



European Securities and  
Markets Authority

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



10 November 2016

## Responding to this paper

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

### **Instructions**

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

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA\_ QUESTION\_MIFID\_PO\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

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

### **Naming protocol**

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

ESMA\_MiFID\_PO\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

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

ESMA\_MiFID\_PO\_ESMA\_REPLYFORM or

ESMA\_MiFID\_PO\_ESMA\_ANNEX1

### **Deadline**

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

All contributions should be submitted online at [www.esma.europa.eu](http://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](http://www.esma.europa.eu) under the headings 'Legal notice' and 'Data protection'.



## Introduction

**Please make your introductory comments below, if any:**

< ESMA\_COMMENT\_MIFID\_PO\_0 >

### Introduction

The Federation of European Securities Exchanges (FESE) represents 36 exchanges in equities, bonds, derivatives and commodities through 20 Full Members from 29 countries, as well as 1 Affiliate Member and 1 Observer Member. FESE represents public Regulated Markets (RMs), which provide both institutional and retail investors with transparent and neutral price-formation.

At the end of 2015, FESE members had 9,201 companies listed on their markets, of which 6% are foreign companies contributing towards the European integration and providing broad and liquid access to Europe's capital markets. Many of our members also organise specialised markets that allow small and medium sized companies across Europe to access the capital markets; 1,299 companies were listed in these specialised markets/segments in equity, increasing choice for investors and issuers. Through their RM and MTF operations, FESE members are keen to support the European Commission's objective of creating a single market in capital markets.

FESE is registered in the European Union Transparency Register with number 71488206456-23.

### General Comments

FESE believes that the proposal by ESMA, as presented in the Consultation Paper, will result in a much more restrictive pre-trade transparency regime for Exchange Traded Derivatives (ETDs) package orders than for individual transactions. This is because the approach proposed in the Consultation Paper would result in the vast majority of ETD packages being determined as liquid, meaning the waiver could not be applied to them. From an exchange and ETD point of view, the proposed rules would in effect negate the waiver for package orders in Level 1, as ETDs would automatically fulfil the 'general criteria' (given these criteria focus on being admitted to trading or traded on a venue, having standardised contractual terms and being available for clearing), and the majority would also fulfil the 'asset-specific criteria', for being considered liquid. This is particularly the case for equity derivatives, and to a lesser degree for credit and interest rate derivatives.

Furthermore, the proposed regime for package orders is inconsistent with the regime for individual transactions (with the exception of the regime for individual equity derivatives) regarding the methodology used: while the pre-trade transparency regime for individual transactions is based on quantitative methodology, the regime for package orders is based on qualitative criteria.

We would also like to emphasise that Article 9(6) of MiFIR states:

*"In order to ensure the consistent application of points (i) and (ii) of paragraph (1)(e), ESMA shall develop draft regulatory technical standards to establish a methodology for determining those package orders for which there is a liquid market. **When developing such methodology for determining whether there is a liquid market for a package order as a whole, ESMA shall assess whether packages are standardised and frequently traded.**"*

However, the proposed methodology concentrates on characteristics of individual components of the package rather than assessing the package as a whole. In this context, it is important to point out that while the individual components of a package may indeed be liquid, that does not automatically translate into the package as a whole being liquid. Furthermore, the proposed rules do not include the 'frequently traded' criterion. Therefore, we would recommend that ESMA considers some quantitative criteria, some of which should assess the package order as a whole. Therefore, we propose that a package should be deemed liquid if the following criteria are fulfilled (to be applied cumulatively):

- There are three or more investment firms which hold themselves out as market-makers in relation to the specific package order in question; and

- Transactions which occur as a result of such a package order account for at least 25% of the total transactions in each component of the package (calculated on an annual basis); and
- The average daily number of total transactions in the package as a whole is 10 or more (calculated on an annual basis).

The key element is to ensure that the transparency regime applied to a package order does not harm the liquidity providers (e.g. hedging purposes) in the case where one or more component is above the pre-trade LIS. This has been among the key elements in advocating for a pre-trade transparency regime specific for package transactions introduced by the MiFID II 'Quick Fix' Regulation and in line with the concerns already expressed by FESE in its non-paper on EFPs/Package Transactions which was forwarded to the legislators and ESMA in April 2016. It is therefore important to preserve this principle, as neglecting it could harm the ability of dealers in providing liquidity in a cost-effective way and could ultimately result in increased total cost of trading for the end investor, and in reduced ability to mitigate risks.

