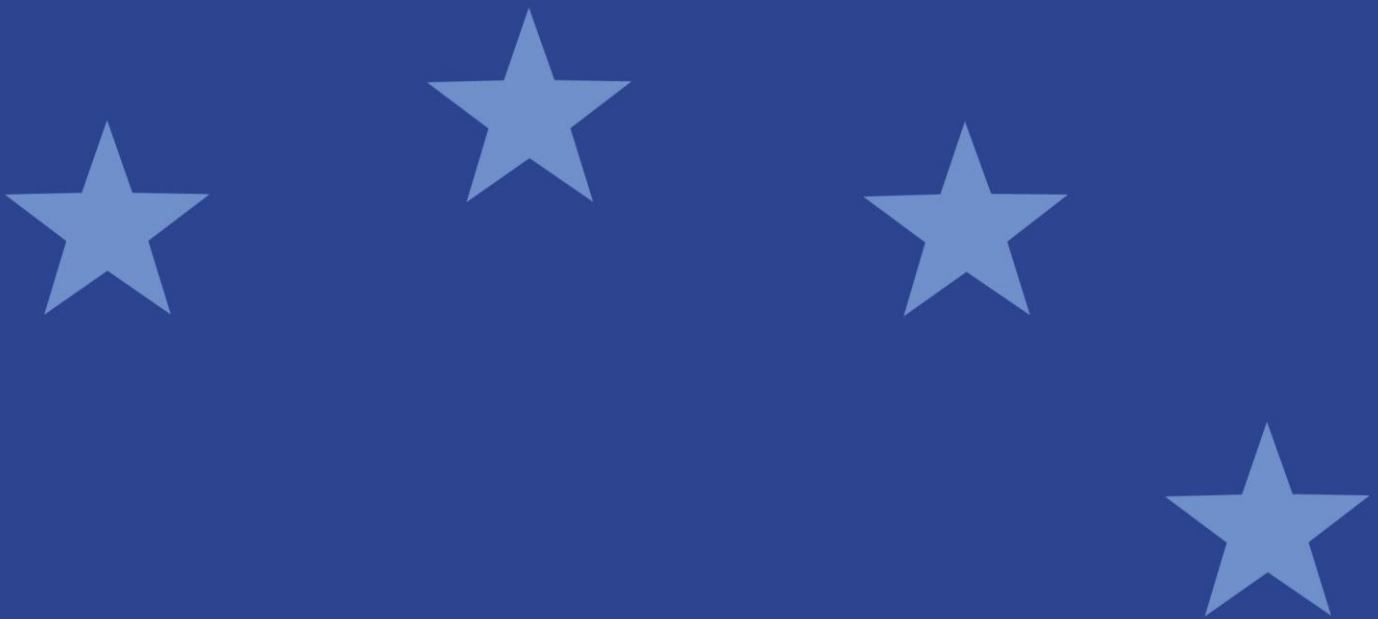




European Securities and
Markets Authority

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



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	Finance Denmark
Activity	Investment Services
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Denmark

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CP_MIFID_NQT_1>

General comments

Finance Denmark¹ welcomes the opportunity to respond to the ESMA consultation: “MiFIDII/MiFIR Review report on the transparency regime for non-equity instruments and the trading obligation for derivatives”. However, as the deadline for this consultation falls within the period of the COVID-19 situation, which puts significant restraints on the functioning of all stakeholders, we reserve the right to come back with further comments at a later stage. In particular we would like to underline the importance of taking a cautious approach to any legal changes at this point in time as the market situation as a consequence of COVID-19 is and will be for a long period of time, under significant stress and not fit for absorbing larger amendments. Moreover, if amendments are made it is crucial that the need for adequate implementation time is considered.

First of all, Finance Denmark recognizes the background for the review, which is to ensure that the provisions have delivered on their objectives and to simplify the regime where possible.

As for testing whether the provisions have delivered on their objectives, Finance Denmark is of the opinion that the in general poor data quality has significantly interfered with the outcome of the rules. For example, it was estimated in 2016² that Denmark should have 38 liquid covered bonds in stage 1. This estimate is reassessed due to a structural change and would imply that DK should have approximately 20 liquid covered bonds in stage 1. According to the ESMA FITRS database, we, however, only have 6 liquid covered bonds. In this context, Finance Denmark encourages additional work on improving the data quality before any changes may be introduced. As for simplifying the regime, Finance Denmark welcomes this step and we support a harmonized regime across Europe to support a level playing field.

