards that both existing and new trading systems are indeed compliant with both the letter and the spirit of MiFID II.

One case in point is the so-called "request for cross" system used by one exchange. This specific system allows participants only a 1 second period to interact with the trade before it is crossed and on this basis claims that such "request for cross orders" are pre-trade transparent although the 1 second period may not be a sufficient amount of time to interact with a trade before it is crossed. This is especially relevant for "flex options", that are permitted to be traded on the system, as flex options are un-listed options contracts with a non-standard expiry, settlement or strike price. When two participants negotiate a trade in a flex option and then enter the option into the "request for cross" system, other market participants are unable to interact with the cross request as the un-listed option will not be set up in their static data. While the trade is technically visible to the market prior to being crossed, due to the fact that it is in an un-listed instrument, other participants are unable to respond. In such circumstances, participants can agree off-order book trades and de-facto circumvent pre-trade transparency requirements. FIA EPTA members would welcome an Opinion from ESMA on the minimum length of time by which such "request for cross orders" are required to be made pre-trade transparency before the order is crossed.

Another potential case where FIA EPTA members would welcome ESMA to provide an Opinion on is if Frequent Batch Auctions (FBAs) are introduced for non-equity instruments. Again, FIA EPTA members' concerns relate to level of pre-trade transparency and ability for market participants to interact in these auctions. An Opinion on the minimum length of time for pre-trade data and notification of the commencement of the FBA would be warranted as otherwise the pre-trade transparency provided could be rendered useless and become purely a "ticking the box" exercise rather than a mechanism of true value to the market.]

<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>

[Yes, FIA EPTA members agree with ESMA's proposal to further clarify the definition of a hybrid system. The key to the existing definition is that this category is for hybrid systems where "the price determination process is of a different nature" to the other systems set out in the Annex of RTS 2. It is FIA EPTA members' opinion that, should a hybrid system simply combine a number of the other systems, mirroring their definition in the Annex, then the hybrid system should be required to meet the obligations as set out in the Annex for those individual offerings. Most new trading systems have hybrid characteristics and there should not be a requirement for ESMA to put together a new definition for each of these if it is simply a case of the system combining the elements of two or more existing systems. ESMA should focus its attention on trading systems that provide a substantively different price determination process than those specified in the current Annex.

FIA EPTA members would suggest that ESMA merge the existing criteria into a simpler platform-agnostic table that looks at the outcome of the price determination process and, as far as possible, prevents for trading systems to circumvent or obscure the MiFID II transparency requirements.]

<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>

[Yes, FIA EPTA members agree with ESMA's proposal to extend the requirement to make data free of charge 15 minutes after publication to include SIs as well as trading venues in Article 13 of MiFIR. In the same manner as other execution venues, it is imperative that market data is provided for free after a period of time to allow smaller investors for whom current market data costs are prohibitively expensive to access this data. This should be provided in a standardised, machine and human readable, format for ease of review and comparison and be available for at least 24 hours after publication.

Currently, as pointed out in the consultation paper, the majority of SIs who have a requirement to publish pre-trade data do this using an APA. As this service provider is already in receipt of the quote data, provision of the data for free should be a relatively simple process. (We note that some APAs are providing this already). FIA EPTA members would not expect this to result in a duplicate publication by the individual SIs that use an APA to make their quotes public, as this would create an unnecessary additional burden.

It is also FIA EPTA members' opinion that the transparency obligations for derivatives SIs should more closely mirror those for SIs of equity-like instruments. This should include a requirement to publish quotes

(% of SSTI or LIS, if the SSTI is merged with LIS) on a regular and continuous basis for liquid equity derivatives, where those quotes are easily accessible to other market participants on a reasonable commercial basis (similar to article 15(1) of MiFIR). This would provide an additional layer of intra-day pre-trade transparency that is currently missing in derivatives markets which would be beneficial to all market participants.]
<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>
[Yes, FIA EPTA members would see value in further standardising the pre-trade transparency information to increase the usability and comparability of the data. This would facilitate the smooth aggregation of this data, support the requirement for this information to be provided for free after 15 minutes and is, also, a key building block in the creation of a consolidated tape service.

Further, FIA EPTA members would request clarification on ETCs and ETNs. Currently these instruments fall under the non-equity classification, however in practice, they trade and operate in the market as equity-like instruments which leads to confusion and impracticality. FIA EPTA members believe that instruments should be classified based on actual trading characteristics in the market rather than on their underlying assets (in this case, a basket of commodities or bonds versus shares) and/or legal structure.

