



European Securities and
Markets Authority

Reply form for the Consultation Paper on draft RTS on package orders for which there is a liq- uid market



Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Discussion Paper on the trading obligation for derivatives under MiFIR, published on the ESMA website.

Instructions

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA_ QUESTION_MIFID_PO_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

- if they respond to the question stated;
- contain a clear rationale, including on any related costs and benefits; and
- describe any alternatives that ESMA should consider.

Naming protocol

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA_MiFID_PO_NAMEOFCOMPANY_NAMEOFDOCUMENT.

e.g. if the respondent were ESMA, the name of the reply form would be:

ESMA_MiFID_PO_ESMA_REPLYFORM or

ESMA_MiFID_PO_ESMA_ANNEX1

Deadline

Responses must reach us by **3 January 2017**.

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'.



Introduction

Please make your introductory comments below, if any:

< ESMA_COMMENT_MIFID_PO_0 >

The German Banking Industry Committee (GBIC, die Deutsche Kreditwirtschaft) is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the Savings Banks Finance Group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks.

GBIC warmly welcomes the opportunity to comment on ESMA's consultation paper – Draft RTS on package orders for which there is a liquid market.

< ESMA_COMMENT_MIFID_PO_0 >



Q1. Do you agree with ESMA’s proposal to apply the SI obligations at the package order level where the investment firm is an SI in at least one component instrument of the package order? If not, please explain why and propose an alternative.

<ESMA_QUESTION_MIFID_PO_1>

GBIC disagrees with ESMA’s proposal according to which an institution would be considered as Systematic Internaliser for the whole transaction package if it is already a Systematic Internaliser in one component of this package. Please find our reasoning based on an example:

A firm is Systematic Internaliser in an asset class of stock options – irrelevant if through opt-in or because of exceeding the relevant thresholds. The firm trades once in a package order that contains a stock option.

Why should this firm become a Systematic Internaliser for this single transaction in a package order? The Systematic Internaliser Regime captures market participants that “deals on own account by executing client orders outside a regulated market or an MTF” on “an organised, frequent and systematic basis”. The assessment of whether a firm is a Systematic Internaliser for the package order (as a product category) should thus be based on the entire package order. The assessment of individual components and financial instruments should, however, not play a decisive role. For package transactions ESMA should define separate own thresholds in addition to those already available for different products.

Under ESMA’s proposal, we understand that a firm could become a Systematic Internaliser on a package level even if it is not a Systematic Internaliser for all the individual components in the package. The question remains, which effects this will have on other parts of the MiFID II/MIFIR regulation.

In our opinion, the fact that a Systematic Internaliser by virtue of Art 18(11) MiFIR will have Systematic Internaliser obligations for the whole package does not mean that it has actually become a Systematic Internaliser for each component in the package. In order to become Systematic Internaliser, a firm needs to opt-in or pass the thresholds in the delegated regulation and notify its status as Systematic Internaliser to the competent authority. Another interpretation would make ESMA’s register of Systematic Internalisers completely unreliable.

The transaction will have a flag as a package transaction that has been executed by the firm as Systematic Internaliser. When two investment firms are dealing with each other, one should be able to rely on this information when deciding which firm has to report the post trade obligations. In other words, the firm acting as a Systematic Internaliser for the package will be the reporting party for the transactions even if it is not a Systematic Internaliser for all relevant components. This should be clarified.

To our understanding, post trade reporting and transaction reporting will be made on an individual basis for each component by using the package price. Further guidance would be welcome as to how firms should make these calculations. On a component-level, firms should only be obliged to indicate that it is Systematic Internaliser for the components/ISIN for which it is actually a Systematic Internaliser.

Moreover, as packages do not have an ISIN, they should not be subject to requirements on execution quality reports in RTS 27.

<ESMA_QUESTION_MIFID_PO_1>

Q2. Do you agree with the proposed methodology based on qualitative criteria? Do you consider an alternative methodology as better suited for identifying liquid package orders as a whole?

<ESMA_QUESTION_MIFID_PO_2>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MIFID_PO_2>

Q3. Do you agree with the general criteria for identifying package orders that may be eligible for being liquid as a whole? Do you consider necessary to add further criteria or to remove any of the criteria proposed? Please explain.

<ESMA_QUESTION_MIFID_PO_3>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_3>

Q4. Do you consider it necessary to further specify the first criterion on the standardisation of components? If yes, which characteristics should be considered to specify the standardised components of packages?

<ESMA_QUESTION_MIFID_PO_4>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_4>

Q5. Do you agree with the proposed interest rate derivatives specific criteria? If not, please explain why and present your preferred approach. Do you consider it necessary to add further criteria? If yes, please explain.

<ESMA_QUESTION_MIFID_PO_5>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_5>

Q6. Do you consider that derivative components in other currencies (e.g. other EEA currencies, JPY) should be included? If yes, which ones?

<ESMA_QUESTION_MIFID_PO_6>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_6>

Q7. Do you agree that only packages with derivative components with the above mentioned benchmark dates should be considered liquid? If not, please explain. Which other or additional benchmark dates do you suggest?