When determining a transparency regime, it is essential to understand the balance between transparency and liquidity, where liquidity is to be understood as the market participants' possibility to quickly executing larger trades within a minimum of market impact. Also, as stated in MiFIR, recital 16, “*the transparency requirements should be calibrated based on the different types of financial instruments..., taking into account the interests of investors, issuers, including government bond and market liquidity...and take account of transaction size, including turnover, and other relevant criteria*”. The overall goal of the transparency rules is to ensure efficient functioning of the bonds- and derivative markets in Europe.

Finance Denmark does indeed agree with the statement in recital 16. For example, it is important to distinguish between various assets classes as their characteristics differ and so do the trading patterns as well as the relevant investor groups and so forth. This consultation is focused on “non-equities” in general without any distinguishing between sub asset classes, which complicates the response as Finance Denmark in general observes different transparency needs depending on the instruments in question.

¹ Finance Denmark is a business association for banks, mortgage institutions, asset management, securities trading and investment funds in Denmark. EU Transparency Register – registration number 20705158207-35

² By Nasdaq

Also, Finance Denmark is very concerned about the apparent focus of the transparency regime in the equity markets as *the* underlying benchmark for an optimal transparency regime. Even as there are significant differences within the sub-asset classes in the non-equity space, these differences are almost becoming insignificant when comparing with the differences between equities and non-equities: Equity markets are characterized by being order driven with many, mixed market participants and relatively low trading sizes, whereas e.g. bonds and derivatives markets in the Nordics can be characterized as being price-driven with following perimeters:

- Limited number of liquidity providers (systematic internalisers)
- Few, large investors
- Large transactions
- Own currency

For all asset classes, a certain level of transparency is crucial as market participants thereby are enabled to trade on an informed basis which leads to a more efficient price discovery process,

However, too much transparency may affect liquidity negatively as the high level of transparency exposes the market participants (e.g. a market maker/systematic internaliser (SI)) to undue risks if the market is informed of significant buy- or sell interest in a certain financial instrument. The market will react to that information which may imply that the market participant faces a worse execution than he would have had if the information were not public.

On the other hand, too little transparency may imply that market participants also face worse execution than justified by the market conditions because more informed market participants use the asymmetric information for own benefit.

Trading in price-driven markets requires intermediaries (market makers/SIs), which puts their own capital at risks, and require the ability to manage such risk. SIs are often acting as a "buffer" (intermediary) ensuring that unequal and often large (opposite) order sizes can be facilitated efficiently when the SI uses its risk capital (e.g. when two clients want to trade in the same instrument, but in unequal sizes or all want either to sell or to buy at the same time). Trading via SIs is also often in complex or customized products and/or where the client wants to discuss the market, the product, the price etc. Trading in price-driven markets are often more sensitive towards transparency as the market maker (SI) puts its own capital at risk and may be unable to handle its risks properly if the SI has to reveal its position to others. Too much transparency may lead a reluctance/avoidance to act as market maker/SI and therefore it may imply a change in the market structure which may not be of benefit to the overall market liquidity and quality. Less efficient secondary markets will have negative implication on the primary markets with detrimental effects on the capital markets and the real economy as a consequence.

Furthermore, different levels of national transparency in markets with cross border trading as EU has faced since the implementation of MiFIDII/MiFIR including discretionary deferral regimes are not optimal as market participants face an unlevel playing field. With that in mind, Finance Denmark strongly supports a harmonized approach in EU.

That said, it is of significant importance for Finance Denmark with the right level of transparency which can support the unique Danish Covered Bond market. The Danish Covered Bond market is one of the largest covered bond markets in the world and a cornerstone in the Danish economy both ensuring efficient financing of real estate and lucrative investment opportunities for investors.

The post-trade transparency for the Danish Covered Bond market is currently ensured by self-regulation via the voluntary industry-level agreement among the principal market participants. Finance Denmark finds it essential that local initiatives to promote transparency remain viable post any reform of MiFIDII/MiFIR.

