



European Securities and
Markets Authority

Reply form for the Consultation Paper on MiFID II/ MiFIR review report on the transparency regime 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	Deutsche Börse Group (DBG)
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	<input type="checkbox"/>
Country/Region	Germany

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CP_MIFID_NQT_1>

Deutsche Börse Group (DBG) appreciates the opportunity to respond to ESMA's consultation on its MiFID II/MiFIR review report on the transparency regime for non-equity and the trading obligations for derivatives. In general, we agree with ESMA's conclusion that the objective of MiFID II/MiFIR to increase transparency has not yet fully materialized when looking at the market share of transactions being made off-venue or subject to a waiver or respectively deferred publication. Furthermore, in certain asset classes, particularly bonds and commodity derivatives, the overall pre- and post-trade transparency regime is currently not effective as the qualification of too many instruments as liquid or illiquid is false. Thus, DBG welcomes ESMA's proposals to make the transparency regime for non-equities more efficient. However, any changes to pre- and post-trade requirements should cater for a level playing field regarding the transparency provided by bilateral compared to multilateral venues.

In this context, we would like to express our support for several of ESMA's proposals:

Adaption of the waiver regime:

Generally, we agree with ESMA that a reasonable step to support the simplification of the pre- and post-trade transparency regimes is removing the SSTI waiver. This should be accompanied by removing the SSTI-concept also for the SI-quoting obligation and replacing it by a reference to (a high percentage of) the LIS threshold.

However, DBG calls to keep package order waivers and OMF waivers available to further complement LIS and Illiquid waivers, which are the most essential ones to mitigate adverse effects in the order book from large sizes. In the broader context, waivers shall support the transfer of products traded OTC, to central infrastructures, as envisaged by the G20 in 2009. In addition to allowing market participants to benefit from already established trading patterns/models on exchanges (including the use of waivers), it is also imperative for exchanges to support the migration of OTC derivatives markets to a regulated trading environment and central clearing by product development and well-integrated trading and clearing practices which cater for the specific liquidity profiles and needs of the concerned products, for example regarding FX derivatives via futurization.

Adaption of LIS thresholds:

DBG is not of the view that there should be a uniform reduction of the LIS thresholds across asset classes to mitigate the removal of the SSTI waiver but rather a re-calibration of the existing methodology to determine LIS-thresholds where appropriate.

While we suggest maintaining the current levels of post-trade LIS-thresholds, we agree with ESMA that a reduction of pre-trade LIS thresholds in some asset classes would help to mitigate the adaption of waivers. In this context, DBG advocates that pre-trade LIS thresholds should only be adjusted, if there is an observed problem with prevailing LIS-thresholds per asset class:

When looking at exchange traded derivatives (ETDs), we agree in general with the methodology for the determination of LIS thresholds. However, for certain ETD products or sub-asset classes, the current LIS thresholds have detrimentally impacted the liquidity of these products. In the respective products, higher

thresholds for off-book on-exchange trading, compared to pre-MiFID II conditions, have moved trading volumes away from exchanges and into the OTC market. Therefore, the recalibration of LIS thresholds for ETDs should address in particular the launch of new products on trading venues, and the time and measures needed to establish exchange trading as viable alternative to the OTC market, where these or similar products might currently be traded.

When it comes to commodity derivatives, we see the need to tailor the current LIS (as well as IL) threshold and threshold calculation methodology to the specifics of commodity derivatives markets. The current thresholds and methodology have led to a mis-classification of a significant number of niche and nascent products as liquid, and thus becoming subject to significantly broader transparency requirements, which were previously reserved for developed markets. A recalibration to the market reality of commodity derivatives by removing the current factors leading to inappropriate thresholds for commodity derivatives (e.g. using notional values which are highly reliant on market prices), the regime would allow for pre-negotiated trades of the most illiquid and new contracts to be brought to an exchange and subsequently familiarize commodity traders with the beneficial features of increased transparency and security of orderbook on-venue trading.

For the special case of bonds, we recommend lowering the current LIS threshold and to use the 100,000 EUR denomination threshold in order to delineate lit trading from dark trading.

A re-calibration of the existing LIS calculation methodology would allow ESMA to determine LIS thresholds, tiered even more specifically to individual market specifics of each of the aforementioned asset classes, and to avoid unintended side effects, such as increasing the share of OTC trading.

Finally, in addition to the proposals made by ESMA and in light of the actual application of transparency thresholds, we believe the overall market would benefit from a clarification relating to the ESMA transparency Q&As, indicating that trading venues have the right to recalculate their conversion of nominal values into lot sizes using up to date market prices. Alternatively, on Level 2 a certain discretion for trading venues to define the circumstances which would require a recalculation could be introduced.

Adaptions to increase the level of pre- and post-trade data available:

We also support ESMA's approach to further define requirements for making pre-trade transparency information more accessible and comparable. Given that there are no concerns or complaints relating to the pre-trade transparency related fields currently published by trading venues, ESMA's technical standards should primarily aim to align existing reported data, rather than fundamentally changing or increasing fields that should be published. However, in order to ensure a level playing field across venues and increase transparency especially regarding SI trading, which is still very opaque, the proposed standardization of pre-trade information should be applicable to all types of venues, including SIs. Together with the requirement for SIs to publish their quotes free of charge after 15 minutes this measure would be a significant step forward to increase pre-trade transparency.

Further, we agree with ESMA that post-trade transparency information should be made available timelier to enhance competition among market participants, reduce information asymmetries and deliver high quality information for market users to enable them to make better informed investment decisions. Only a minor fraction of all transactions in non-equities, especially in exchange traded derivatives, should be eligible for deferred publication to maximize post-trade transparency. In addition, timely post trade transparency, meaning a publication after 15 minutes and 5 minutes in the future, should be further improved by increasing the amount of transaction data published. Further, we suggest reducing the complexity of the current framework by only allowing one timeframe for deferred publication, no matter which waiver was used. Deferral periods of up to four weeks immensely decrease the value of the respective data for market participants, as data will be outdated and thus irrelevant. Hence, we support a single deferral regime, requiring the publication of all transaction related data by the next business day (and no later than t+2).

In light of our recommendations to maximise the availability of post-trade data, we would like to highlight that we are not of the view that the additional set-up of a consolidated tape (CT) would help to increase transparency of EU markets per se. Hence, DBG would like to point out that we do not support a real-time pre- or post-trade CT for any asset class. Rather than any CT, we consider the improvement of off-venue

data quality and timely availability in the parts of the markets that are still highly opaque today as an essential element to bring transparency in equity and non-equity markets forward. While on-venue data is unrivalled in terms of quality, timeliness and depth, one of the current major impediments to any tape is the lacking availability of off-venue data, which is of sufficient quality, and data of certain instruments. In this context, it is of essence that the relevant data is made available to the public at a reliable and timely quality, across asset classes and across all execution venues (particularly SIs and OTC).

Based on improved off-venue data quality, DBG recommends a Tape of Record as a viable alternative which would be a significantly less complex and costly technical set-up, while providing a comprehensive database to the benefit of the entire industry. In case a such a tape should be created, we would deem it most sensible to consider starting in those market areas where there is currently no or hardly any transparency, and where information is important as well for funding of the economy, such as for example bonds, whereas where instruments are “unique” such as in a large part of the derivatives markets, a consolidated view is probably not sensible at all.