FESE is therefore very concerned about paragraph 19 of the Consultation Paper (page 11-12):

*“Following the publication of the Quick Fix Regulation ESMA received requests from stakeholders to introduce the possibility to waive pre-trade transparency obligations for a package order that is considered liquid as a whole where the package order is “as a whole” large in scale (LIS) compared with normal market size. ESMA understands the wish of stakeholders to benefit from a waiver to such orders. **However, after due consideration of the legal mandate, ESMA does not see any room for developing LIS-thresholds for liquid package orders.**”*

Many non-equity instruments are deemed as liquid under RTS 2 and based on extensive quantitative analysis and criteria, pre-trade transparency thresholds have been defined in order to safeguard the critical role of liquidity providers when trading in large sizes. The LIS-thresholds should implicitly be extended to any ESMA recognized type of liquid package transactions based on such non-equity components. ESMA in that sense does not need to develop any specific LIS-thresholds for liquid packages.

Neglecting this principle would harm the ability of dealers to provide liquidity in a cost-effective way and would ultimately result in increased total cost of trading for the end investor. Furthermore, it would have dramatic consequences for the block market with the likely outcome of liquidity moving OTC in order to avoid the negative impact of a transparency regime that neglects the basic principles of facilitating liquidity provision.

It is hard to conceive a situation where a package order based on components that can avail of the pre-trade LIS waiver when traded individually (e.g. common equity derivatives strategies) could not be granted any pre-trade transparency waiver even when above the min block trade size.

FESE therefore wishes to emphasise that market participants need to be able to continue to use the LIS waiver, either for individual legs of the package order or for the package order as a whole, in order to facilitate large package orders. In the obvious case where all components are above their individual pre-trade LIS thresholds, an implicit pre-trade transparency waiver for the whole package should be granted. Failing to do so would critically damage the ability of liquidity providers to hedge the risk they undertake. Large package orders cannot be put on the order book, which means that in the absence of such a LIS waiver, these packages would disappear from exchanges, and be traded OTC which would greatly reduce the liquidity on trading venues, increase liquidity fragmentation, and negatively impact the overall level of transparency compared to current levels.

FESE also believes it is necessary to establish the types of packages which are currently recognised by trading venues. Regardless of asset class, such package types fall into the following two broad categories:



- Those for which all components of the package are executed within the trading venue (a “Type 1 Package”); and
- Those for which one (or more) of the components is executed outside the trading venue (i.e. either in the OTC market or in a separate trading venue) (a “Type 2 Package”).

An example of a Type 1 Package would be a package comprising two different maturities of the same futures contract (e.g. the December 2016 and March 2017 delivery months of the Bund Futures Contract traded on Eurex). An example of a Type 2 Package would be a package comprising a futures contract and a related bond (e.g. the December 2016 delivery month of the Long Gilt Futures Contract traded on ICE Futures Europe, and a specific UK Government Bond traded in the OTC market or on an MTF).

Wherever possible, and given the choice, trading venues will tend to make packages available on a “Type 1” basis, because doing so enables them to add most value to the trading process (in terms of efficiency, transparency and breadth of participation). However, that choice is not always available (e.g. in cases where one component of the package does not lend itself to electronic trading because it is not sufficiently standardised or where its core parameters can be varied), in which case the trading venue will need to make packages available on a “Type 2” basis.

However, when it comes to these ‘Type 2’ packages, a trading venue will have no control over the other leg(s) of the package (i.e. leg(s) executed on other trading venues or OTC). It is therefore unclear how trading venues can apply the proposed regime to such packages. We would also recommend that if such a package has more than two components it should be considered illiquid.

For your information, in Q40 (CBAQ12) we provide input from one of our members, Nasdaq.

< ESMA\_COMMENT\_MIFID\_PO\_0 >



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

<ESMA\_QUESTION\_MIFID\_PO\_1>

We agree with ESMA proposal. SIs should be subject to equivalent rules in order to ensure a level playing field.

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<ESMA\_QUESTION\_MIFID\_PO\_1>

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

<ESMA\_QUESTION\_MIFID\_PO\_2>

It is important that any qualitative criteria used to define a package as liquid is not at the expense of the key priority of protecting the activity of the liquidity providers in the presence of one or more components that is above pre-trade LIS thresholds.

From an exchange and exchange-traded derivatives (ETDs) point of view, the proposed rules would in effect negate the waiver for package orders in Level 1, as ETDs automatically fulfil the ‘general criteria’, and the majority would also fulfil the ‘asset-specific criteria’, for being considered liquid. This is particularly the case for equity derivatives, and to a lesser degree for credit and interest rate derivatives.