Finally, Finance Denmark is of the opinion as both SSTI and LIS are based on pan European figures and measured in percentiles, the levels are both unpredictable and do not take national differences into ac-



count. In this context, the level of SSTI and LIS should rather be a fixed threshold and it could be considered to include currency when determining the proper levels. Please also see Finance Denmark's reply to the ESMA consultation on SI and non-equities.

<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>

As non-equity covers a wide range of instruments, the benefits/impacts of increased pre-trade transparency may vary depending on the market structure. Focus should now be on improving the data quality so that the full effects of the current rules can be observed, instead of changing the rules.

Overall, it is Finance Denmark's assessment that pre-trade information is not used today and increased pre-trade transparency may force SIs to change their business model to compensate for the increased risk or withdraw from the market – with negative consequences for the liquidity with increased costs for the customers and the real economy as a consequence.

Furthermore, as the Danish bond market is the most transparent in EU, Finance Denmark does not see a need for changes in order to increase the level of (pre trade) transparency, as the pre-trade transparency in particular will harm liquidity providers such as SIs. Unlike trading venues, SIs trade against their own capital which makes them exposed to risks. That makes SIs more vulnerable to pre-trade transparency than trading venues, as SIs have to disclose their identity when making the quotes public. In this context, this risk may be larger in smaller markets with few SIs/market makers where it can be relatively easy to assess which investment firm that is acting as a given SI.

In particular, the SIs are concerned with the requirement in MiFIR, article 18(6) that SIs shall allow other clients to execute transactions on the same terms. An SI should not be forced by regulation to provide quotes not considered acceptable from a commercial or risk perspective. Therefore, we urge to delete this requirement and in connection hereto, also to delete MiFIR, article 18(7) and 18(5) to ensure that quotes are not to be given to other clients. In case article 18(6) and article 18(7) in MiFIR are deleted, the present requirements for SIs to publish quotes with name/MIC can also be abolished.

Additionally, due to the poor data quality, as also recognized by ESMA, Finance Denmark encourages to focus on enhancing the data quality before additional measures are taken. Please also see the Danish example under "General comments".

<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>

Finance Denmark does not see a need to change the regime for waivers at this point in time. As described above, the main focus should be on improving the data quality, standardisation of information to be disclosed and fixed SSTI and LIS thresholds to minimise uncertainty for the SIs.

Improving transparency for derivatives is a challenging problem with the present granularity requirement for both reporting and transparency purposes, e.g. for interest rate derivatives, which change ISINs every day. It would be helpful if the requirement of granularity was changed so e.g. a spot 10y IRS always have the same ISIN despite trade date and maturity date when everything else is similar. This would also lead to increased pre-trade transparency for these instruments.

Please also see Q18 for additional input.

<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>

Finance Denmark does neither support a deletion of the SSTI threshold nor a compensation by lowering the pre-trade LIS threshold across (all) asset classes. The SSTI level is introduced to protect liquidity providers/SIs from undue risks and enable these to hedge their risks as liquidity providers/SI as opposed to trading venues put their own capital at risk when trading. Consequently, liquidity providers/SIs needs to be protected from e.g. pre-trade transparency requirements above this level.

Finance Denmark strongly supports the SSTI – however as a fixed threshold to minimise uncertainty.

<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>

The concept must be kept for the SI obligation in art. 18 as the threshold is an important tool for the SI obligations since it reflects a reasonable level which does not expose the SI to undue risks. However, Finance Denmark believes that the methodology should be changed from percentiles to a fixed level as the percentile is a flexible measure depending of the pan European transaction sizes which per se creates uncertainty as these may vary considerably and may hamper the SI ability to act as an SI. The level of the SSTI must reflect the present level of the pre-trade SSTI.

So, option 1 is preferred if this can be converted into a fixed level.

