MANAGED FUNDS ASSOCIATION
The Voice of the Global Alternative Investment Industry
WASHINGTON, DC | NEW YORK

31 July 2017

European Securities and Markets Authority
CS 60747
103 rue de Grenelle
75345 Paris Cedex 07
France

Dear Sir or Madam,

Re: Consultation Paper on the trading obligation for derivatives under MiFIR dated 19 June 2017

Managed Funds Association[1] ("**MFA**") welcomes the opportunity to provide comments to the European Securities and Markets Authority ("**ESMA**") in response to ESMA's Consultation Paper on the trading obligation for derivatives under the Markets in Financial Instruments Regulation ("**MiFIR**") dated 19 June 2017 (the "**Consultation Paper**").[2] Terms defined in the Consultation Paper have the same meaning when used in this letter and the accompanying reply form.

As the European Commission noted in its original proposal[3] for the revised Directive on Markets in Financial Instruments, the overarching objective of the MiFID framework is to further the integration, competitiveness and efficiency of the EU financial markets. MFA is a strong advocate of these values and understands that the trading obligation plays an important role in furthering such values.

[1] Managed Funds Association (MFA) represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry's contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, the Americas, Australia and many other regions where MFA members are market participants.

[2] The Consultation Paper is available here: https://www.esma.europa.eu/press-news/esma-news/esma-consults-draft-standards-trading-obligation-derivatives-under-mifir.

[3] The European Commission's original proposal is available here: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011PC0656&from=EN

MFA appreciates ESMA's efforts to implement a Level 2 regime for MiFID II and is grateful for the opportunity to respond to certain questions set out in the Consultation Paper. Outlined below, in brief, are MFA's main points with regards to ESMA's proposed implementation of the derivatives trading obligation ("**TO**") under MiFIR:

- **ESMA can achieve closer alignment of the TO with the US CFTC's "made available to trade" ("MAT") regime by using broader data sources**. Closer product scope alignment between the EU and US mandatory trading regimes is vital, as many MFA members conduct derivatives trading activity in both the U.S. and the EU, and thus will trade in-scope derivatives in both jurisdictions. While MFA welcomes ESMA's decision to supplement data from trade repositories ("**TRs**") with data sourced from MTFs when assessing which derivative classes are sufficiently liquid for the TO, remaining tenor discrepancies could be further minimised by ESMA's use of global data from CCPs, as well as US SDR data. The eventual full alignment of the US and EU regimes would ease the administrative burden faced by such market participants subject to trading obligations in both jurisdictions, and ensure cross-border harmonisation such that the derivative contracts subject to the CFTC's trade requirement as MAT swaps will also be subject to the TO and *vice versa*.

- **For trades above the post-trade large in scale ("LIS") threshold, ESMA should achieve closer alignment with the CFTC's treatment of block trades.** MFA urges ESMA to both (i) allow trades above the post-trade LIS threshold to be privately negotiated and executed *away* from a trading venue (but still pursuant to the trading venue's rules and procedures) and (ii) expressly prohibit in the final RTS such private negotiation or pre-arranged trading for transactions below the LIS threshold to ensure that counterparties do not evade the TO.

- **ESMA should continue to enhance the quality of data to assess which derivative contracts should be subject to the TO**. MFA is concerned that ESMA's revised liquidity assessment fails to consider any CCP data, given: (a) the large volumes of OTC derivatives in global markets cleared by CCPs, (b) the fact that the TO only applies to OTC derivatives cleared by CCPs, and (c) ESMA's acknowledged challenges in determining how many TR records to exclude to avoid double-counting of OTC derivatives cleared by CCPs. MFA recommends that ESMA should rely upon a broader set of data sources to assist its analysis, such as CCP data and data from US SDRs, to yield more accurate assessments of the liquidity of IRS at various benchmark tenors. The main liquidity providers in IRS and CDS markets serve clients in different jurisdictions equally, such that liquidity in EUR, GBP, and USD IRS that a client can access is generally the same irrespective of whether the client is based in Paris, Frankfurt, London, or New York.

- **ESMA has an important role in timely equivalence determinations of third country trading venues**. MFA encourages ESMA to stress to the European Commission the importance of recognising third country trading venues, such as

US SEFs and DCMs, prior to the implementation of the TO. To the extent that derivative products are subject to both the CFTC trade execution requirement and the TO, it will be vital for MFA members trading these products to satisfy the TO by trading on a SEF or DCM declared equivalent under MiFIR, or to satisfy the CFTC trade execution requirement by trading on MTFs or OTFs by substituted compliance with the CFTC regime. MFA thus appreciates that the CFTC's reciprocity is also required to avoid market disruption and resulting losses of liquidity in the global derivatives markets.