Adaptions to the commodity derivatives regime:

In order to tailor the pre-trade transparency regime in particular to commodity derivatives, next to the review of the currently ill-calibrated methodology to determine LIS thresholds for most commodity derivatives mentioned above, we support ESMA’s proposal to introduce a commodity specific pre-negotiated trade waiver. However, such a waiver should not replace the hedging exemption.

Rather, we recommend a widened hedging exemption for financial counterparties, to allow for the continued formation of liquidity in the order book without jeopardizing the ability of commodity derivatives markets to fulfil their function.

Adaptions to the transparency regime for bonds:

Regarding bonds, DBG agrees with ESMA’s assessment that the current level of pre- and post-trade transparency for bonds is very low given that too many bonds are defined as illiquid. Therefore, we recommend a review of the liquidity assessment of bonds to increase the number of bonds that are deemed liquid and subject to the transparency requirements. We support in this context ESMA’s proposal to move to the S2 phase for the liquidity test to increase the share of bonds defined as liquid, although this would increase the number of bonds deemed as liquid only in a very limited way (0.32-0.48% of total bonds under S2 compared to 0.21-0.31% of total bonds under S1). Furthermore, we would recommend including trades below 100.000 EUR into the liquidity test. We see no reason why a trade below 100.000 EUR on a regulated market should not be considered for the liquidity assessment of a bond.

Lastly, we suggest trading in bonds of sizes below LIS to be executed on a transparent trading venue only. As the current LIS threshold for the special case of bonds is too high to require all trading below LIS to happen on an RM, MTF or OTF, as mentioned above, we recommend using the 100,000 EUR denomination threshold to delineate lit (RM, MTF and OTF) trading from dark (OTC and SI) trading. Such an approach would significantly reduce market fragmentation, aggregate liquidity and increase pre- and post-trade transparency in particular for retail investors.

DBG trusts that our comments are seen as a useful contribution to increase the functioning and effectiveness of the transparency regime for non-equity instruments and remain at the disposal of ESMA for any questions and additional feedback.

<ESMA_COMMENT_CP_MIFID_NQT_1>

1. 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>

DBG appreciates the level 1 text of pre-trade transparency and the need for different waiver possibilities. DBG also acknowledges the degree of complexity that comes with the different waiver possibilities and understands that a simplification of the complex framework would bring benefits for market participants, infrastructure providers and regulators alike. In derivatives markets, we appreciate that already a more concise set of waivers is in place, in comparison to e.g. equities markets. While complexity reduction is welcome, it is of paramount importance for ESMA to keep a range of waiver types available to ensure certain products and trading strategies can continue to be used by market participants to manage their risk exposure, even if the volumes under certain waiver types appear to be small. A range of waivers allows risk transfer markets, in contrast to capital allocation markets, to fine tune the nuanced market needs in risk management. Apart from LIS waivers and illiquid waivers, which are the most essential ones to mitigate adverse effects in the order book from large sizes, a second and third very important element in derivatives markets are complex trading strategies and complex order types. In order to support the market further, waivers can absorb this need in market risk management, i.e. the need to trade derivatives. Among those waivers:

- Package order waivers are used to enable the trading of e.g. option or volatility strategies, which play a vital role in the risk-transfer of large orders, and other packages in variations. Being able to trade certain products as (hedged) packages ensures market participants can offer their customers, and liquidity providers can offer the market, their best possible prices. This holds true particularly for equity derivatives and interest rate derivatives, where trading in package orders accounted for considerable off-book trading volumes in 2019. Removing this waiver type or restricting its usage may be detrimental as it may lead to these complex trades being conducted in the pure non-transparent OTC space.
- OMF-waivers are used for certain order types, which again provide essential risk-mitigation tools to all market participants. In particular, end-customers benefit from order types which by design can limit their trading exposure, depending on market movements. Ultimately, this also helps market participants by allowing them to provide liquidity or flow in a clearly calibrated way and credit institutions managing their liquidity exposures that needs to be capitalized.

As such, DBG strongly advocates to keep package order waivers and OMF waivers available to further complement LIS and Illiquid waivers.

In addition to allowing market participants to benefit from already established trading patterns/models on exchanges (including the use of waivers), it is also imperative for exchanges to support the migration of OTC derivatives markets to a regulated trading environment and central clearing by product development and well-integrated trading and clearing practices which cater for the specific liquidity profiles and needs of the concerned products. In order to support the shift from OTC to this standardized product and trading environment gaps need to be bridged, especially in the 'futurization' process, where previously OTC traded products need to be lifted into a new environment and this transfer would otherwise be limited, before the transparency regime could unfold in a second step. This is especially true where products and entire asset classes are prone to higher OTC shares.

DBG acknowledges that the overwhelming majority of transactions in FX derivatives (roughly 98% globally¹) is still conducted on non-transparent OTC-markets, contrary to the MiFID II policy objective. However, DBG does not share ESMA's opinion that classifying FX derivatives as liquid instruments would necessarily lead

¹ This figure is based on own estimates based on overall FX derivatives trading volume illustrated in Schrimpf/Sushko, FX trade execution: complex and highly fragmented, p.49, BIS Quarterly Review, December 2019, and volumes published by regulated exchanges offering FX products (www.cmegroup.com, <https://www.sgx.com/research-education/market-updates/20200511-sgx-fx-futures-volume-10-y-o-y-us95-billion-april-2020>).

to a bigger share of transactions being executed on exchanges, OTFs and MTFs, and hence increased pre- and post-trade transparency.

The current classification as illiquid provides trading venues with the necessary leeway to design their FX offering in a way such that the shift of trading volumes from OTC to trading venues can be actively supported. DBG has observed that market participants appreciate these efforts and as a result are gradually shifting their activities to trading venues, increasing overall transparency in the market. A re-classification of (some) FX derivatives as liquid, can only achieve the MiFID II policy objective of increased transparency after a sufficient share of trading volumes and hence a sufficient liquidity pool in respective products has been established on trading venues, to provide market participants with a convincing alternative to trading these products OTC. The same logic applies for new asset classes or product types particularly designed to offer an alternative to prevailing OTC trading.

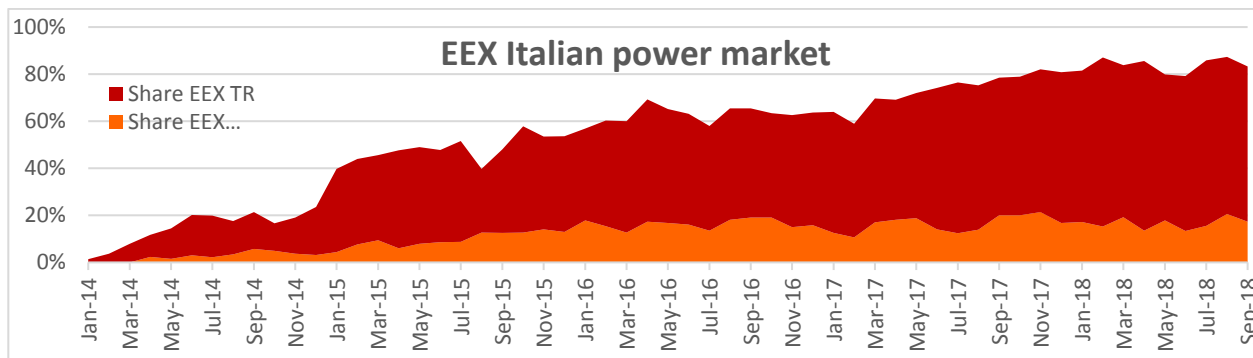
As such, DBG does not believe that a re-classification of FX derivatives as liquid instruments at this point in time and with the prevailing share of OTC trading vs on exchange trading would lead to improved pre-trade transparency.