<ESMA_QUESTION_MIFID_PO_7>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_7>

Q8. Do you consider that for certain types of packages derivative components that have broken dates (e.g. invoice spreads) or which are traded on IMM and MAC dates (e.g. rolls) have a liquid market?

<ESMA_QUESTION_MIFID_PO_8>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_8>



Q9. Do you consider it necessary to specify criteria for non-derivative components of packages? If yes, which criteria would you suggest and why?

<ESMA_QUESTION_MIFID_PO_9>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_9>

Q10. Do you agree with the proposed equity derivatives specific criteria? If not, please explain why and present your preferred approach. Do you consider it necessary to add further criteria? If yes, please explain.

<ESMA_QUESTION_MIFID_PO_10>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_10>

Q11. Do you consider that derivative components in other currencies (e.g. other EEA currencies, JPY) should be included? If yes, which ones?

<ESMA_QUESTION_MIFID_PO_11>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_11>

Q12. Do you consider it necessary to specify that all components of the package order should have the same underlying? If yes, please explain.

<ESMA_QUESTION_MIFID_PO_12>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_12>

Q13. Do you agree with the proposed credit derivatives specific criteria? If not, please explain why and present your preferred approach. Do you consider it necessary to add further criteria? If yes, please explain.

<ESMA_QUESTION_MIFID_PO_13>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_13>

Q14. Do you agree that derivative components in USD, EUR or GBP should be considered sufficiently liquid for the purpose of this RTS? Do you consider that derivative components in other currencies (e.g. other EEA currencies, JPY) should be included? If yes, which ones?

<ESMA_QUESTION_MIFID_PO_14>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_14>

Q15. Do you consider it necessary to further specify the indices that are eligible? If yes, please specify which specific indices should be included. Do you consider it necessary to specify the maturity dates of the underlying indices?

<ESMA_QUESTION_MIFID_PO_15>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_15>

Q16. Do you agree with the proposed commodity derivatives specific criteria? If not, please explain why and present your preferred approach. Do you consider it necessary to add further criteria? If yes, please explain.

<ESMA_QUESTION_MIFID_PO_16>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_16>

Q17. Do you consider that derivative components in other currencies (e.g. other EEA currencies, JPY) should be included? If yes, which ones.

<ESMA_QUESTION_MIFID_PO_17>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_17>

Q18. In which types of contracts do package orders in commodity derivatives mostly occur? Do you consider it necessary to provide for asset class specific criteria that take option and future/forward contracts into account? If yes, please explain.

<ESMA_QUESTION_MIFID_PO_18>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_18>

Q19. Do you consider it necessary to develop criteria at a more granular level (e.g. energy derivatives, agricultural derivatives) to better reflect the particularities of package orders in the different sub-asset classes? If yes, please explain.

<ESMA_QUESTION_MIFID_PO_19>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_19>

Q20. Do you consider it necessary to specify that all components of the package order should have the same underlying? If yes, please explain at which level this concept of “same underlying” should apply (e.g. same asset class, same sub-asset class, same sub-class – as per Annex III of RTS 2 – or at or more granular level).

<ESMA_QUESTION_MIFID_PO_20>



TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_20>

Q21. Are there package orders in other derivative asset classes that are in your view standardised and frequently traded and which should be eligible for having a liquid market as a whole? If yes, what asset class specific criteria do you suggest for those?

<ESMA_QUESTION_MIFID_PO_21>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_21>

Q22. Do you agree with the approach proposed for FX derivatives or do you consider it necessary to include an asset-class specific approach for FX derivatives?

<ESMA_QUESTION_MIFID_PO_22>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_22>

Q23. How should ESMA deal with cross-asset class package orders? Should ESMA develop cross-asset class specific criteria? If yes, please specify those. Alternatively, should cross-asset class package orders be allocated to only one asset class? If yes, how?

<ESMA_QUESTION_MIFID_PO_23>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_23>

Q24. Do you agree that package orders where all components are subject to the trading obligation for derivatives should be considered to have a liquid market as a whole? If not, please explain.

<ESMA_QUESTION_MIFID_PO_24>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_24>

Q25. Do you consider that package orders where at least one component is subject to the trading obligation and all other components are subject to the clearing obligation should be considered to have a liquid market as a whole? If not, please explain.

<ESMA_QUESTION_MIFID_PO_25>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_25>



Q26. Do you agree that the categories of packages above should be considered as standardised and frequently traded for the purpose of this RTS empowerment? If not, please explain.

<ESMA_QUESTION_MIFID_PO_26>
 TYPE YOUR TEXT HERE
 <ESMA_QUESTION_MIFID_PO_26>

Q27. Are there any categories of packages missing in the above asset classes that should be considered for the purpose of this RTS empowerment? Are there in your view categories of packages in other asset classes that ESMA should consider?