- **MFA supports ESMA's decision to match the phase-in of the TO with the clearing obligation ("CO")**. MFA applauds ESMA for adopting this approach for the phase-in of the TO so that no derivative transacted by a market participant will be subject to the TO prior to the CO applying to such market participant.

The list of points above is not exhaustive and MFA welcomes the opportunity to discuss our views, as set out in the attached Appendix, in greater detail with ESMA. Please do not hesitate to contact the undersigned at +1 (202) 730-2600, Laura Harper Powell at LHarperPowell@managedfunds.org, or Michael Pedroni at MPedroni@managedfunds.org with any questions that ESMA or its staff might have regarding this response.

Respectfully submitted,

/s/ Stuart J. Kaswell

Stuart J. Kaswell
Executive Vice President, Managing
Director & General Counsel

19 June 2017 | ESMA70-156-166

Reply form for the Consultation Paper on the trading obligation for derivatives under MiFIR

Date: 19 June 2017

Responding to this paper

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

Instructions

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

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA_ QUESTION_MIFID_TO_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

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

Naming protocol

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

ESMA_MiFID_TO_NAMEOFCOMPANY_NAMEOFDOCUMENT.

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

ESMA_MiFID_TO_ESMA_REPLYFORM or

ESMA_MiFID_TO_ESMA_ANNEX1

Deadline

Responses must reach us by **31 July 2017.**

All contributions should be submitted online at www.esma.europa.eu 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	Managed Funds Association
Activity	Investment Services
Are you representing an association?	☒
Country/Region	International

Introduction

Please make your introductory comments below, if any:
<ESMA_COMMENT_MIFID_TO_0>
TYPE YOUR TEXT HERE
<ESMA_COMMENT_MIFID_TO_0>

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

<ESMA_QUESTION_MIFID_TO_1>

MFA Supports Broader Data Sources for Liquidity Assessment. MFA agrees with ESMA's expanded data set and holistic approach in applying the various liquidity criteria to certain classes of IRS and index CDS that will become subject to the TO. However, MFA believes that ESMA should expand the types of trading data that it collects. In MFA's response to the DP (available here: https://www.managedfunds.org/wp-content/uploads/2016/11/MFA-Comments-to-ESMA-on-MiFIR-Derivatives-Trading-Obligation-Cover-Letter-and-Reply-Form.pdf (the "**MFA DP Response**"), MFA expressed concerns with the limitations of ESMA's exclusive reliance on TR data when assessing the liquidity of derivatives for the purposes of the TO. In the CP, MFA welcomes ESMA's decision to supplement TR data with data sourced from MTFs when assessing which derivative classes are sufficiently liquid for the TO. MFA believes ESMA's decision improved its revised liquidity assessments of certain classes of IRS, resulting in a broader proposed product scope for the TO that will be more closely aligned with the CFTC MAT scope. However, tenor discrepancies remain that ESMA should reconcile, or further minimise, in consultation with the CFTC. Achieving closer alignment of in-scope derivatives between the US and EU mandatory trading regimes would facilitate significant compliance efficiencies and ease the on-venue transition for market participants that trade the same derivative products in both jurisdictions.

With respect to ESMA's use of data sources, MFA is concerned that ESMA seems inclined to continue to rely primarily on TR data when assessing the number and types of active market participants for the purposes of the TO liquidity test when stating that the "majority of the respondents to the consultation suggested using TR data to compute the number and type of market participants" (paragraph 59 of the CP). ESMA further justified its reliance on TR data by stating in the CP that: "At this stage, there exists no other exhaustive source of trading data for OTC-data going to the level of detail that is included in TR-data" (see paragraph 31 of the CP). MFA acknowledges that ESMA may supplement TR data with post-trade data after the implementation of MiFID II/MiFIR. However, going forward, MFA urges ESMA to assess the global liquidity of a class of OTC derivatives, rather than limiting its assessment to TR data supplemented by European MTF data. While ESMA has acknowledged in the CP the suggested use of CCP data and trading venue data by industry stakeholders, MFA is concerned that ESMA's revised liquidity assessment fails to consider any CCP data, given: (a) the large volumes of OTC derivatives in global markets cleared by CCPs, (b) the fact that the TO only applies to OTC derivatives cleared by CCPs, and (c) ESMA's acknowledged challenges in determining how many TR records to exclude to avoid double-counting of OTC derivatives cleared by CCPs. As noted in the MFA DP Response, the burden of obtaining such CCP data should be minimal, as a small number of CCPs clear most of the OTC derivatives volumes. In

MFA's view, using broader data sources both within and outside the EU, such as CCP data and data from US swap data repositories ("SDRs"), will yield more accurate assessments of the liquidity of IRS at various benchmark tenors. Such broader data sources would also more accurately reflect the fact that liquidity in the instruments that ESMA is considering for the TO is global in nature, and not confined or tethered to the jurisdiction in which a particular counterparty is domiciled.