Moreover, from the perspective of DBG's commodity derivatives markets served by EEX Group, we fully agree with the objectives of MiFID II/MiFIR and the G20 Pittsburg commitments to "improve the functioning and transparency of financial and commodity markets and address excessive commodity price volatility". We therefore support the aim and implementation of the pre-trade transparency regime, however, believe the current calibration hampers a substantial increase in contracts traded on exchanges and cleared through central counterparties (CCPs), hence being subject to a sufficient level of security and transparency. Therefore, against the background of the upcoming MiFID II/MiFIR review, we believe that transparency requirements need to be balanced to avoid damaging liquidity, undermining price discovery processes under exchanges' rules and driving market participants towards more bilateral trading.

In sum, the pre-trade transparency regime should better take into account the fact that non-equity markets are fundamentally different from equity markets, and that there are significant differences across the underlying non-equity markets themselves. It is, for example, important to understand that commodity markets have specific characteristics and hence, often suffer from a one-size fits all regulatory approach to financial instruments. As currently tailored, the pre-trade transparency regime limits pre-arranged trades from being submitted to exchanges, thereby limiting the ability of market participants to hedge their commercial exposures on exchanges, directly in opposition to the G20 reforms ambitions of driving more OTC derivatives towards central-clearing. It is in the policy-makers' interest to have more on venue trading with a view to increase integrity, efficiency and transparency.

Compared to other financial instruments, commodity instruments are often less liquid. In order to achieve execution on an exchange trades are pre-negotiated outside the regulated venues and then brought to the exchanges and central clearing with the exchanges' respective CCP via trade registration. This is often more promising than entering orders in a central order book where a satisfactory execution would be less likely. This ensures maximum transparency for these nascent markets. Additionally, energy markets are – by nature – characterized by a wide range of different contract types, including forwards, futures and options with various combinations of quality, location, delivery type, duration and size. These markets are used by professional investors to hedge risk connected to the production or consumption of an actual commodity, and thus often require liaison via a broker to find a counter party without incurring undue risk. Trade registration has been and still is essential to bring more volumes to the cleared market under the exchange rules. This move should evolve naturally and not be forced by regulation. EEX Spanish and Italian power illustrate well how trade registration has been the driver behind on-venue trading in these markets. Figure 1 below shows the importance of trade registration in the Italian power market which took off in 2014, as by 2019, more than 80% of the Italian power volumes come from trade registration whilst less than 20% of this nascent market related to the orderbook. This latter number is gradually increasing and as of today reaches 23%. It is important for such nascent markets that thresholds for the waivers are appropriate to allow for a natural move to central order book trading.

Figure 1: EEX market share of central orderbook trading and trade registration on the Italian power market



This difference amongst markets is furthermore reflected in differences such as how market participants use non-equity derivatives instruments for hedging and commercial purposes. As observed by ESMA in section 3.1.2.1, bullet point 41, commodity derivatives stand for 42.87% of number of transactions in 2018. ESMA rightly concludes that the explanation lies in the difference in the average size of transactions, which differs largely in the non-equity segment. It is smaller for commodity derivatives (transactions of small size and notional amount) compared to for instance interest rates derivatives, which have the second largest share of transactions, however characterized by fewer transactions of larger size.

On Level 1, we would propose that the hedging exemption available in Art. 8(1) MiFIR is extended to cover all market participants managing risks arising from activity in the physical market, including financial counterparties. Such solution would allow the building of liquidity in the order book to continue without jeopardizing the ability of commodity derivatives markets to fulfil their function. Importantly, such change should be combined with relevant amendments in Level 2 which would remove the current factors leading to inappropriate thresholds for commodity derivatives (e.g. using notional values which are highly reliant on market prices).

We therefore welcome that ESMA stands ready to review the current design of the pre-trade transparency regime for commodity derivatives contracts on both Level 1 and 2. A better tailored transparency regime would help promote and foster EU commodity markets, notably regarding energy markets denominated in euro, and contribute to the international role of the Euro.

Finally, when looking at bond and securitized derivatives, we would like to highlight that trading in these asset classes is still opaque and there was no increase and pre- and post-trade transparency triggered by MiFID II as concluded by ESMA in its consultation paper: As of today, the large majority of bond and securitized derivatives trading is bilateral, taking place OTC (more than 90% percent of traded nominal is reported by APAs) and, as a consequence, provides limited access for market participants and less transparency than multilateral trading on RMs, MTFs and OTFs. Moreover, bonds and securitized derivatives trading is very fragmented, i.e. takes place on 166 bond SIs, 45 securitized derivatives SIs and 293 non-equity trading venues (no separate numbers available for bonds and securitized derivatives trading venues). Therefore, we urge ESMA to support initiatives to bring more trading of bonds and securitized derivatives to transparent and multilateral trading venues.

It is commonly understood that publicly available orderbooks of regulated exchanges maximize transparency and hence benefits for overall financial markets. Therefore, orderbook trading at regulated exchanges should be encouraged by financial regulation wherever possible. We recommend in this context reviewing the criteria for assessing the liquidity of bonds so as to increase the number of bonds that are deemed liquid and therefore subject to the transparency requirements.

Further, we suggest trading in bonds and securitized derivatives of sizes below LIS to be executed on a transparent trading venue only. As the current LIS threshold for the special case of bonds and securitized derivatives is too high to facilitate all trading below LIS to happen on an RM, MTF or OTF, we recommend

using the 100,000 EUR denomination threshold to delineate lit (RM, MTF and OTF) trading from dark (OTC and SI) trading. This threshold is used by the prospectus regulation to ease the requirements for issuers of bonds for the publication of a prospectus. Furthermore, pursuant to RTS 2 trades below 100.000 EUR are not relevant for the consideration of the liquidity of a bond. Therefore, we consider this threshold best suited to delineate lit trading from dark trading and to bring more liquidity onto orderbooks on transparent markets. Such an approach would significantly reduce market fragmentation, aggregate liquidity and increase pre- and post-trade transparency in particular for retail investors.

<ESMA_QUESTION_CP_MIFID_NQT_1>

2. 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>

DBG considers the removal of the SSTI waiver (please see our answer to Q3), accompanied by an alignment between the SSTI and LIS thresholds for SIs, as the most beneficial way to decrease the complexity of the pre-trade transparency regime and to increase the transparency in the overall market, particularly as regards trade sizes below the LIS thresholds currently benefitting from the SSTI waiver.

In particular, when looking at ETDs and bonds, it is counterintuitive that current SSTI thresholds applicable to SIs are below LIS thresholds applicable to regulated exchanges, reducing trading volumes on publicly available orderbooks / regulated exchanges. As such, in order to close the gap between the SSTI and the LIS thresholds which creates a space of limited transparency dominated by bilateral execution models, DBG supports the deletion of the SSTI concept for SIs, replacing it with a reference to (a high percentage of) LIS thresholds for regulated exchanges not only to reduce complexity of the current pre- and post-transparency frameworks, but also to increase transparency of overall financial markets.

It is commonly understood that publicly available orderbooks of regulated exchanges maximize transparency and hence benefits for financial markets overall. Therefore, orderbook trading at regulated exchanges should be encouraged by financial regulation wherever possible.