A key example of this is an ETN that is structured as a note (issued by a financial institution), the value of which tracks an underlying bond or basket of bonds. While the legal structure is a note, these ETNs trade in the same manner equity-based ETFs. Due to the difference in classification, market makers and SIs of exchange traded products (ETPs) which includes liquidity provision of ETFs, ETNs and ETCs must track the regulatory differences in transparency requirements, waivers and deferrals for these products, although the process for pricing, trading and hedging these instruments is the same.

FIA EPTA members would recommend re-classifying all ETPs as equity-like instruments. Having the current split classification inhibits end-investors' ability to efficiently use these instruments and creates an unnecessarily complex trading environment.]

<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>

[FIA EPTA members strongly agree with ESMA's assessment and believe a more streamlined and uniform post-trade regime is essential. As identified in ESMA's consultation paper and also noted by other market participants (e.g., by ICMA in their Time to Act report, see our response to Question 2), transparency in bond and derivatives markets has decreased to the detriment of all investors.

FIA EPTA members observe that too many fixed income instruments are deemed insufficiently liquid to be in scope, and deferral periods render any post-trading information unusable without a clear rationale. Currently, only 5% of off-venue trading activity in OTC derivatives is subject to post-trade transparency, due in large part to problems in the interpretation of the Traded on a Trading Venue (ToTV) concept (Cf. https://www.clarusft.com/what-we-need-to-do-to-fix-mifid-ii-data/).

Furthermore, 90% of on-venue trading activity in OTC derivatives is being granted a four-week deferral while 85% of trading activity in EU bonds is not being published in real-time with full transaction details often absent when eventually published (Cf. https://www.clarusft.com/mifid-ii-data-for-bonds/).

Post-trade transparency is critical for a number of reasons. It allows market participants to perform accurate transaction cost analysis and best execution assessments and enables liquidity providers to more accurately price and provide liquidity – also with respect to derivative instruments, and e.g. fixed income ETFs, whose pricing depends on that of their underlying assets. Comprehensive real-time data enables market participants to more confidently assess current market dynamics and hedge their positions, which increases investor confidence and is particularly important during times of market volatility. In addition, real-time data reduces existing information asymmetries, where certain market participants may have greater knowledge regarding ongoing trading activity than other investors. Levelling the playing field with respect to access to information regarding ongoing trading activity helps investors hold liquidity providers accountable and promotes overall market competition. In addition, post-trade transparency allows for the production of more general market research and commentary that will benefit all investors.

In order to deliver post-trade transparency in non-equities asset classes, the following problems must be addressed across all non-equities instruments:

(1) **The regime must be comprehensive**, covering all on-venue and off-venue trading activity in each non-equities instrument. As a result, the ToTV concept should be removed, as it significantly limits the amount of off-venue trading activity that is in-scope for the transparency regime at the moment.

(2) **Post-trade transparency must be real-time; deferrals should be limited in scope, with one clear size-based deferral only.** This includes completely removing the concept of allowing trades to avail of a post-trade transparency deferral purely because it is an illiquid instrument (as the deferral inhibits natural growth and interest in the instrument). Finally, the regime should be consistent across the EU27, removing the existing discretion for NCAs to grant more extended deferrals than others. We provide more detail below.

(3) **For listed derivatives, the LIS thresholds should be increased to more appropriate levels**. Based on our members' experience in the below markets, the levels are currently sub-optimal and we believe the following would be more appropriate thresholds of post trade transparency for these products. In line with ESMA's goal to further increase transparency and allowing for more trades in a transparent manner, increasing these thresholds will be a valuable step in this direction.

Table 5

	ADNA upper threshold	**Current post-trade LIS**	**Proposed post-trade LIS**
Index options	<100	1,500,000	25,000,000
	100< ADNA< 200	30,000,000	60,000,000

	200< ADNA <600	55,000,000	100,000,000
	600 +	160,000,000	300,000,000
Equity options	<5	1,250,00	2,500,000
	5< ADNA< 10	1,500,000	5,000,000
	10< ADNA <20	3,000,000	12,500,000
	20 +	5,500,000	25,000,000

(4) Finally, ass set out in Table 5 above, we would encourage ESMA to **calibrate appropriate LIS thresholds for transparency**, reflecting the wide variety of fixed income instruments and liquidity characteristics.

<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>
[FIA EPTA members agree with the removal of the SSTI deferral because it is overly complex and there should be one clear size-based deferral from post-trade transparency requirements. As noted by ESMA, this would increase harmonisation with other non-EU jurisdictions, where there is typically only one size-based deferral. However, FIA EPTA members do not believe that this removal would warrant lowering the post-trade LIS threshold for derivatives and would be very much opposed to this. The relevant LIS thresholds for bonds need to be carefully analysed given the variety of instruments and liquidity characteristics in that class.