MFA Supports a Lower Weighting of the Number of Market Makers/Liquidity Providers as a Liquidity Criterion. MFA supports ESMA's decision to take a broad interpretation of this criterion and to give it a lower weighting due to "the ambiguities around the concepts of 'market maker' and 'liquidity provider' and the fact that many trading venues do not have any binding liquidity arrangements in place" (paragraphs 75 and 76 of the CP).

MFA Supports a Holistic Approach to Assessing Liquidity Criteria. In the MFA DP Response, MFA urged ESMA to take a holistic approach when assessing the liquidity of a class of derivatives rather than rigidly applying the liquidity criteria under MiFIR. With respect to the number of market participants trading a product, MFA pointed out that "although certain products may trade relatively infrequently, a consistent presence of ready and willing buyers and/or sellers for a product may mean there is still a liquid market for the product." MFA is therefore pleased to see in the CP that ESMA has opted for a more flexible approach by deciding not to set fixed thresholds for the number of trades per day or the minimum number of market participants of a class of derivatives under the liquidity test for the TO (paragraph 63 of the CP).

<ESMA_QUESTION_MIFID_TO_1>

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

<ESMA_QUESTION_MIFID_TO_2>

MFA would like to underscore the importance of aligning the TO with the CFTC's trading mandate with respect to LIS transactions. Based on MFA's understanding of ESMA's revised proposal, there would be some significant misalignment between the two regimes. To avoid such misalignment, MFA urges ESMA to both (i) allow trades above the post-trade LIS threshold to be privately negotiated and executed *away* from a trading venue (but still pursuant to the trading venue's rules and procedures) and (ii) expressly prohibit such private negotiation or pre-arranged trading for transactions below the LIS threshold in the final RTS.

MFA's understanding of ESMA's revised proposal is that ESMA has decided that trades larger than the post-trade LIS threshold need not be exempted from the TO, as such trades already benefit from pre-trade transparency waivers and post-trade transparency deferrals. Therefore, ESMA reasons that "no additional protection is necessary" as these "waivers/deferrals will also be applicable to derivatives that are subject to the TO" (paragraph 94 of the CP). Thus, ESMA chooses to subject such trades to the TO.

If MFA's understanding of ESMA's revised proposal is correct, MFA is inclined to disagree with ESMA's approach, as it raises a significant point of difference with the CFTC's treatment of swap trades that exceed the CFTC's appropriate minimum block sizes for each swap category. This point of difference could undermine an equivalence determination by the European Commission. More harmonised treatment of larger derivative trades between the US and EU markets would ease the transition for market participants to comply with the TO when market participants trade the same derivative products in both jurisdictions.

Under the CFTC regime, block trades may be executed away from a SEF's or DCM's trading system or platform (but still pursuant to the SEF's or DCM's rules and procedures), and thus need not be executed via an order book or request-for-quote system. Block trades are also exempt from the general prohibition on pre-arranged trading on SEFs and DCMs. As such, counterparties can privately negotiate block trades *away* from the trading venue, but they must execute them pursuant to the rules and procedures of the trading venue to ensure that the block trade is subject to a pre-trade credit check and the straight-through processing requirements for the execution-to-clearing workflow, among other requirements of the SEF or DCM. For swap trades below the appropriate minimum block sizes, private negotiation and pre-arranged trading on SEFs and DCMs is prohibited to ensure that counterparties do not evade the trading obligation.

ESMA believes that its revised approach to LIS transactions is "similar to" the CFTC approach but that the main difference, as stated in the CP, "would be in relation to the size for the large in scale transactions that may benefit from a waiver/deferral in the EU or that may benefit from a more flexible execution regime in the US" (paragraph 96 of the CP). Currently, the CFTC exempts interest rate and credit swap trades from the execution requirement on SEFs or DCMs where a transaction has a notional or principal amount greater than the 50th volume percentile for that category of swaps during the initial period. (In the post-initial period, the CFTC will determine minimum block sizes using a 67 percent notional amount calculation). However, the main difference is not the size of transactions, as the post-trade LIS threshold and the CFTC block trade threshold are generally similar in design and intent, subject to a material transitional divergence, as described below. Rather, the main difference is how trades both below and above the threshold are treated with respect to the TO and the ability for private negotiation and execution to occur *away* from the trading venue.