For what it concerns commodity markets, where – in particular due to lack of liquidity – order book trading is not possible / common, trade registration on regulated exchanges should be promoted as alternative with the highest possible transparency. In order to achieve execution on an exchange, trades are pre-negotiated outside the regulated venues and then brought to the exchanges and central clearing with the exchanges' respective CCP via trade registration. This is often more promising than entering orders in a central order book where a satisfactory execution would be less likely. This ensures maximum transparency for these nascent markets. It is important for such nascent markets that waiver thresholds are appropriate to allow for a natural move to central order book trading.

While MiFIR rightly recognizes that certain exemptions can be granted to trading venues from the general requirement to publish pre-trade transparency data to preserve orderly price discovery processes and allow in particular illiquid and nascent markets to develop the current shortcomings of the regime have sometimes prevented market participants on commodity derivative markets from moving to transparent and regulated venues and central clearing.

Therefore, as outlined in Q1, following the specific market reality and role of pre-registered transactions in commodity markets, we recommend a review of the current ill-calibrated waiver thresholds methodology and an extension of the hedging exemption in Art. 8(1) MiFIR to cover all market participants. Furthermore, as further detailed in Q5, we would support the proposal to add a limited negotiated trade waiver. In this

way, the regime would allow for pre-negotiated trades in the most illiquid and new contracts to be brought to an exchange and subsequently familiarize commodity traders with the beneficial features of increased transparency and secure on-venue trading.

As an additional aspect for improving the level of pre-trade transparency, DBG considers it also as important for the special case of bonds that the liquidity calculations are reviewed with a view to ensure that the bonds that actively trade are deemed liquid and therefore subject to the transparency requirements. This should improve the level of pre-trade transparency available to the benefit of investors and the market in general.

Further to these amendments, DBG believes that further guidance regarding the application of waiver related thresholds, and the conversion of thresholds from notional amounts into lot sizes is needed. The transparency Q&As (ESMA70-872942901-35) outline what is to happen, once ESMA has published updated data relating to transparency thresholds, including how the nominal values published by ESMA can be converted into lot sizes by trading venues. However, currently there is no clear guidance of whether other events could also trigger a requirement for trading venues to recalculate the thresholds applied by them, or whether trading venues are entitled to re-calculate their thresholds on an annual basis, even if ESMA has not published updated data. When converting a nominal value into a lot size, a specific value is assumed per lot to enable the conversion. Naturally, due to market movements the actual value per lot can vary, in crisis situations even significantly. We believe that a clarification relating to the transparency Q&As, indicating that trading venues have the right to recalculate their conversion of nominal values into lot sizes using up to date market prices, even if ESMA does not publish annual numbers would benefit the overall market. Alternatively, on Level 2, a certain discretion for trading venues to define the circumstances which would require a recalculation could be introduced.

<ESMA_QUESTION_CP_MIFID_NQT_2>

3. 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, DBG welcomes the proposal to delete the SSTI-waiver to simplify the overall pre-trade transparency framework, including the deletion of the SSTI package order waiver under Article 9 (1) (e)(iii) MiFIR. As stated in our response to Q2, we support the assumption that particularly for trade sizes below the LIS thresholds, currently benefitting from the SSTI waiver, pre-trade transparency would be increased and complexity would be reduced. We would also like to reiterate in this context our answer to Q2 and Q4, that the deletion of the SSTI waiver should be accompanied by removing the SSTI-concept also for the SI-quoting obligation and to replace it by a reference to (a high percentage of) the LIS threshold.

However, DBG is not of the opinion that a uniform lowering of pre-trade LIS-thresholds across asset classes is the best way forward to compensate for the deletion of the SSTI-waiver, as this would partly give up again the increase in transparency achieved by deleting the SSTI waiver. A uniform lowering of existing thresholds would bear the risk of a race to the bottom in which venues might further and further decrease their thresholds to compete for business-, even though certain trade sizes could be absorbed by trading models providing a higher level of transparency, such as orderbook trading.

In order to increase the level of transparency, DBG is therefore not of the view that there should be a uniform reduction of the LIS thresholds across asset classes. DBG rather advocates that pre-trade LIS thresholds should only be adjusted, if there is an observed problem with prevailing LIS-thresholds per asset class. We therefore recommend a re-calibration of the existing methodology to determine LIS-thresholds where appropriate, while we agree with ESMA that a reduction of pre-trade LIS thresholds in some asset classes would help to mitigate the adaption of waivers, such as for commodity derivatives, bonds and some ETDs:



When looking at ETDs, DBG considers the vast majority of the current LIS-thresholds to be appropriately set to strike a sensible balance between high levels of transparency and acknowledgment that there are order sizes too big to be made transparent without unwanted market effects. However, DBG also recognizes that the LIS-thresholds for certain ETD products or sub-asset classes, have detrimentally impacted the liquidity of these products. In the respective products, higher thresholds for off-book on-exchange trading, compared to pre-MiFID II conditions, have moved trading volumes away from exchanges and into the OTC market.

One possibility for a re-calibration of the applicable methodology could be to increase the level of granularity on which thresholds are calculated, e.g. from the current sub-asset class level to a product/ underlying level. Another possibility, for fixed income related derivatives, for example, would be to re-evaluate applicable trade-percentiles and volume-percentiles for specific sub-asset classes including a potential switch from trade-percentiles to volume-percentages where appropriate.

Overall the distribution between orderbook and other trading systems should be factored into the definition of thresholds for the affected ETD products, as well as the total number of transactions executed in a specific ETD product, to allow e.g. for newly launched products to be established, in equity derivatives like single stock futures, for example. It should be considered whether (temporarily) lower thresholds can be established where orderbook trading accounts for a minimal percentage of overall trading volumes in the respective product on the respective trading venue, and where the total number of trades executed in the respective product on the respective trading venue is very low.

Having said that, please also see our response to Q1-2 as well as to Q29-31 about the need to tailor the LIS threshold as well as LIS threshold calculation methodology to the specifics of commodity derivatives markets, where the current threshold and calculation methodology has led to a mis-classification of gas and power contracts resulting in significant negative impact.

Further, please also see our recommendation in Q1 to lower the current LIS threshold and to use the 100,000 EUR denomination threshold for the special case of bonds in order to delineate lit trading from dark trading.

A re-calibration of the existing methodology would allow ESMA to determine LIS thresholds, tiered even more specifically to individual market specifics of each of the aforementioned asset classes, and to avoid unintended side effects, such as increasing the share of OTC trading.

<ESMA_QUESTION_CP_MIFID_NQT_3>

4. 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>

We believe that Option 2 is preferable, as it simplifies the pre-trade transparency framework for both market participants and regulators.

In addition to our answer to Q2, we would like to highlight that bonds and securitized derivatives trading are still opaque and there was no increase in transparency triggered by MiFID II compared to MiFID I. This is in particular the case for SI trading where there is seemingly no pre- and post-trade transparency available. Transparency is established by SIs via proprietary means, via their websites, via ECN-like networks or has not to be established at all (for illiquid bonds). While we do not question the merit of SIs forming part of the EU financial market's landscape, to increase transparency in the traditionally opaque markets in named instruments and to create a level playing field across all types of execution venues, we recommend closing the gap between SSTI thresholds and LIS thresholds.