As pointed out by ESMA, the LIS deferral applies to all instruments and so it would be a significant step back from current levels of post-trade transparency when our members believe that ESMA's key focus should be on increasing this transparency across the board.]
<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>
[FIA EPTA members strongly prefer Option 3: we support real-time publication for all trades potentially with volume-masking for above LIS trades. We agree with eliminating the deferral based on liquidity assessments, as currently these liquidity assessments do not accurately reflect market conditions. For example, the vast majority of OTC derivatives that are subject to the EMIR clearing obligation have nonetheless been determined to be illiquid for transparency purposes. We are concerned that various issues will continue to make it difficult to arrive at accurate liquidity assessments, including poor data quality, lack of comprehensive data, and the potential loss of access to UK data.

To the extent Option 1 is selected, FIA EPTA members consider the liquidity determinations must be recalibrated (including ensuring OTC derivatives subject to the EMIR clearing obligation are always considered to be liquid for transparency purposes).

Separately, we note that for packages, only one leg of the package needs to be eligible for a deferral in order for the entire package to be eligible for a deferral. This approach results in far too many package transactions being eligible for a deferral. We note that under US rules, all legs of a package must qualify for a post-trade transparency deferral in order for the package to qualify and we recommend that ESMA adopt a similar approach.

More generally, the changes to the post-trade framework detailed above would align the EU regime with existing U.S. post-trade transparency frameworks for bonds, futures and OTC derivatives. These U.S. regimes have positively impacted market conditions, including increasing liquidity and decreasing transaction costs.[2] The same benefits should be expected in the EU to the extent meaningful post-trade transparency is achieved.]
<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>

[2] We refer to the following academic papers assessing the current U.S. regime:
Jacobsen and Venkataraman (2018), Does Trade Reporting Improve Market Quality in an Institutional Market? Evidence from 144a Corporate Bonds; https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3171056.
Asquith, Covert, Pathak (2019), The Effects of Mandatory Transparency in Financial Market Design: Evidence from the Corporate Bond Market, National Bureau of Economic Research; https://www.nber.org/papers/w19417.
Loon, Zhong (2013), The Impact of Central Clearing on Counterparty Risk, Liquidity and Trading: Evidence from the Credit Default Swap Market, Journal of Financial Economics (forthcoming); https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2176561.
Loon, Zheng (2014), Does Dodd-Frank Affect OTC Transaction Costs and Liquidity? Evidence from Real-Time CDS Trade Reports, Journal of Financial Economics (forthcoming); http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2443654.

[FIA EPTA members support publishing the full volume of a transaction after a certain period of time, for example four weeks as suggested by ESMA. As set out in Option 3, real time publication with volume masking for LIS transactions and publication of the volume for LIS transactions after 2 days (with the volume of 'very large' LIS transactions after a specified period) would in FIA EPTA members' opinion be the most beneficial to the markets. Option 3 would also be the most optimal option of the three for achieving an EU consolidated tape for non-equity instruments.]
<ESMA_QUESTION_CP_MIFID_NQT_13>

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

<ESMA_QUESTION_CP_MIFID_NQT_14>
[Yes, as also outlined extensively in our response to ESMA's consultation on the cost of market data and the consolidated tape,[3] FIA EPTA members agree with ESMA that there should be a stronger focus on enforcing existing rules and guidance. While ESMA has continued to provide welcome additional guidance regarding how to populate specific data fields, in many instances this guidance appears to be largely ignored by market participants. Data is not easily accessible, not easily machine-readable and in some cases of low quality. Our members strongly support enforcement of minimum requirements pertaining to content and standardised format, and delivery (both streaming and downloadable for reference).

In addition, in order to address the continuing lack of accessibility to the published data, we consider that ESMA should consider recommending a Level 1 change that would prohibit trading venues and APAs from charging for regulatory-required post-trade transparency data, even prior to the expiration of the 15-minute delay period. We note that this approach is consistent with US post-trade transparency frameworks for non-equities, where real-time data is provided free or charge (or extremely low-cost).]
<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>
[FIA EPTA members consider that the transparency framework should be (a) comprehensive (covering both on-venue and off-venue trading activity), and (b) real-time (with only clearly defined and limited deferrals). Otherwise, the CTP will not have access to a sufficient amount of useful data to provide a valuable service to market participants. The transparency framework should also support a CTP providing access to post-trade data at a low cost (or free of charge).