Notwithstanding the fact that the CFTC's block trade threshold and ESMA's post-trade LIS threshold are similar in design and intent, ESMA's transitional transparency calculations for interest rate derivatives that ESMA published on 3 July 2017 present a material divergence between the two regimes. Specifically, with respect to the fixed-to-float swap sub-asset class, ESMA identified only four sub-classes as liquid. This small subset means that all other sub-classes of fixed-to-float swaps are illiquid, including the vast majority of swaps that ESMA proposes to subject to the TO. As a result of being considered illiquid, the post-trade LIS threshold for all these sub-classes of fixed-to-float swaps will be set at EUR 10 million, as prescribed under RTS 2. This transitional post-trade threshold diverges materially from the CFTC's block trade thresholds, which vary by tenor, ranging from USD 170 million for USD and EUR swaps with tenors between 5 years and 10 years, and USD 240 million for USD and EUR swaps with tenors between 2 years and 5 years. By contrast, for the four sub-classes that ESMA found to be liquid, ESMA did set more appropriate post-trade LIS thresholds of between EUR 80 million and EUR 150 million. MFA therefore urges ESMA to re-examine the transitional transparency calculations for interest rate derivatives to ensure that the appropriate sub-classes of fixed-to-float swaps are classified as liquid, and by extension, that appropriate post-trade LIS thresholds for such sub-classes are calculated more accurately. Otherwise, ESMA will cause material divergence with the CFTC's block trade thresholds for MAT swap products by allowing the post-trade LIS threshold for fixed-to-float swaps subject to the TO to default to the EUR 10 million level prescribed under RTS 2 for illiquid products.

Considering the foregoing, MFA is concerned that ESMA's proposal not to exempt trades above the post-trade LIS threshold from the TO would cause a significant point of difference from the CFTC's treatment of block trades with respect to the negotiation and execution of such trades and the prohibition on pre-arranged trading. Closer alignment between the US and EU mandatory trading regimes for transactions above the post-trade LIS threshold would benefit market participants trading the same instruments in both jurisdictions.

<ESMA_QUESTION_MIFID_TO_2>

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

<ESMA_QUESTION_MIFID_TO_3>

MFA Supports a More Comprehensive Register of Derivatives Available to Trade On-Venue. MFA substantially agrees with ESMA's proposal, with an additional suggestion that further would facilitate a successful market transition to trading OTC derivative products on-venue. MFA strongly believes that the success of the TO depends upon, among other things, market participants being able to access sufficient pools of liquidity on-venue to adequately fulfil their trading needs for a given class of derivatives. Thus, MFA urges ESMA to populate and maintain a register that also sets out a comprehensive list of derivatives which are available to be traded on-venue, even where certain derivative contracts are not subject to the TO, and the trading venues on which they are admitted to trading.

Article 34 of MiFIR only requires ESMA to publish and maintain a list of derivatives subject to the TO and the venues upon which they are admitted to trading or traded using information which ESMA seeks itself from CAs. Nothing in Article 34 of MiFIR requires ESMA to include information relating to derivative classes that are not subject to the TO and the venues upon which they can be traded, nor does any provision of MiFID II/MiFIR require CAs to provide that type of information to ESMA. Consequently, considering that CAs are not legally required to provide this information to ESMA, MFA is concerned that CAs will provide ESMA with information that lacks sufficient detail to inform market participants about which products they can trade on-venue, either on a voluntary or mandated basis, and on which venues. Additionally, as ESMA is also required to maintain a list of trading venues where in-scope derivatives for the TO are admitted to trading or traded, the potential omission of information provided by CAs may also limit ESMA's ability to coordinate effective supervision of such trading venues.

To address these concerns, MFA encourages ESMA to seek authority from the European Commission to compel CAs to provide ESMA, on an ongoing basis, with detailed information of all the products that trading venues are trading or have admitted to trading, not just those which are subject to the TO. This will ensure that CAs provide a sufficient level of reliable data to ESMA on an ongoing basis, thus enabling ESMA to publish a more complete register that offers enhanced utility for market participants to make more informed trading decisions and to facilitate their transition to on-venue trading.

MFA Supports an Expedited Removal Process from the TO. As discussed above, Article 34 of MiFIR directs ESMA to publish and maintain the register of derivatives subject to the TO. This obligation will require ESMA to amend the register whenever ESMA declares a new class of derivatives subject to the TO or removes a class from the TO. On this basis, MFA would like to remind ESMA of the practical difficulties that may apply if it becomes necessary to disapply the TO with respect to a class of derivatives that is no longer liquid. In such case, MFA believes that ESMA will need to act with some urgency to remove such derivative from the scope of the TO. However, the legislative procedure to amend the RTS applying the TO does not currently envisage such expedited removal authority by ESMA (see Article 32(5) of MiFIR) or CAs. MFA believes that ESMA should encourage the European Commission to take steps to amend MiFID II/MiFIR to authorise ESMA to remove insufficiently liquid or illiquid derivative products from the TO in a more expedited manner. Failure to do so could create undue procedural delay and potential harm to the derivatives markets.