<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>

Finance Denmark supports turning the hedging exemption into a limited negotiated trade waiver, as we agree that the hedging exemption has been very complicated to apply. However, it should not be restricted to commodity derivatives only. Further, there could be reasons to also allow financial counterparties to use this new waiver for their hedging activities

<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>



Finance Denmark supports this approach as this would allow the needed flexibility and “time-to-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>
Finance Denmark does not respond to this question
<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>
Finance Denmark supports this proposal provided that the trading venues do not charge the SIs for providing and publishing SI quotes as a number of trading venues have introduced in connection with MiFIDII/MiFIR. Please also see our response to the ESMA consultation on market data and the ESMA report following the consultation.³

<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>
Finance Denmark is generally supportive of further standardising the pre-trade transparency information, as that would help to clarify the SI’s obligations in this respect. Further, standardisation will potentially help investors and other stakeholders to compare pre-trade transparency disclosures across firms.
<ESMA_QUESTION_CP_MIFID_NQT_9>

Q10. Do you agree with ESMA’s assessment of the level of post-trade transparency and with the need of a more streamlined and uniform post-trade regime which does not include options at the discretion of the different jurisdictions? If not, please explain why and, where available, support your assessment with data.

<ESMA_QUESTION_CP_MIFID_NQT_10>
As for the assessment of the level of post-trade transparency, Finance Denmark is concerned that the level of data problems may interfere with the content and conclusions leaving a too negative impression of the transparency. Please also beware that the study of the Swedish market (figure 19) is based on perceptions, which may be affected by the fact that pre MiFIDII/MiFIR, the participants published the transparency information on one Regulated Market and post MiFIDII/MiFIR, various APAs were used for publication.

That said, Finance Denmark welcomes and supports a more streamlined and uniform post-trade regime as this will support a level playing field, provided it does not expose liquidity providers/SIs to undue risks.

³ https://www.esma.europa.eu/sites/default/files/library/mifid_ii_mifir_review_report_no_1_on_prices_for_market_data_and_the_equity_ct.pdf and https://finansdanmark.dk/media/40034/response_to_esma_consultation_on_the_development_in_prices_for_pre-and_post-trade_data_and_on_the_consolidated_tape_for_equity_instruments_final_0-finance-denmark.pdf

This is in particular important for smaller markets, such as in the Nordics, where liquidity is dependent on the ability of SIs to use their balance sheets to execute client orders.

Finance Denmark also sees a need for a room to accommodate local needs, like the self-regulation for Danish covered bonds to maintain the high level of transparency available before MiFIDII/MiFIR, cf. the consultation page 48, no. 130.

<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>

No. Finance Denmark is concerned about the proposal to delete the SSTI and to use a recalibrated LIS as recent experience with the post trade SSTI and LIS has revealed a considerable increase in both post trade SSTI and LIS for e.g. covered bonds, where SSTI has changed from 6 to 7 mEUR and LIS has changed from 15 to 20 mEUR. This is a significant increase and will also imply a significant increase in risk for liquidity providers/SIs. This is a concrete example of a need for fixed thresholds to minimize uncertainty for liquidity providers/SIs.

The level for which deferred post trade information is possible for covered bonds (using LIS or SSTI depending of the levels of these thresholds) should not exceed approximately 13 mEUR/100 mDKK. Experience shows that exceeding this level implies undue risks for SIs/liquidity providers.

<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>

First and foremost, Finance Denmark strongly opposes the proposal to require immediate publication of price for transactions that are eligible for deferral. Such requirement would expose liquidity providers/SIs to undue risks, as other market participants as a consequence of the publication are enabled to assess that a large/illiquid trade has been executed due to the volume masking. Thereby, the liquidity provider/SI is exposed to undue risk as other market participants naturally knows that the liquidity provider/SI needs to unwind its risk and will make use of such information.

Furthermore, it is important to underline that the volume often is a sensitive factor for both liquid and illiquid instruments. Revealing information of e.g. a large sale/a sale in illiquid instruments too soon will expose the liquidity provider/SI to undue risks and hamper the possibility for the liquidity provider/SI to unwind the risk as other parties will know that the particular liquidity provider/SIs needs to purchase the instrument to enable deliverance to the clients and the price for the instrument will be set at a higher level than if the market did not have the information, thereby hampering the liquidity provider/SI. This also implies a disincentive to provide liquidity to the market, which may cause real economic consequences.