As stated in our response to Q2 and Q3, we therefore support the removal of the SSTI concept also for the SI quoting obligation, replacing it by a reference to (a high percentage of) the LIS threshold. This means in practice, that if the SSTI waiver was to be deleted, both SIs and their customers would be aware of LIS

thresholds. As such, it seems most reasonable and intuitive to reuse (a percentage of) the same threshold for SI quoting obligations, rather than mandating regulators to calculate, and market participants to stay aware, of yet another threshold.

For the special case of bonds, as highlighted in Q1, we would further suggest to complement the measure above with allowing trading of sizes at and below 100,000 EUR on transparent multilateral venues only as this would significantly reduce market fragmentation, aggregate liquidity and increase pre- and post-trade transparency, with particular benefits for the retail market.

<ESMA_QUESTION_CP_MIFID_NQT_4>

5. 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>

Although we are supportive of a dedicated negotiated trade waiver for commodity markets, we do not see merit in replacing the current hedging exemption by such waiver with the exact same scope. This would increase paperwork and procedural obligations for market participants, outweighing potential benefits a waiver could bring.

Therefore, we support the introduction of a commodity specific pre-negotiated trade waiver, whilst not having it replace the hedging exemption.

However, should this not be possible, we would recommend extending the hedging exemption to financial counterparties instead. This would already allow for more crucial pre-arranged trades in nascent and illiquid contracts to be brought to an exchange for central clearing, hence addressing the specific market reality of commodity markets.

<ESMA_QUESTION_CP_MIFID_NQT_5>

6. 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>

DBG agrees that the definitions in Annex 1 of RTS 2 do not capture all available trading systems, resulting in several systems being classified as hybrid systems. In order to ensure increased transparency, DBG is therefore proposing a three-fold solution which aims at covering all established trading systems more clearly and at allowing regulators to be able to react timely to the emergence of new trading systems.

Having an opinion issued by ESMA every time a potentially new trading system is introduced, will in our eyes put undue stress on ESMA's resources. Any backlog in such an approval process (as has been observed with the approval process for waiver applications) bears the risk to delay innovation and will result in longer periods of trading in less regulated environments (OTC market).

Therefore, we believe it would be a more sensible way forward to extend the existing definitions of trading systems. We propose to amend the definitions of Annex 1 in such a way that they cover variations of the initial system types, which might share main characteristics but are also partly innovative (such as "RFQ variation", covering RFQ systems which, for example, start with an RFQ and switch to auction modus after the initial requester's trading interest has been satisfied). This way, the currently misused "hybrid systems" definition with its significant leeway in choice of applicable transparency would be phased out for such cases, and instead replaced by an efficient regime. The transparency requirement for such variation systems should, however, be sufficiently amended, reflecting the fact that it might prove difficult to provide the same

level of transparency for a, for example, RFQ-auction variation as for the clear-cut case of a “pure” RFQ system, whereas applying the same level of transparency to all variations of a type would furthermore ensure a level playing field. Such an amendment would additionally pose a change on Level 2 as opposed to Level 1, offering the possibility of a quicker amendment process.

DBG could see merit in the proposed ESMA opinions on new trading systems as a complementary solution, where they cover system types which are in no way variations of the definitions listed in Annex 1 and instead completely innovative. This way, ESMA resources would only be used in exceptional cases where there is indeed a distinct need for analysis and appropriately set transparency requirements suitable for the respective market conditions. To not obstruct market innovation, we propose to combine such opinions with timelines similar to those used for waiver applications and allow for operation of the system in question if the originally envisioned assessment deadline is delayed (in the same way as operation under an unapproved waiver has been allowed in the past as a delay mitigation measure). We also believe that the national competent authority (NCA) supervising the venue on which such an innovative system type is employed should be involved in this assessment process.

Finally, we suggest another complementary measure when considering variations for Annex I and issuing opinions on innovative new trading systems: should ESMA deem it required to facilitate more convergence of national practices when it comes to new trading systems and their characteristics and transparency requirements, ESMA could also provide guidance for NCAs’ interpretation of Annex 1 of RTS 2 on Level 3 via Q&As.

In addition, we would see value in regulators and supervisors jointly assessing if and how systems offering functionalities around the execution and aggregation of orders as well as concomitant services that are hitherto not covered by the MiFID II/MiFIR transparency regime should be determined as MiFID trading venues. This assessment should also include the possibility to amend existing definitions in accordance with the principle of ‘same business – same rules’.

<ESMA_QUESTION_CP_MIFID_NQT_6>

7. 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>

We agree with the reasoning outlined by ESMA. A combination of two or more trading systems should meet the pre-trade transparency obligations applicable to each relevant component part of the overall trading system.

A hybrid system should only cover systems, which are truly combinations of the system types defined in Annex 1 of RTS 2. Our proposal in our answer to Q6 would bring its definition back to its originally intended use-case of only covering combinations, instead leaving variations to be covered by extended definitions and complete innovations by ESMA opinions, respectively.

<ESMA_QUESTION_CP_MIFID_NQT_7>

8. 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, we support ESMA’s recommendations to define that SIs also have to make available data free of charge 15 minutes after its publication.

To improve the quality of published pre-trade transparency information, in particular in traditionally opaque markets, the requirements of SIs should be on the same level as those of trading venues. This would not

only further level the playing field between SIs and trading venues but would also improve the overall level of pre-trade transparency in financial markets. DBG therefore supports ESMA's recommendation to define that SIs also have to make available data free of charge 15 minutes after its publication. This is an imperative step, before other regulatory initiatives dependent on this data can progress.

<ESMA_QUESTION_CP_MIFID_NQT_8>

9. 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, DBG generally supports a standardization of pre-trade transparency, similar to that for post-trade transparency. We believe that such standardization can add considerable benefits to market participants in their attempt to compare trade related data.

However, as ESMA concluded in its parallel consultation on the transparency regime for SIs, SI trading in the non-equity space is still opaque and there was no increase in transparency triggered by MiFID II compared to MiFID I. While we do not question the merit of SIs forming part of the EU financial market's landscape, we welcome ESMA's proposals to make the transparency regime for SIs more efficient and call for closing the gap of requirements between SIs and trading venues. Therefore, in order to ensure a level playing field across venues, the proposed standardisation and arguably the efforts on establishing an aligned format of data being published, must only be introduced if applicable to all types of trading venues, including SIs. This would require a change of the Level 1 legislation. However, together with the requirement for SIs to publish their quotes free of charge after 15 minutes (as trading venues are required to do) this measure would be a significant step forward to increase pre-trade transparency.

Given that there are no concerns or complaints relating to the pre-trade transparency related fields currently published by trading venues, ESMA's technical standards should primarily aim to align existing reported data, rather than fundamentally changing or increasing fields that should be published.

<ESMA_QUESTION_CP_MIFID_NQT_9>

10. 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>

Yes, DBG supports ESMA's view that a streamlining of post-trade transparency regimes would further benefit the market. We agree with ESMA's view that post-trade transparency information should be made available timelier to enhance competition among market participants, reduce information asymmetries and deliver high quality information for market users to enable them to make better informed investment decisions. The prevailing patchwork of differing national deferral rules is complex to understand and to comply with for market participants and seems to contradict the EU's single market.

DBG in general also supports a timely publication of post-trade transparency data, i.e. within 15 minutes currently 5 minutes in the future, across all asset classes to enhance competition among market participants, reduce asymmetries of information and deliver high quality information for market users.