To this point, MFA notes that CAs have the power to suspend the transparency requirement under MiFIR. As explained below, MFA encourages ESMA to discuss with the European Commission the possibility of taking legislative steps to address the need for CAs to have the power to suspend the TO under urgent market conditions as well.

As further support for MFA's request, MFA understands from the recent EMIR review (available here: http://eur-lex.europa.eu/resource.html?uri=cellar:b12bb02d-30ba-11e7-9412-01aa75ed71a1.0001.02/DOC_1&format=PDF) that the European Commission has proposed to amend EMIR to authorise ESMA to request that the Commission temporarily suspend the CO if necessary (see article 6b of the proposed review). For purposes of the TO, ESMA is considering only derivatives that are subject to the CO to become subject to the TO. With the potential introduction of temporary suspension powers for the CO, a situation may arise where the CO is suspended with regards to a class of derivatives, but the TO is not. Consequently, MFA urges ESMA and the European Commission to align the treatment of the CO and the TO if there is a temporary suspension. To achieve that alignment, ESMA should request that the European Commission take legislative steps to authorise CAs to suspend temporarily the TO where the CO has been suspended.

MFA Supports Timely Equivalence Determinations of Third Country Trading Venues. MFA further notes ESMA's reference in paragraph 119 of the CP to third country trading venues declared equivalent for the purposes of the TO. In this regard, MFA would like to underscore the importance of ESMA's role in facilitating the European Commission's equivalence determination of the CFTC's swaps trading regime governing SEFs and DCMs. Many MFA members conduct derivatives trading activity in the US and EU. To the extent that such derivatives are subject to both the CFTC trade execution requirement and the TO, it will be vital for MFA members trading these derivatives to satisfy the TO by trading on a SEF or DCM declared equivalent under MiFIR, or to satisfy the CFTC trade execution requirement by trading MAT swaps on MTFs or OTFs by substituted compliance with the CFTC regime. Such equivalence/substituted compliance determinations will relieve the significant cost and operational burdens of on-boarding at EU or US trading venues for market participants trading on a cross-border basis, and would avoid market disruption and resulting losses of liquidity in the global derivatives markets.

MFA thus respectfully encourages ESMA to stress to the European Commission the importance of recognising third country trading venues in a timely manner to allow market participants, such as many MFA members whose OTC derivatives trades will become subject to both the TO and CFTC MAT regime after MiFID II/MiFIR implementation, to satisfy their compliance obligations under the TO by trading on SEFs and DCMs as equivalent third country trading venues. Without an equivalence determination in place prior to the implementation of the TO, entities that are required to comply with the TO, such as financial counterparties and non-financial counterparties above the EMIR clearing threshold, that are currently trading derivative contracts on SEFs, DCMs or other third country trading venues, would be forced to trade in-scope derivatives for the TO solely on specified venues under MiFIR (*i.e.*, RMs, MTFs or OTFs) to comply with the TO. Forcing such entities to trade solely on EU venues would disrupt and bifurcate markets, and could result in adverse effects on liquidity in the global derivatives markets. MFA also believes that the CFTC should reciprocate, so that market participants can also satisfy the CFTC's trade execution requirement by trading MAT swaps on MTFs and OTFs.

Separately, MFA would like to applaud ESMA on its recent Q&A on MiFID II and MiFIR market structure topics (available here: https://www.esma.europa.eu/press-news/esma-news/esma-updates-qa-mifid-ii-implementation-0) which clarified certain arrangements on trading venues that ESMA would regard as non-objective and discriminatory and thus inconsistent with non-discriminatory access to trading venues for market participants. The arrangements that ESMA cited as inconsistent with non-discriminatory access correspond with the arrangements cited in CFTC Staff Guidance to SEFs as being inconsistent with the impartial access requirement. MFA is pleased to see that ESMA has decided to provide similar guidance to EU trading venues prior to the implementation of the TO.