The proposed methodology concentrates on characteristics of individual components of the package rather than assessing the package as a whole, which we find to be at odds with Article 9(6) of MiFIR. In this context, is important to point out that while the individual components of a package may indeed be liquid, that does not automatically translate into the package as a whole being liquid. Furthermore, the proposed rules do not include the ‘frequently traded’ criterion. Therefore, we would recommend that ESMA considers some quantitative criteria, some of which should assess the package order as a whole. Therefore, we propose that a package should be deemed liquid if the following criteria are fulfilled (to be applied cumulatively):

- There are three or more investment firms which hold themselves out as market-makers in relation to the specific package order in question; and
- Transactions which occur as a result of such a package order account for at least 25% of the total transactions in each component of the package (calculated on an annual basis); and
- The average daily number of total transactions in the package as a whole is 10 or more (calculated on an annual basis).

While it is quite easy to identify standardized *type* of strategies, most of these do trade very infrequently when compared to the turnover on the individual components. The possible *strategy orderbooks* can be a very large number due to the variety of possible combination of different strikes & maturities chosen by the investors to define the package they need to trade. It is therefore key to properly identify the strategies in utmost granular terms (individual package transaction type/complex instrument signature) that trade on a frequent basis electronically.

As a way of example, below you will find some statistics that could help assessing the frequency of trading strategies in Nasdaq Nordic equity derivatives market for the period: 1 Aug – 31 Oct 2016.

Product	Total Volume (SC)	Volume, Strategies (SC)	Nbr of Total Deals (SC)	Nbr of Deals, Strategies (SC)	Nbr of Strategy order-books	Nbr Deals per
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						Strategy order-book
Equity Options	5 231 513	185 077	76 528	2 188	1 033	2,1
Index Futures	9 289 394	1 993 571	1 221 469	98 210	12	8 184
Index Options	1 850 014	34 913	56 064	829	1 194	0,7

The table reports total traded volumes in contracts (column *Total Volume (SC)*) for different product types including also volumes traded as part of packages. The column *Volume Strategies (SC)* reports the total volumes for each product type that was traded only as part of package.

Already by comparing these numbers, it is quite obvious that volumes traded via packages in electronic orderbooks are very limited compared to the total.

The next 2 columns (*Nbr of Total Deals(SC)* and *Nbr of Deals, Strategies (SC)*) are providing a similar comparison but in terms of deals.

The column Nbr of Strategy orderbooks, reports how many electronic orderbooks for packages where available for trading during the observation period.

The ratio of deals on strategy orderbooks and number of total strategy orderbooks is extremely low with the sole exception of index futures where the calendar roll orderbook trades relatively frequently but only limited to expiration weeks.

For these reasons, we conclude that none of the standard types of equity derivatives strategies are considered as having a liquid market for the purpose of Article 9 (1)(e)(ii).

<ESMA\_QUESTION\_MIFID\_PO\_2>

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

<ESMA\_QUESTION\_MIFID\_PO\_3>

For exchange traded derivatives, the general criteria are given and do not add any additional value. The focus instead should be on quantitative criteria that assess the package and its liquidity as a whole, such as (to be applied cumulatively):

- Number of investment firms which hold themselves out as market-makers in relation to the specific package order in question; and
- Transactions which occur as a result of such a package order compared to the total transactions in each component of the package; and
- The average daily number of total transactions in the package as a whole (calculated on an annual basis).

<ESMA\_QUESTION\_MIFID\_PO\_3>

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

<ESMA\_QUESTION\_MIFID\_PO\_4>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_PO\_4>

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

<ESMA\_QUESTION\_MIFID\_PO\_5>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_PO\_5>

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

<ESMA\_QUESTION\_MIFID\_PO\_6>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_PO\_6>

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

<ESMA\_QUESTION\_MIFID\_PO\_7>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_PO\_7>

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

<ESMA\_QUESTION\_MIFID\_PO\_8>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_PO\_8>

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

<ESMA\_QUESTION\_MIFID\_PO\_9>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_PO\_9>



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

<ESMA\_QUESTION\_MIFID\_PO\_10>

For identifying the most standardized strategies, we agree with ESMA that the number of components should be capped but have no common position within FESE on the exact level.

Strategies with different ratios among components should not be considered standardized.