<ESMA_QUESTION_CP_MIFID_NQT_10>

11. 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>

DBG agrees with ESMA's proposal to delete the post-trade SSTI waiver, to simplify and streamline the overall post-trade transparency framework, and to further strengthen a level playing field between different types of trading venues as explained in more detail in our response to Q2 and the preference to move towards LIS.

However, DBG does not agree with ESMA's proposal to compensate for the deletion of the SSTI-deferral by uniformly lowering the post-trade LIS threshold. In line with our response to Q3, lower post-trade LIS-thresholds bear the danger that trading venues enter into a race to the bottom with their deferrals and thus deprive market participants of valuable post-trade information. Hence, DBG cannot see how lower post-trade LIS-thresholds set uniformly for all or several asset-classes would improve the overall level of real time post-trade transparency.

DBG believes that only a minor fraction of all transactions in non-equities, especially in exchange traded derivatives, should be eligible for deferred publication to maximize post-trade transparency, to reduce information asymmetries, and to improve data quality for market participants. Instead of lowering the post-trade LIS-threshold, DBG therefore suggests maintaining the current levels of post-trade LIS-thresholds.

<ESMA_QUESTION_CP_MIFID_NQT_11>

12. 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>

DBG thinks that timely post trade transparency, meaning a publication after 15 minutes and 5 minutes in the future, should be further improved by increasing the amount of transaction data published. Any masking of transaction-related data reduces the meaningfulness of the published information, and potentially renders such post-trade data as uninformative for market participants. A single regime which incorporates volume masking is detrimental to the overall level of post-trade transparency.

Rather than any of the proposals provided under Options 1 to 3, DBG would welcome a post-trade transparency framework, which maximises the post-trade data released. For this reason, we suggest reducing the complexity of the current framework by only allowing one timeframe for deferred publication, no matter which waiver was used. Deferral periods of up to four weeks immensely decrease the value of the respective data for market participants, as data will be outdated and thus irrelevant. DBG therefore proposes to introduce a single regime, requiring the publication of all transaction related data by the next business day (and no later than t+2). This deferral period should uniformly apply across all asset classes.

<ESMA_QUESTION_CP_MIFID_NQT_12>

13. 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 our answers to Q12, Q14 and Q15.

Rather than any of the proposals provided under Options 1 to 3, DBG would welcome a post-trade transparency framework, which maximises the post-trade data released. For this reason, we suggest reducing the complexity of the current framework by only allowing one timeframe for deferred publication, no matter which waiver was used. Deferral periods of up to four weeks immensely decrease the value of the respective data for market participants, as data will be significantly outdated and thus irrelevant. DBG therefore proposes to introduce a single regime, requiring the publication of all transaction related data by the next business day (and no later than t+2). This deferral period should uniformly apply across all asset classes.

Regarding the consolidated tape (CT), DBG would like to point out that we do not support a real-time pre- and post-trade CT for any asset class. Rather than any CT, we consider the improvement of off-venue data quality in the parts of the markets that are still highly opaque today as an essential element to bring transparency in equity and non-equity markets forward. While on-venue data is unrivalled in terms of quality, timeliness and depth, one of the current major impediments to any tape is the lacking availability of off-venue data which is of sufficient quality and data of certain instruments. In this context, it is of essence that the relevant data is made available to the public at a reliable and timely quality, across asset classes and across all execution venues (particularly SIs and OTC).

Based on improved off-venue data quality, DBG recommends a Tape of Record as a viable alternative which would be a significantly less complex and costly technical set-up, while providing a comprehensive database to the benefit of the entire industry. In case a such a tape should be created, we would deem it most sensible to consider starting in those market areas where there is currently no or hardly any transparency, and where information is important as well for funding of the economy, such as for example bonds. Whereas where instruments are “unique” such as in a large part of the derivatives markets, a consolidated view is probably not sensible at all.

<ESMA_QUESTION_CP_MIFID_NQT_13>

14. 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, DBG welcomes ESMA’s proposal to issue further guidance on the enforcement of publication of post-trade data. A more complete data set benefits all market participants. It is important that the same publication requirements apply to and are enforced towards all types of trading venues and SIs. Please also see our responses to Q9 and Q13 in this context.

DBG does not believe that further measures at the legislative level are required to improve the quality of post-trade data beyond our recommendations in relation to the deferral regime and post-trade data laid down in Q10-13, as the requirements are already clearly defined.

<ESMA_QUESTION_CP_MIFID_NQT_14>

15. What would be the optimal transparency regime to help with the potential creation of a CTP?

<ESMA_QUESTION_CP_MIFID_NQT_15>

DBG would like to point to the recommendations laid down in Q1 how the functioning and effectiveness of the transparency regime for non-equity instruments could be improved from our perspective.

Regarding the potential creation of a consolidated tape (CT), DBG would like to reiterate our answer to Q13 as we do not support a potential CT for any asset class. Rather than any CT, we consider the improvement of off-venue data quality in the parts of the markets that are still highly opaque today as an essential element to bring transparency in both equity and non-equity markets forward. While on-venue data is unrivalled in terms of quality, timeliness and depth, one of the current major impediments to any tape is the lacking availability of off-venue data which is of sufficient quality and data of certain instruments. In this context, it is of essence that the relevant data is made available to the public at a reliable and timely quality, across asset classes and across all execution venues (particularly SIs and OTC).

Based on improved off-venue data quality, DBG recommends a Tape of Record as a viable alternative which would be a significantly less complex and costly technical set-up, while providing a comprehensive database to the benefit of the entire industry. In case such a tape should be created, we would deem it most sensible to consider starting in those market areas where there is currently only little transparency available, and where information is important for funding of the economy, such as bonds.

As mentioned in our answers to the previous and following questions in relation to bonds, we would consider it highly beneficial if transparency in bonds was promoted by regulators. Please also see our comments to Q1 as regards the level of transparency reached for bonds and recommended policy actions in this context.

Besides overly long delays (please also refer to our answer to Q13), the possibility to publish selected data points of one single transaction in bonds over a certain period, is not only overly complex but it prevents usable transparency to the public rather than providing it. This is to the disadvantage of EU investors, as proper transparency data in bonds could enable passive investment as well in bonds for the benefit of investors and issuers alike.

<ESMA_QUESTION_CP_MIFID_NQT_15>

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

<ESMA_QUESTION_CP_MIFID_NQT_16>

Yes, DBG agrees that the current very narrow definition of TOTV exempts derivatives which reasonably could and should be included in the MiFIR transparency and transaction reporting requirements. We believe a broader definition of TOTV would be in line with MiFID II's objective to increase transparency in the overall market.

<ESMA_QUESTION_CP_MIFID_NQT_16>

17. 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, in the interest of efficiency and reducing unnecessary complexity, we agree with ESMA's proposal to keep the interpretation of TOTV aligned for transparency and transaction reporting.

<ESMA_QUESTION_CP_MIFID_NQT_17>

18. 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>

DBG is supportive of Option 2 and 3 as they would substantially extend the scope of the transparency and transaction reporting regime for OTC-derivatives compared to the status quo, i.e. Option 1.

However, DBG prefers Option 3 over Option 2. Even though Option 2 would already extend the scope of the transparency and transaction reporting regime to OTC-derivatives which share a minimum number of characteristics with derivatives available for trading on trading venues, it potentially leaves some leeway to circumvent the transparency and transaction reporting requirements.