<ESMA_QUESTION_MIFID_TO_3>

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

<ESMA_QUESTION_MIFID_TO_4>

As referenced in MFA's response to Q1, MFA applauds ESMA's use of MTF data to supplement TR data when assessing the overall liquidity of a derivatives contract. However, MFA strongly encourages ESMA to look to CCPs as additional sources of data given: (a) the large volumes of OTC derivatives in global markets cleared by CCPs, (b) the fact that the TO only applies to OTC derivatives cleared by CCPs, and (c) ESMA's acknowledged challenges in determining how many TR records to exclude to avoid double-counting of OTC derivatives cleared by CCPs. Every CCP must have a complete record of data for all transactions it clears. By contrast, TR data is potentially duplicative given the multiple records that may exist with respect to a single cleared OTC derivative transaction and other challenges with EMIR reporting. Therefore, there is a greater risk that TR data is not as accurate as CCP data for liquidity assessments of cleared OTC derivatives. To enhance the accuracy of its liquidity assessments, MFA urges ESMA to further supplement its new dataset with CCP data.

MFA also notes that ESMA used a six-month period of trading data from both MTFs and TRs from 1 July to 31 December 2016. MFA continues to urge ESMA to consider data on a rolling basis for the purposes of assessing the liquidity of a derivative class. MFA expects the liquidity of derivatives to fluctuate over time and therefore urges ESMA to regularly assess and update its dataset to ensure that all derivative contracts that are liquid enough to be subject to the TO become subject to the TO as soon as possible.

<ESMA_QUESTION_MIFID_TO_4>

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

<ESMA_QUESTION_MIFID_TO_5>
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<ESMA_QUESTION_MIFID_TO_5>

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

<ESMA_QUESTION_MIFID_TO_6>

MFA supports the alignment of the CFTC's MAT scope with the product scope of the TO as it would facilitate cross-border trading of the same derivative products in both jurisdictions. In MFA's view, liquidity is a global concept and the indicators of a class of derivatives which signal that such a derivative is liquid should be the same on a cross-border basis. The main liquidity providers in the IRS and CDS markets serve clients based in different jurisdictions equally, such that liquidity in EUR, GBP, and USD IRS that a client can access is generally the same irrespective of whether the client is based in Paris, Frankfurt, London, or New York. Based on this premise, MFA believes that full alignment of in-scope derivatives products for the trading mandates under both the US and EU regimes should be the eventual outcome.

However, as ESMA noted in the CP, due to the differences in the process by which derivative contracts in the US are determined to be MAT and how the EU TO process works, MFA appreciates that there will be some initial product scope differences between the two regimes. As summarised in the CP, DCMs and SEFs initiate the process by submission of a MAT determination to the CFTC that a swap is available to trade on its platform. In its MAT determination, the DCM or SEF must consider, as appropriate, one or more of the CFTC's six liquidity-related criteria, which are comparable to the liquidity criteria under MiFIR. In addition, the CFTC provided a comment period for MAT determinations prior to any derivative becoming subject to the MAT regime, which proved useful in narrowing initial MAT determinations from certain SEFs and DCMs that were over-inclusive in product scope. While MFA believes the public comment process resulted in a more accurate MAT product scope for the US, this scope has not expanded for three and a half years (*i.e.*, since February of 2014) and thus may not be entirely accurate now. For these reasons, MFA is advocating for broad alignment of in-scope derivative products between the two regimes in the short term to account for such process differences. As a longer-term solution toward fully aligned in-scope products, MFA encourages ESMA to obtain broader data sources and to continue to resolve product scope discrepancies over time with the CFTC (*i.e.*, ESMA identifies a derivative as sufficiently liquid for the TO which has not been declared MAT in the US, or *vice versa*).

Notwithstanding certain tenor discrepancies that remain, MFA is pleased to see that ESMA's liquidity assessment in the CP for certain fixed-to-float IRS is more closely aligned with the IRS product scope under the CFTC MAT regime than the proposed scope in the DP. Many MFA members trade on a cross-jurisdictional basis in the US and EU and will therefore benefit from a close alignment of the two regimes. However, given that ESMA's overall product scope for the TO is still narrower than the CFTC's MAT scope, MFA appreciates that ESMA is amenable to expanding its product scope for the TO once it has more trading data for its liquidity analysis.

As discussed above, ESMA has fairly attributed some of the product scope differences between the US and the EU to differences in the US/EU processes for determining the classes of derivatives that should be subject to the trading mandate. While this is a valid cause of discrepancy, MFA also believes that product scope differences between the two regimes may also be explained by ESMA's reliance on limited data from TRs and MTFs in the EU to conduct its liquidity test, and by omitting entirely the use of higher quality, global data from CCPs, as well as US SDR data, to inform its analysis.

In paragraph 126 of the CP, ESMA admits that the "liquidity analysis in this CP is likely to understate the overall liquidity in IRS". ESMA explains in the CP that it included only a small part of TR data in the analysis due to missing fields and the fact that the MTF data it relied upon captured a relatively small part of the overall trading in IRS. Considering such dataset shortcomings, MFA encourages ESMA to continue to improve its liquidity assessment by assessing a broader, more global and higher quality dataset to obtain a more accurate view of liquidity in the derivatives markets. By doing so, MFA firmly believes that initial product scope differences between the US and EU regimes will continue to diminish over time.