[3] https://www.fia.org/resources/fia-epta-response-esma-consultation-cost-market-data-and-consolidated-tape

Therefore, we would urge ESMA to consider requiring trading venues and APAs to provide access to the required post-trade data on a real-time basis free of charge, which would be consistent with the U.S. non-equities regimes. Whilst not necessary to achieve a CTP, FIA EPTA members are also supportive of legislation that would mean trades below LIS moving to trading venues and SIs to minimise the amount of relatively small size trading occurring OTC where pre- and post-trade transparency can be elusive.]
<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>
[Yes, FIA EPTA members agree that the current interpretation of ToTV significantly narrows the scope of post-trade transparency for OTC derivatives. As the analysis by ANNA-DSB shows, an extremely small percentage of ISINs created for OTC derivatives are reported to FIRDS. We recommend that ESMA incorporate into its analysis estimates regarding the percentage of OTC derivatives not considered to be ToTV.

In particular, one analysis found that~95% of off-venue trading activity in interest rate OTC derivatives is currently not considered ToTV This may mean that up to EUR 800 billion per week in trading volume in EUR interest rate swaps alone is missing from the transparency and transaction reporting framework. (Cf. https://www.clarusft.com/what-we-need-to-do-to-fix-mifid-ii-data/). These are highly liquid, centrally cleared instruments that are completely exempted from post-trade transparency. We see no policy justification for the current status quo.]
<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>
[In FIA EPTA members' view, the ToTV concept should be eliminated for both transparency and transaction reporting. This would ensure that all OTC derivatives transactions are subject to transaction reporting, providing policymakers with comprehensive data for monitoring and oversight purposes.] <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>
[FIA EPTA members strongly support Option 3. This will establish a comprehensive post-trade transparency regime that covers both on-venue and off-venue trading activity, levels the playing field between trading venues and SIs, and increases harmonisation with US rules. In addition, we believe eliminating the concept of ToTV can actually reduce operational costs, as members will not have to assess compliance with an unclear standard on an ongoing basis.

Based on the available data, we would hope there is consensus that retaining the status quo is not an acceptable policy outcome. However, Option 2 may be considered, which would seek to redefine ToTV. We note that this option would fail to deliver the benefits detailed above, leaving a post-trade transparency regime that (i) is not comprehensive, (ii) creates an unlevel playing field between trading venues and SIs, (iii) is not harmonised with other jurisdictions, and (iv) does not reduce the operational and compliance costs associated with implementing and monitoring ToTV.

Importantly, as long as market participants are subject to different post-trade transparency requirements depending on whether a transaction is considered to be ToTV, there will be incentives to structure around whatever definition of ToTV is provided. The current regime has clearly demonstrated the practical difficulties associated with attempting to delineate specific characteristics of complex OTC derivatives that must be present in order for an instrument to be considered ToTV, characteristics that are likely to vary across asset classes.

In addition, the current regime has clearly demonstrated how easy it is for market participants to structure around any definition provided by ESMA. In our view, these limitations will continue to exist as long as the ToTV concept is retained.]
<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>
[We support this proposal.]
<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>
[FIA EPTA members agree with ESMA to amend the provisions in Article 28 to align it to EMIR by reflecting the EMIR refit changes.

In addition to this, we support amending Article 28(4) to ensure that central aspects of the MiFID II framework are considered as part of equivalence decisions. These include ensuring third-country trading venues (a) provide market participants with non-discriminatory access and (b) apply comparable transparency requirements to derivatives subject to the DTO.]
<ESMA_QUESTION_CP_MIFID_NQT_20>

Q21. Do you have any views on the abovementioned 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>
[FIA EPTA members agree that the current criteria appear sufficient.]
<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>
[FIA EPTA members would recommend that ESMA focus on:

- **Prohibiting post-trade name give-up by MTFs and OTFs.** EU market participants must be able to access all trading venues that list instruments subject to the DTO. Trading venues are required to provide non-discriminatory access to all market participants under Articles 18(3) and 53(1) of MiFID II. Unfortunately, the continued practice of "post-trade name give-up", which is employed by certain MTFs and OTFs that offer trading of centrally cleared OTC derivatives, acts a discriminatory access barrier.

  Post-trade name give-up occurs when the identities of counterparties to an anonymous trade are subsequently disclosed. While necessary for non-cleared instruments, it serves no legitimate purpose for centrally cleared instruments: post-trade, the counterparties face the CCP, and do not have any ongoing exposure to each other (and under relevant straight-through-processing rules, counterparties face the CCP immediately post-trade). Post-trade name give-up effectively prevents new liquidity providers from accessing specific venues, and the practice does not comply with the non-discriminatory access requirements in MiFID II.