DBG therefore favours the abundance of the concept of TOTV, proposed under Option 3. This proposal would provide a universally applicable transparency and transaction reporting framework for all derivatives, OTC and TOTV, and would thus create a level-playing field among both spheres and maximize post-trade transparency for the overall marketplace.

<ESMA_QUESTION_CP_MIFID_NQT_18>

19. 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>

DBG agrees with ESMA's proposal to remove the possibility for temporarily suspending transparency provisions on a national level. We are of the opinion, that the workings of the current possibility for NCAs to use this option are not sufficiently defined, to be actually used. Hence a deletion of this option will reduce complexity and ambiguity and hence benefit the overall market.

<ESMA_QUESTION_CP_MIFID_NQT_19>

20. Do you have any remarks on the assessment of Article 28 of MiFIR? Please explain.

<ESMA_QUESTION_CP_MIFID_NQT_20>

DBG acknowledges the target of EMIR Refit to relief smaller market participants from unnecessary burden and understands the proposal on the alignment of the MiFIR provisions to reflect the EMIR Refit changes as part of this attempt.

DBG wants to highlight that the scope alignment will lead to an exemption of smaller counterparties from the DTO. As a result, these market participants might be inclined to turn to OTC-markets as they have no legal obligation to trade on trading venues anymore. It seems questionable whether exempting these market participants will eventually serve to their advantage as they will most likely remain strongly bilaterally exposed to a potential default of large market participants and overall will increase their dependence on these. While the exemption from both clearing and trading obligations may appear as an initial cost relief for some, these firms might become undercollateralized, exposed to the default of systemic banks which in turn is keeping the resilience of the overall system and the benefits of increased transparency overall limited.

Any recommendation to the European Commission to align the trading obligation for OTC derivatives under MiFIR with the recent changes to the counterparties in scope of the clearing obligation under EMIR Refit should therefore not be rushed – but rather based on evidence. The proposals to remove counterparties from the trading obligation on the basis of this alignment has the air of a cascade of rolling back regulatory reform.

Secondly, in order to achieve an optimal outcome for the market and legislative intentions, we believe any exemption from key rules agreed by the G20 with a view to making our markets more stable and resilient should be based on a thorough impact assessment conducted by ESMA in order to avoid that any unintended side effects will override the common goal of avoiding unnecessary regulatory burden in particular for smaller market participants.

<ESMA_QUESTION_CP_MIFID_NQT_20>

21. 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_NQT_21>

22. 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>

23. Do you have a view on this or any other issues related to the application of the DTO?

<ESMA_QUESTION_CP_MIFID_NQT_23>

It is DBG's view that discrepancies between the MiFIR Transparency Regime and the Trading Obligation should be aligned to the best extent possible. To our view, it is imperative for ESMA to take into account the interplay of the trading obligation for OTC derivatives and the adjacent transparency requirement that would apply to trading venue offering the for trading eligible instruments. Hence, we disagree with ESMA's current approach not to investigate if and how the transparency regime and the trading obligation should be better aligned.

DBG would consider a combination of trading obligation and adequate transparency regime in the following way to be ideal:

- First, ESMA to define which asset classes are generally appropriate for trading on trading venues (i.e. trading eligible under the MiFIR trading obligation);
- Moreover, trading venues to assess the application of pre- and/or post- trade transparency exemptions in order to mitigate any adverse effects, and consequently to apply for waivers and deferrals with competent authorities.

ESMA has already put a lot of effort in designing thresholds for pre- and post-trade LIS in OTC derivatives. This effort has resulted in various threshold levels that allow trading venues to waive pre- and post-trade transparency where meaningful but allow the market structure to evolve in a way that the trading obligation sets the tone for the asset class to be traded on trading venues in the first place.

<ESMA_QUESTION_CP_MIFID_NQT_23>

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

<ESMA_QUESTION_CP_MIFID_NQT_24>

DBG appreciates the efforts of ESMA to maintain the public register for the trading obligation for derivatives under MiFIR. The register is seen by DBG as a helpful source of information.

<ESMA_QUESTION_CP_MIFID_NQT_24>

25. 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>

DBG agrees with ESMA's assessment that current level of pre- and post-trade transparency for bonds is very low. In general, we are of the view that the number of bonds classified as liquid (around 0,2% of total bonds in Q3 2019) shows that the liquidity determination process is not effective and has not delivered on the MIFIR objective to increase transparency in bonds markets. As highlighted by ESMA in its assessment, these low figures fall below expectations when calibrating the regime, which were about 2% of bonds being classified as liquid in S1. Further, ESMA concludes that most bonds that have been determined as illiquid in one quarter, remain illiquid through the next quarter, accounting for 90-95% of illiquid bonds.

Therefore, we recommend changing the criteria for assessing the liquidity of bonds so as to increase the number of bonds that are deemed liquid and therefore subject to the transparency requirements. Particularly, we suggest including trades below 100.000 EUR into the liquidity test. We see no reason why a trade below 100.000 EUR on a regulated market would not support to the liquidity of a bond.

Since the liquidity assessment criteria are reviewed on a yearly basis, we would recommend running simulations with next year's calibration, in order to understand whether the impact on the number of liquid bonds will be substantial or not. Additionally, simulations with different transparency thresholds should be conducted to better understand the impact of the MiFID II thresholds. Lastly, a full assessment of the underlying data should be performed, taking also into consideration the ratio of volume traded under a pre-trade transparency waiver, and the data adjusted when required (before running new transparency calculations).

<ESMA_QUESTION_CP_MIFID_NQT_25>

26. 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>

As highlighted in the answer to the previous question, the overall pre-trade transparency regime for bonds is not effective as too many bonds are defined as "illiquid". Therefore, we support ESMA's proposal to move to the S2 phase for the liquidity test of bonds to increase the share of bonds defined as liquid, although this approach would increase transparency only in a very limited way (0.32-0.48% of total bonds under S2 compared to 0.21-0.31% of total bonds under S1). Hence, as mentioned in our answer to Q25, a broader review of the methodology to perform the transparency calculations might be necessary. In this context, we would recommend including trades below 100.000 EUR into the liquidity test. We see no reason why a trade below 100.000 EUR on a regulated market would not support to the liquidity of a bond.

<ESMA_QUESTION_CP_MIFID_NQT_26>

27. 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>

As described in the answers to questions 3, 4 and 11 above, DBG supports ESMA's proposal to delete the SSTI waivers for pre-trade and post-trade transparency and suggested to link the SI quoting obligation to a high percentage of LIS thresholds. Hence, we believe the question of when to move to stage 2 for the determination of SSTI thresholds is no longer relevant.

<ESMA_QUESTION_CP_MIFID_NQT_27>

28. 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>

In line with our answer to the previous questions, DBG supports ESMA's proposal to delete SSTI waivers for pre and post-trade transparency and suggest to link the SI quoting obligation to a high percentage of LIS thresholds. Therefore, the question of moving to stage 2 for the determination of SSTI thresholds for bonds becomes obsolete.

<ESMA_QUESTION_CP_MIFID_NQT_28>

29. 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>

MiFIR rightly recognizes that certain exemptions can be granted to trading venues from the general requirement to publish pre-trade transparency data to preserve orderly price discovery processes and allow in particular illiquid and nascent markets to develop. However, the current calculation methodology of corresponding waivers is fundamentally flawed. The IL (Illiquid) and LIS (Large In Scale) waivers do not fit all non-equity markets, especially commodity and energy derivatives markets. The current methodology has led to significant number of niche and nascent products being incorrectly (re-)classified as liquid, and thus becoming subject to significantly broader transparency requirements, which were previously reserved for developed markets. In this regard, we welcome the de-coupling of Level 1 and Level 2 measures in time, and urge ESMA to take into account the gathered views in the 2020 transparency calculations.