<ESMA_QUESTION_MIFID_TO_6>

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

<ESMA_QUESTION_MIFID_TO_7>
Please see MFA's response to Q6.
<ESMA_QUESTION_MIFID_TO_7>

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

<ESMA_QUESTION_MIFID_TO_8>

MFA reiterates its belief that the TO should be closely aligned with the CFTC's MAT regime. Please see MFA's response to Q6 in this respect.

In addition, MFA would like to re-emphasise the importance of reviewing the liquidity of derivatives on a global basis rather than simply using EU data. For example, considering that more data on IRS denominated in USD is likely to be found in US SDR data, MFA encourages

ESMA to consider this data to complement its own analyses of EU data sources to reconcile remaining tenor discrepancies in product scope. In MFA's view, to achieve the same results and align the two regimes more closely, not only should ESMA be reviewing data on a global basis (as discussed in MFA's response to Q6), ESMA should also be using the current MAT determinations in the US as a guide to which types of derivative classes may be sufficiently liquid for the TO. As previously suggested in Q6, to the extent ESMA finds additional classes of derivatives to be liquid for the purposes of the TO that are not currently subject to the US MAT regime, ESMA should share its findings with the CFTC in an ongoing process to achieve full product scope alignment between the two regimes. Conversely, if ESMA's expanded dataset reveals insufficient liquidity in classes of derivatives for the TO that are subject to the MAT regime, ESMA should share its findings with the CFTC as part of a continuing reconciliation process toward the goal of full alignment.

Once ESMA has obtained a more accurate and broader range of data, it should ensure that, when it is attempting to more closely align the two regimes, it is identifying data which is most material to the liquidity assessment. In MFA's view, ESMA's focus should be directed to identifying the most complete range of liquid benchmark tenors instead of focusing on less material economic terms such as the fixed leg payment frequency and floating leg reset frequency. To obtain the right range of benchmark tenors within the scope of the TO, ESMA could seek additional trading data from CCPs and US SDRs to reconcile tenor discrepancies, such as the fact that the CFTC MAT scope includes IRS denominated in USD with benchmark tenors of 6Y, 12Y, 15Y and 20Y, whereas the EU regime would exclude them as insufficiently liquid. ESMA should also reconcile its much narrower set of tenor points of 5, 6 and 30 years as sufficiently liquid for USD IMM swaps with the substantially broader set of tenor points for such MAC and IMM swaps included in the CFTC MAT scope (see www.cftc.gov/idc/groups/public/@otherif/documents/file/swapsmadeavailablechart.pdf).
MFA encourages ESMA to review the right set of benchmark tenors which are central to the liquidity of a derivative when aligning the two regimes, and not concentrate on less material economic terms.

<ESMA_QUESTION_MIFID_TO_8>

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

<ESMA_QUESTION_MIFID_TO_9>
Please see MFA's response to Q6.
<ESMA_QUESTION_MIFID_TO_9>

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

<ESMA_QUESTION_MIFID_TO_10>

In general, please see MFA's comments in response to Q6 above. Consistent with MFA's concerns with regards to US/EU product scope differences for classes of IRS denominated in EUR and USD, MFA finds it counter-intuitive that a wider range of IRS contracts denominated in GBP can be found liquid under the CFTC MAT regime than under the TO considering there is, presumably, a more active market in IRS denominated in GBP in the EU than in the US. In addition, as noted earlier, liquidity in products such as GBP IRS is global in nature. MFA would like to stress again the importance of using an expanded dataset to reconcile remaining US/EU product scope discrepancies. MFA was encouraged to see that ESMA supplemented its liquidity analysis of fixed-to-float IRS denominated in GBP with feedback from stakeholders by proposing the same tenors as the US for IRS in GBP with Euribor 3M and 6M floating reference rates and terms.

<ESMA_QUESTION_MIFID_TO_10>

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

<ESMA_QUESTION_MIFID_TO_11>

Many MFA members trade on a cross-border basis in the US and EU and therefore support broad alignment of in-scope products between the CFTC MAT regime and the TO where possible. Consequently, MFA was pleased to see that ESMA has decided not to subject any fixed-to-float IRS denominated in JPY to the TO at this time. This exclusion is consistent with the CFTC MAT regime and therefore means that MFA members who trade IRS denominated in JPY in the US and EU will not be required to trade on-venue in either jurisdiction.