  There is no legitimate justification for the continued use of the practice for centrally cleared instruments. For these reasons, the US. CFTC has recently proposed to prohibit "post-trade name give-up" for OTC derivatives that are centrally cleared and executed anonymously. The continued use of "post-trade name give-up" serves the entrenched interests of incumbent dealers and blocks new entrants on relevant trading venues. We note that in the US the CFTC is prohibiting "post-trade name give-up" for anonymously executed, cleared OTC derivatives[4], and we urge the ESMA to address this issue in its advice to the European Commission.

- **Reconsidering pre-arranged trading for DTO instruments.** While pre-arranged trading may be appropriate for large-sized transactions, allowing too many transactions to be pre-arranged undermines the intent of the DTO, which is to transition trading onto transparent and competitive trading venues. We recommend that ESMA use the post-trade LIS threshold rather than the pre-trade LIS threshold for these purposes. We note that the practice of executing transactions OTC and then merely reporting them to a regulated market would not be considered to comply with the share trading obligation and we see no reason why it should be permitted for the DTO.]

<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>
[TYPE YOUR TEXT HERE]
<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>
[FIA EPTA members consider that the quarterly calculations are postponing resolution of the concerns in the markets and create undue circularity: products are illiquid because they are deemed illiquid; they remain illiquid because of a lack of transparency.

Generally, we consider that the calculations relating to bonds are overly-complicated and, more importantly, lead to poor outcomes for market participants and end-users. A *de minimis* number of bonds are deemed liquid. We are in favour of more bonds being deemed liquid to ensure there is greater transparency (both from a pre and post- trade transparency perspective).

A simpler methodology to determine whether trading in a particular size should mean a waiver or deferral of pre and post trade transparency might be as follows:

[Take 1% of issued outstanding bonds divided by years to maturity]

So, for example, USD1bn outstanding with 10 year maturity equals 10m/10yrs = 1m trade size. Thus, LIS would be any trade over 1million. Any trades below 1m in that bond would be deemed liquid and should be printed immediately.

[4] For a summary see e.g., https://www.shearman.com/perspectives/2020/03/cftc-approves-proposed-rule-on-post-trade-name-give-up-on-swap-execution-facilities

Resolving the significant transparency issues in the fixed income market will lead to an improvement in liquidity and enhance competition by encouraging non-traditional liquidity providers (including electronic market makers) to provide pricing. This reflects buy-side demand and is substantiated by academic research which has confirmed that the introduction of more transparency in the U.S. corporate bond market (TRACE) has reduced the estimated bid-ask spreads of peripheral dealers by about 24 basis points, while spreads of core dealers remained unaffected. There was no effect on dealers' capital commitment and inventory behavior.[5]]

<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>
[FIA EPTA members are in favour of this change but would note that this will only result in the number of liquid bonds increasing from 0.32% to 0.48% (for the EU27 and the UK taken together); even less for the EU27 on its own. We believe there is significant scope for ESMA to be more ambitious in liquidity determination (see our response to Question 25).

In addition, EPTA's members would be comfortable for ESMA to move to Stage 4 of the liquidity determination and/or a new framework that places 80%± of the tradeable fixed income universe that is included in leading indices (and ETFs) in scope of publication requirements.]
<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>
[No, as detailed in the report, the current regime has not delivered meaningful pre-trade transparency in non-equities asset classes and therefore we recommend moving to stage 2 as soon as possible.]
<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.

[5] Dugalic (2018), The Effect of Corporate Bond Market Transparency Across Dealers, in: Essays in Financial Economics; https://searchworks.stanford.edu/view/12663220

<ESMA_QUESTION_CP_MIFID_NQT_28>
[As we discuss in our response to Q3 above, FIA EPTA members are in favour of the removal of the SSTI threshold and the simplification of the various thresholds, deferrals and liquidity determinations. FIA EPTA members support any measures ESMA can take to meaningfully improve transparency in the bond market.] and moving to S4 - or a regime beyond - as soon as reasonably possible.]
<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>
[TYPE YOUR TEXT HERE]
<ESMA_QUESTION_CP_MIFID_NQT_29>

Q30. 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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Q31. 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.

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Q32. What is your view on the analysis and proposals related to the pre-trade LIS thresholds for commodity derivatives? Which proposal to mitigate the counter-intuitive 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.

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