<ESMA_QUESTION_MIFID_PO_27>
 TYPE YOUR TEXT HERE
 <ESMA_QUESTION_MIFID_PO_27>

Q28. Do you agree with the draft RTS in annex IV? If not, please explain.

<ESMA_QUESTION_MIFID_PO_28>
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 <ESMA_QUESTION_MIFID_PO_28>

Q29. CBAQ1: Please identify, per asset class and per currency, the total nominal amount traded (including packages). Please also identify what % of this total trading is executed i) through packages (incl. EFPs) and ii) through packages (with only financial instruments as components), on trading venues and OTC. Reference period: September 2015–September 2016. If you are a trading venue, please fill in the trading venue columns only. If you are an investment firm, please fill in the trading venue and OTC columns as appropriate.

<ESMA_QUESTION_MIFID_PO_29>

	Total Nominal amount traded, including packages (in euros) Sept 2015-Sept 2016		% of packages (including EFPs)		% of packages (with only financial instruments as components)	
	Trading venues	OTC	Trading venues	OTC	Trading venues	OTC

Interest rate derivatives						
Euro						
USD						
GBP						
Other currencies (please specify)						
Equity derivatives						
Euro						
USD						
GBP						
Other currencies (please specify)						
Credit derivatives						
Euro						
USD						
GBP						
Other currencies (please specify)						
Commodity derivatives						
Euro						
USD						
GBP						
Other currencies (please specify)						

<ESMA_QUESTION_MIFID_PO_29>

Q30. CBAQ2: Based on ESMA draft RTS, out of the package orders (comprised only of financial instruments) that you trade, which percentage of the volume traded do you expect to be considered as having a liquid market as a whole? Please confirm which category the package orders you trade fall under:

1= less than 10% of the volume of package orders traded;

2= from 10% to 25% of the volume of package orders traded;

3= from 25% to 50% of the volume of package orders traded;

4= from 50% to 75% of the volume of package orders traded; or,

5= more than 75% of the of the volume of package orders traded.



<ESMA_QUESTION_MIFID_PO_30>
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<ESMA_QUESTION_MIFID_PO_30>

Q31. CBAQ3: In which area do you anticipate the costs of complying with ESMA' draft RTS to stem from (e.g. IT, training)?

<ESMA_QUESTION_MIFID_PO_31>
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<ESMA_QUESTION_MIFID_PO_31>

Q32. CBAQ4: Could you provide an indication of the expected implementation costs of ESMA' draft RTS (in euros) differentiating between (i) one-off costs and (ii) recurring costs (on an annual basis)?

<ESMA_QUESTION_MIFID_PO_32>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_32>

Q33. CBAQ5: In relation to the size of your business, do you expect those costs to be:

very low;

low;

medium; or,

high.

<ESMA_QUESTION_MIFID_PO_33>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_33>

Q34. CBAQ6: Do you expect any impact from ESMA's draft RTS on your business model/activity? If so, please explain the drivers and the expected changes to your business model/activity.

<ESMA_QUESTION_MIFID_PO_34>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_PO_34>

Q35. CBAQ7: Do you expect you expect broader market changes from the draft RTS in the short or medium term TO?



<ESMA_QUESTION_MIFID_PO_35>
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 <ESMA_QUESTION_MIFID_PO_35>

Q36. CBAQ8: If so, please explain

<ESMA_QUESTION_MIFID_PO_36>

Expected Impact on	Yes/No/NA	Positive Impact	Negative impact
Market structure (changes in trading models, in trading strategies...)			
Liquidity (please explain how you measure liquidity)			
End users			
Other (specify)			

<ESMA_QUESTION_MIFID_PO_36>

Q37. CBAQ9: Are their specific concerns regarding ESMA's draft RTS you would wish to highlight? Please be as specific as possible in your answer.

<ESMA_QUESTION_MIFID_PO_37>
 TYPE YOUR TEXT HERE
 <ESMA_QUESTION_MIFID_PO_37>

Q38. CBAQ10; Are there specific benefits arising from ESMA's draft RTS you would wish to mention?

<ESMA_QUESTION_MIFID_PO_38>
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 <ESMA_QUESTION_MIFID_PO_38>

For trading venues only

Q39. CBAQ11: Do you offer trading in packages?

<ESMA_QUESTION_MIFID_PO_39>
 TYPE YOUR TEXT HERE
 <ESMA_QUESTION_MIFID_PO_39>

Q40. CBAQ12: If so, please describe, per asset class, the categories of packages for which pre-trade transparency is currently provided. Please also state whether you consider those packages as liquid and the criteria taken into consideration (e.g. spreads, volume traded, number of transactions, number of market participants). If

no sufficient space is available to respond, please provide the information in an annex.

<ESMA_QUESTION_MIFID_PO_40>

Package Categories with pre-trade transparency	Currency	Tenor	Reference index	Other characteristics (please identify)	Liquidity assessment (Y/N) and underlying criteria
Interest rate derivatives					
Equity derivatives					
Credit derivatives					
Commodity derivatives					
Others (please specify)					

<ESMA_QUESTION_MIFID_PO_40>