MFA also appreciates that ESMA complemented its liquidity analysis of IRS denominated in other currencies with the additional requirement that at least three tenor points in a particular class of derivatives should be sufficiently liquid for any IRS denominated in that currency to be in scope (see paragraph 91 of the CP).

<ESMA_QUESTION_MIFID_TO_11>

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

<ESMA_QUESTION_MIFID_TO_12>

MFA notes that ESMA has determined that certain European untranched index CDS should be liquid enough to be subject to the TO in both the on-the-run series and the entire first off-the-run series. ESMA's proposal for the TO in this regard is aligned with the CFTC MAT regime on European index CDS only. The index CDS MAT scope in the US is broader than the EU regime, as the CFTC also includes the North American CDX.NA.IG 5Y and CDX.NA.HY 5Y indices.

MFA understands that these North American reference indices are currently not subject to the EU CO and, therefore, will not be considered for the TO under ESMA's approach. While the CDX.NA.IG and CDX.NA.HY reference indices are liquid enough to be subject to the CO, ESMA believes it lacks the authority to update the public register even though they are now cleared by EU CCPs, which is a prerequisite to then consider subjecting them to the CO.

If, and when, these reference indices become subject to the CO, MFA believes ESMA should promptly consider them for inclusion in the product scope for the TO if ESMA determines they are sufficiently liquid.

<ESMA_QUESTION_MIFID_TO_12>

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

<ESMA_QUESTION_MIFID_TO_13>

Yes. MFA has previously supported matching the phase-in of the TO with the CO so that no derivative transacted by a market participant will be subject to the TO prior to the CO applying to such market participant. Thus, MFA is pleased to see that ESMA has adopted this approach for the phase-in of the TO.

MFA would like to reiterate the points it made in the MFA DP Response with regards to the phase-in of the TO, namely that the delay to the phase-in of the CO for Category 3 entities will provide smaller market participants with ample time to prepare themselves operationally for the TO (*e.g.*, on-boarding themselves at trading venues and finalising their internal systems). Additionally, many market participants (including MFA members) are already trading MAT swaps on SEFs and DCMs under the CFTC regime, which has been in place since February 2014. Thus, these market participants should be ready to meet the proposed compliance deadlines under the TO without facing operational difficulties or incurring substantial onboarding expenditures.

<ESMA_QUESTION_MIFID_TO_13>

CBA QUESTIONS

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

<ESMA_QUESTION_MIFID_TO_14>

Category	Number of employees	Total Notional traded 2016 (in thousands euros)	Total number of trades 2016
EMIR Category 1	**[1-50]**	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[51-250]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[251-1000]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	>1000	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
EMIR Category 2	**[1-50]**	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[51-250]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[251-1000]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	>1000	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
EMIR Category 3	**[1-50]**	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[51-250]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[251-1000]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
		TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
EMIR Category 4	**[1-50]**	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[51-250]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[251-1000]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

	>1000	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Trading Venue	**[1-50]**	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[51-250]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	[251-1000]	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
	>1000	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

<ESMA_QUESTION_MIFID_TO_14>

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

<ESMA_QUESTION_MIFID_TO_15>

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

<ESMA_QUESTION_MIFID_TO_15>

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

Q16. Out of the trading activity expected to be captured by the TO, as identified under Q2, which % is already traded on an EU regulated market, an EU Multilateral Trading

Facility (MTF), a US Swap Execution Facility (SEF) or another third-country trading venue?

<ESMA_QUESTION_MIFID_TO_16>

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

<ESMA_QUESTION_MIFID_TO_16>

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

<ESMA_QUESTION_MIFID_TO_17>

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

6. I am considering other arrangements; Please explain those arrangements in the Comments section	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

<ESMA_QUESTION_MIFID_TO_17>

CBA Question 18 is to be answered by trading venues

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

<ESMA_QUESTION_MIFID_TO_18>

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

<ESMA_QUESTION_MIFID_TO_18>

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

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

<ESMA_QUESTION_MIFID_TO_19>

TO Impact	Positive Impact	Negative impact
Impact on your business model/ organisation/ client relationship	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Impact on your revenues	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Impact on market structure (e.g. principal vs. agency trading etc).	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Impact on market liquidity and execution costs.	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Other impacts. Please elaborate	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

<ESMA_QUESTION_MIFID_TO_19>

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

<ESMA_QUESTION_MIFID_TO_20>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MIFID_TO_20>

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

<ESMA_QUESTION_MIFID_TO_21>

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

<ESMA_QUESTION_MIFID_TO_21>

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

<ESMA_QUESTION_MIFID_TO_22>

Please enter here “Low”, “Medium” or “High” TYPE YOUR TEXT HERE

<ESMA_QUESTION_MIFID_TO_22>