As for the concrete options, due to the concerns of revealing price information immediately for transactions eligible for deferral, Finance Denmark proposes a **revised option 1** which can work for all non-equity instruments. The proposal allows deferral for both price and volume if the transaction is either illiquid or above a certain size (SSTI or LIS depending of the levels, cf. Q11). The price should be deferred T+2 and

the volume masking for both illiquid instruments and large trades should be at least 2 weeks. The proposals ensure that volumes are to be masked where liquidity providers'/SIs' ability and willingness to provide liquidity is compromised by regulatory disclosures. Robustness of the pricing is a key point here and it is important to protect the client and the liquidity provider in segments where there are few liquidity providers or where liquidity depth is restricted/limited, such as the Nordic markets.
<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>

Please see Q12 for our response as we propose a revised option 1, where the price is deferred T+2 and the deferral of the volume should be at least 2 weeks for transactions eligible for deferral in illiquid and large trades. Finance Denmark assumes that the regime will apply automatically when a transaction is eligible for deferral (i.e. NCAs shall not approve the deferral regime).

In the opinion of Finance Denmark, such regime would provide the urgently needed simplicity, which will allow for both a level playing field and more efficient and overall, more transparent non-equities markets than today.

As for the consolidated tape, Finance Denmark refers to our response to the European Commission consultation on MiFIDII/MiFIR Review⁴ where we underline our scepticism regarding the use cases for a Consolidated Tape and strongly urge both the European Commission and ESMA to focus on ensuring efficient markets by ensuring the protection of liquidity providers/SIs rather than a Consolidated Tape as these are the prerequisites for efficient and well-functioning markets to the benefit of the real economy.

<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>

Finance Denmark agrees with ESMA that there is a need to issue further guidance to improve the quality of post-trade data, besides focusing on the data quality in general as initially stated. However, Finance Denmark does not support broadening the scope for derivatives subject to the transparency requirements as we will elaborate on in Q17.

In particular, Finance Denmark agrees with the challenges with non-compliance of 15-minutes free of data-requirements, which Finance Denmark has provided a solution for in our response to ESMA's consultation on market data⁵, inconsistent reference data, publication of erroneous information, duplicative and/or missing trade reports for OTC transactions, challenges with the flagging. However, some of the

⁴ <https://finansdanmark.dk/media/40706/finance-denmark-response-to-european-commission-consultation-on-mifidiimifir-review.pdf> and <https://finansdanmark.dk/media/40705/proposals-to-questions-in-the-ec-consultation-finance-denmark-position-paper.pdf>

⁵ <https://finansdanmark.dk/media/40034/response-to-esma-consultation-on-the-development-in-prices-for-pre-and-post-trade-data-and-on-the-consolidated-tape-for-equity-instruments-final-0-finance-denmark.pdf>



challenges within particular duplicative and/or missing trade reports for OTC transactions is due to the present Trade reporting hierarchies:

Linking a higher position in the trade reporting responsibility waterfall model to systematic internaliser status has had unexpected outcomes, for example a number of firms have opted to be systematic internalisers in order to shoulder reporting responsibility for their clients. Finance Denmark notes that an inability to trade report is a barrier to entry for new entrants and could result in suboptimal outcomes for end-investors. Investment firms' institutional clients (buyside) currently feel compelled to transact with systematic internalisers to ensure their reporting requirements are met (in the frequent case they have not built their own reporting capabilities).

Furthermore, there are technical difficulties with systematic internaliser to systematic internalise trading in the absence of an official source of SI data (golden source). Available trade data do not indicate in which capacity the counterparty has done the trade. This sometimes creates uncertainty as to who should report and there is a risk that either both of the parties or none of the parties publish the trade. This hampers the data quality. Also, the requirement to assess the reporting requirement is measured at ISIN level which is in contraction with the present SI determination for non-equities (at asset class level and not per ISIN level).

Therefore, Finance Denmark would strongly support an amendment allowing counterparties to agree contractually who will report, with the existing reporting waterfall model providing a backup (and certainty of reporting) in case the counterparties do not enter into such an agreement.

Finance Denmark also suggests that if the reporting follows the normal reporting regime (If two investment firms trade, the seller must report. If one of the parties is an SI, the SI must report despite the SI is the buyer. If both investment firms are SIs, the seller SI must report), the identification of whether the SI is an SI in the particular instrument should be done at asset class level instead of ISIN level in order to mitigate the problems of the inability to identify SIs at ISIN level in the ESMA database..

As for challenges with the flagging, Finance Denmark wonders why APAs are not allowed to use the "NPFT" flag, as this flag is aimed for post trade transparency for transactions executed outside a trading venue (RTS 2, art. 12).