IL thresholds are determined on the basis of the average traded daily notional amount (ADNA, or average daily amount in case of emission markets). However, this current calibration methodology does not reflect the market reality. Consequently, we propose to replace the current RTS methodology for calculation IL (as well as LIS) waiver thresholds for commodity derivatives in line with the below suggestions. These should be read in combination with the principles for a workable methodology we highlight in Q31.

First, in order for a market to be considered liquid, a sufficiently high number of trades should be executed on each trading day. We therefore recommend that the thresholds should be set at the median of 100 transactions per day instead of the current average of 10. This represents an average of approximately 1 trade in every 5 minutes on an 8-hour trading day. In contrast, a threshold of 10 trades represents just 1.23 trades per hour. Given that trading is rarely uniformly distributed throughout the day, the higher threshold is a better basis for determining liquidity, and thus indication of the ability to find a counterparty in a relatively short period of time within a given trading day.

Second, ADNA does not automatically reflect a large number of trades, and thus a high level of liquidity. We suggest to rather look at trade frequency and standard size to determine liquidity, excluding unrelated vectors such as price and currency.

Thirdly, commodity trading venues and market participants might also be challenged by the fact that the thresholds are set in Euros instead of lots. For what is concerns cash-settled financial derivatives, such as for example the Eurex BCOM Index Futures and Options, the base quantity unit is indeed the currency (usually EUR or USD), while for the majority of commodity derivatives contracts rather lots appear to be the most sensitive approach to set the base quantity unit. For these commodity derivatives contracts, prices do not determine liquidity of a market and notional values do not reflect trading practice. Notional values include

a significant amount of ‘noise’ to an analysis of market liquidity. Moreover, market participants typically hedge their production and consumption in trading in lots and not in notional value. Thus, we recommend that liquidity analysis is normalised to a base quantity unit that is native to the asset class, allowing for an appropriate treatment of both cash-settled financial derivatives as well as the majority of commodity derivatives contracts.

<ESMA_QUESTION_CP_MIFID_NQT_29>

30. 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>

We welcome ESMA’s initiative to consolidate and streamline liquidity segmentation criteria in RTS 2. For the sake of regulatory consistency, we propose to put particular focus on phasing out the usage of sub product categories of RTS 23 (meant for reference data) for the further specification of the underlying energy of commodity derivatives. The fact that no legal link had been in place between RTS 2 and the sub-categories of RTS 23 has in our eyes led to inconsistency and confusion in the market.

We do support proposals SC1 and SC2 for the added benefit of harmonisation they would provide, both in making the data for different commodity classes more comparable and harmonising data from different venues. While we do feel that extending the use of “delivery/cash settlement location” from energy to other classes makes sense, we do want to stress that this can only be achieved with significant guidance. Whereas the change from using “market area” (or rather, hub) for gas seems feasible, this is not comparable to freight or emission allowances, where a completely different approach is used today. In addition, implementation costs need to be taken into account, as it would require significant IT efforts to set new values in the system and adapting the software for processing of such values. Therefore, we strongly recommend to set a generous timeline and work solely in a forward-looking way, without historical changes.

We do not support proposal SC3, as introducing a new field (instead of adapting the currently available, as proposed in SC1 and SC2) would result in a change in file structure and would in turn make a costly adaption of our trading system to these new parameters necessary. In light of implementation costs, we do not find SC3 to be a sensible way forward to reach the desired degree of harmonisation.

More importantly and in addition to the proposals put forward by ESMA, we also want to reiterate our proposal to separate liquidity assessments by trading venue. Although the IL waiver is intended to protect new and illiquid markets, accumulating liquidity across exchanges defeats this purpose. We do not think a liquidity assessment accurately reflects market conditions if an instrument is considered liquid on one venue (although liquidity is low) just because it has been found to be liquid on another venue. This makes it practically impossible for an exchange to launch a new contract (or even to launch a new type of contract, depending on the granularity used for the liquidity assessment) that is already liquid on another exchange.

<ESMA_QUESTION_CP_MIFID_NQT_30>

31. 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>

As elaborated on in our response to Q1, trade registration is an important way to allow transactions in illiquid/nascent markets to be executed in the most transparent way. Too high LIS thresholds could lead market participants to revert to more bilateral trading outside transparent and supervised venues and outside CCP clearing. To avoid this from happening and to allow for a more natural move to on venue trading, the current methodology for setting the LIS thresholds should be replaced by a more appropriately tailored and market-based approach.

The LIS calculation is based on a threshold floor expressed as notional trade value in a given sub-asset class and the trade size which lies below the percentage of transactions corresponding to the trade percentile specified in the RTS for this sub-asset class. However, this methodology has proven to be flawed in practice, particularly with respect to energy commodity derivatives. Therefore, we suggest a reviewed methodology for which we emphasize key principles below:

First, we welcome ESMA's assessment on the counterintuitive effects arising from the current percentile approach. The results of this approach would imply that instruments with a low liquidity can support higher LIS levels than highly liquid instruments – when in fact the opposite is true. We therefore suggest using a scaled approach based on variations in the liquidity distribution of the instrument. In case the percentile approach is maintained, we suggest adjusting the percentiles.

Second, in a similar fashion, for many commodity markets, the minimum threshold of 500.000 EUR is too high and should be decreased significantly. By bringing the LIS value more closely in line with the actual market, the overall negative market impact should be reduced. In addition, the use of a euro-denominated minimum floor is inefficient when applied to energy commodity derivatives.

Third, as mentioned above, commodity trading venues and market participants might also be challenged by the fact that the LIS thresholds are set in Euros instead of lots. As mentioned in our answer to Q29, for what concerns cash-settled financial derivatives, such as for example the Eurex BCOM Index Futures and Options, the base quantity unit is indeed the currency (usually EUR or USD), while for the majority of commodity derivatives contracts rather lots appear to be the most sensitive approach. Using historical Euro trade values to determine LIS thresholds for these commodity derivatives – instead of the number of traded lots in particular sub-asset classes – has created unintended and disproportionate thresholds that ignore the actual underlying trading behavior. Liquidity should therefore not be measured only by using the notional value of the transactions, but a liquidity assessment should be based on a combination of thresholds including measures normalised to a base quantity unit that is native to the asset class. For the majority of commodity derivatives, this will typically be a specific unit of measure (e.g. MW).

DBG appreciates that while working on a revised methodology for both waivers, or when a new methodology is not deemed feasible, ESMA could propose a less comprehensive amendment of the methodology by recalibrating the current parameters.

Please note that the proposals for revised thresholds for commodity derivatives are based on the assumption that, for the bucket grouping according to time to delivery, each financial instrument (e.g. Phelix Monthly Futures) is considered individually for the purpose of the calculation. For example, the July 18 expiry in the Phelix Monthly Futures would not be placed in one maturity bucket with other futures products with the same underlying, e.g. the Second Week July 18 Phelix Weekly Futures. Any other way of conducting these calculations would inevitably produce inaccurate outcomes in terms of liquidity profiles of the instruments in question.

<ESMA_QUESTION_CP_MIFID_NQT_31>