<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>

Finance Denmark recognises the challenges with fragmented transparency due to the number of trading venues and APAs in order to facilitate a consolidated view of transparency in particular for bonds.

However, Finance Denmark is sceptical regarding value of a consolidated tape not at least due to the high market data costs, which a CT will **not** solve. Also well-founded use cases as well as a comprehensive cost-benefit analysis are missing. That said, if a CT is mandated, Finance Denmark suggests only to enable a post trade bond CT mainly for transparency purposes with no requirement of mandatory consumption. All types of derivatives should be excluded due to the inherent complexity in these instruments which will limit the relevant and usable scope considerably. An important prerequisite is also harmonized transparency regime and that deferred trades are not included in the CT as long as they are subject to deferral, as this would expose SIs/liquidity providers to undue risks.

Please also see our response to the European Commission consultation on MiFIDII/MiFIR Review.⁶

<ESMA_QUESTION_CP_MIFID_NQT_15>

⁶ <https://finansdanmark.dk/media/40706/finance-denmark-response-to-european-commission-consultation-on-mifidiimifir-review.pdf> and <https://finansdanmark.dk/media/40705/proposals-to-questions-in-the-ec-consultation-finance-denmark-position-paper.pdf>

Q16. Do you agree with ESMA's above assessment? If not, please explain.

<ESMA_QUESTION_CP_MIFID_NQT_16>

Finance Denmark is, as initially expressed, concerned with the rather firm assessment from ESMA, as Finance Denmark is of the view that the poor data quality may inflict with the conclusion. When the issues with data quality have been improved/solved, Finance Denmark trusts that it will result in more transparency.

<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>

Yes – the interpretations must be kept aligned for consistency reasons. More definitions of the same issue make it more complicated and increase the risks of poor data. Additionally, Finance Denmark finds it important that the transparency serves a purpose, i.e. is useful and comparable for the market participants. If instruments subject to transparency purposes are either too bespoke and/or truly illiquid, the published information would, at best, not be fit for use. At worst, it would be misleading.

<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>

Finance Denmark supports the ESMA opinion on TOTV for OTC-derivatives as this approach provides a sound and useful framework for meaningful transparency, e.g. Finance Denmark supports **option 1** as both option 2 and 3 would expand the scope for transparency for OTC derivatives in a level creating a significant risk of publishing information of no or even detrimental value for market participants. The main reason is that the vast majority of the current non-ToTV OTC instruments are illiquid and seldomly traded. Under the current regime a liquidity provider/SI can place positions in illiquid instruments in their own inventory and wait until an opposite interest appears in the market. If markets in illiquid instruments are made more transparent, all market participants will know each other market maker's position which will reduce market makers willingness to quote prices and take positions in illiquid instruments.

Consequently, illiquid instruments will be even more illiquid in a more transparent regime.

Finance Denmark urges in this context that the ESMA data base (FIRDS) can serve as a "golden source" which firms can use in order to ascertain which instruments are traded on a trading venue (TOTV). At present, investment firms experience challenge as some trading venues do not report the reference data to FIRDS before the instrument is quoted. In this context the database must be updated, which also takes time. This implies that transactions cannot be transaction reported as the transactions are rejected by the NCAs due to the delay in the updating of the systems.

In the opinion of Finance Denmark, FIRDS must be the Golden Source for assessing whether an instrument is TOTV or not as this is key to improve transparency and minimize noise. Therefore, only instruments that are included can be considered as TOTV.

Furthermore, Finance Denmark proposes that it is reassessed which criteria are relevant in generating ISINs, as ISINs are the referential for the identification of derivatives in the EU and the basis for transparency: Several trade level attributes are included in ISINs for certain OTC derivatives instruments. 'Expiry Date' is a required attribute for Interest Rate Swaps. Each day, Interest Rate Swaps are traded with a different maturity date and therefore map to a different ISIN. The consequences of ISINs including such trade level attributes is creation of multiple ISINs for comparable OTC derivatives instruments/products making it very difficult for end users to benefit from transparency. If interest rates instruments were to reference the tenor of a swap instead of the maturity date, the number of ISINs required for what would essentially be the same swap product would be significantly reduced and thereby increasing the scope for transparency.

<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>

TYPE YOUR TEXT With the present market situation in mind and what could have happened, it would be appropriate to keep the possibility for temporarily suspending the transparency provisions.

<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>

Finance Denmark agrees. However, due to Brexit it would be beneficial to have in place equivalence decisions for UK as soon as reasonably possible

<ESMA_QUESTION_CP_MIFID_NQT_20>

Q21. Do you have any views on the above-mentioned criteria and whether the criteria are sufficient and appropriate for assessing the liquidity of derivatives? Do you consider it necessary to include further criteria (e.g. currency)? Do you consider that ESMA should make use of the provision in Article 32(4) for asset classes currently not subject to the trading obligations? Please explain.

<ESMA_QUESTION_CP_MIFID_NQT_21>

Finance Denmark does not support that ESMA should make use of the provisions in Article 32(4) as the instruments in questions are either not standardized or liquid enough to be subject to the DTO.

<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>

Finance Denmark agrees.

<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>
Finance Denmark will not respond to this question.
<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>
Finance Denmark believes the register works fine and has no comments.
<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>
Finance Denmark supports the current quarterly liquidity calibration and does not see any need for a change. Also, Finance Denmark is of the firm opinion that the focus should be on improving the data quality before changing the methodology..
<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>
Finance Denmark supports the move from stage 1 to stage 2.
<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>
Finance Denmark supports ESMA's proposal not to move from stage 1 to stage 2.
<ESMA_QUESTION_CP_MIFID_NQT_27>

Q28. Do you agree with ESMA proposal to move to stage 2 for the determination of the pre-trade SSTI thresholds for bonds (except ETCs and ETNs)? Please explain.

<ESMA_QUESTION_CP_MIFID_NQT_28>
As mentioned several times, Finance Denmark is concerned with the data quality. That said, Finance Denmark reluctantly supports to move to stage 2 for bonds only. As for both the SSTI and LIS we strongly urge to change these from percentiles to fixed thresholds in order to minimize uncertainty in the market.



However, Finance Denmark directs the attention to the recent ESMA consultation on SI in non-equities, where ESMA suggests to delete both MiFIR, article 18(6) and article 18 (7). As Finance Denmark wrote in our response, we welcome and support this as this is a significant step to limit the SI risks to a reasonable level and to incorporate the existing ESMA Q&As on these questions. This will also create a more level playing field compared to trading venues having no similar requirements to commit to trade multiple times on a displayed quote.

In order to make the simplification consistent, Finance Denmark suggests deleting art. 18.5, so it is only a requirement to publish quotes to the market and not make the quotes available to the other clients.

Also, Finance Denmark suggests changing the methodology from pan European based percentiles for both SSTI and LIS to fixed thresholds. A dynamic figure as percentiles creates uncertainty and as the calibration in addition is based on pan European figures, the uncertainty is even larger. However, any such fixed threshold would of course need to be determined in a way so that the policy objective of protecting SIs against undue risk is fulfilled. The level of the threshold will differ across asset classes. For Instance, the SSTI threshold should be set at a reasonable level, not exceeding the present floor as this level is representative for the retail sizes.

<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>

Finance Denmark has no comments at this point in time.

<ESMA_QUESTION_CP_MIFID_NQT_29>

Q30. In relation to the segmentation criteria used for commodity derivatives: what is your view on the segmentation criteria currently used? Do you have suggestions to amend them? What is your view on ESMA's proposals SC1 to SC3? In your view, for which sub-asset classes the "delivery/cash settlement location" parameter is relevant.

<ESMA_QUESTION_CP_MIFID_NQT_30>

Finance Denmark has no comments at this point in time.

<ESMA_QUESTION_CP_MIFID_NQT_30>

Q31. What is your view on the analysis and proposals related to the pre-trade LIS thresholds for commodity derivatives? Which proposal to mitigate the counterintuitive effect of the current percentile approach do you prefer (i.e. keep the current methodology but modify its parameters, or change the methodology e.g. using a different metric for the liquidity criteria)? Please justify your views and proposals with quantitative elements where available.

<ESMA_QUESTION_CP_MIFID_NQT_31>

Finance Denmark has no comments at this point in time.

<ESMA_QUESTION_CP_MIFID_NQT_31>