Strategies with cross-asset equity instruments (e.g. derivatives vs the underlying shares) should not be considered standardized as the individual components are usually traded on different trading venues (i.e. limited possibility to trade electronically such a strategy in a single orderbook).

Volatility trades i.e. options vs futures/shares should not be considered standardized or liquid.

<ESMA\_QUESTION\_MIFID\_PO\_10>

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

<ESMA\_QUESTION\_MIFID\_PO\_11>

Yes, they should be included. In any case, all EEA currencies should be included as many of them also trade on venues that will be subject to this approach. In addition, we see no reason to exclude non-EEA currencies that trade in the EU.

<ESMA\_QUESTION\_MIFID\_PO\_11>

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

<ESMA\_QUESTION\_MIFID\_PO\_12>

While we think that in general packages traded heavily across different underlyings should not automatically be exempt, for equity derivatives, the standard type of strategies have all components based on the same underlying and therefore it seems reasonable to introduce this criteria here, keeping in mind the recommendations in Q10.

<ESMA\_QUESTION\_MIFID\_PO\_12>

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

<ESMA\_QUESTION\_MIFID\_PO\_13>

TYPE YOUR TEXT HERE



<ESMA\_QUESTION\_MIFID\_PO\_13>

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

<ESMA\_QUESTION\_MIFID\_PO\_14>

Yes, they should be included. In any case, all EEA currencies should be included as many of them also trade on venues that will be subject to this approach. In addition, we see no reason to exclude non-EEA currencies that trade in the EU.

<ESMA\_QUESTION\_MIFID\_PO\_14>

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

<ESMA\_QUESTION\_MIFID\_PO\_15>

We believe that there is no need to further specify underlying indices. This would only artificially limit packages that may be liquid, but would not be regarded as such because the underlying index has not been specified.

<ESMA\_QUESTION\_MIFID\_PO\_15>

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

<ESMA\_QUESTION\_MIFID\_PO\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_PO\_16>

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

<ESMA\_QUESTION\_MIFID\_PO\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_PO\_17>

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

<ESMA\_QUESTION\_MIFID\_PO\_18>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_PO\_18>

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

<ESMA\_QUESTION\_MIFID\_PO\_19>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_PO\_19>

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

<ESMA\_QUESTION\_MIFID\_PO\_20>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_PO\_20>

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

<ESMA\_QUESTION\_MIFID\_PO\_21>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_PO\_21>

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

<ESMA\_QUESTION\_MIFID\_PO\_22>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_PO\_22>

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



<ESMA\_QUESTION\_MIFID\_PO\_23>

We see no reason to treat those any differently from packages with one asset class. The criterion should be whether the package as a whole is liquid (based at least in part on quantitative criteria). Placing these types of packages out of scope before even assessing possible liquidity would go against the (goal of) Level 1 text.

<ESMA\_QUESTION\_MIFID\_PO\_23>

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

<ESMA\_QUESTION\_MIFID\_PO\_24>

FESE disagrees with the approach of using the trading obligation as a possible criterion without further assessing the liquidity of the whole package based on some quantitative criteria. The trading obligation on the individual components is not a guarantee that any package based on such components has such a high level of liquidity as a whole to overcome the need for a pre-trade transparency waiver.

It would seem inconsistent if an order on an instrument subject to the trading obligation can be granted a waiver if above the pre-trade LIS when traded individually, but a package built on such instruments cannot be granted such a pre-trade transparency waiver. In the first case the liquidity provider is safeguarded in executing its hedge while in the second case they are not.

<ESMA\_QUESTION\_MIFID\_PO\_24>

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

<ESMA\_QUESTION\_MIFID\_PO\_25>

FESE disagrees with the approach of using the trading obligation and the clearing obligation as possible criteria without further assessing the liquidity of the whole package based on some quantitative criteria. The trading and clearing obligation on the individual components is not a guarantee that any package based on such components has such a high level of liquidity as a whole to overcome the need for a pre-trade transparency waiver.

It would seem inconsistent if an order on an instrument subject to the trading and/or clearing obligation can be granted a waiver if above the pre-trade LIS when traded individually, but a package built on such instruments cannot be granted such a pre-trade transparency waiver. In the first case the liquidity provider is safeguarded in executing its hedge while in the second case they are not.

<ESMA\_QUESTION\_MIFID\_PO\_25>



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

<ESMA\_QUESTION\_MIFID\_PO\_26>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_PO\_26>

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

<ESMA\_QUESTION\_MIFID\_PO\_27>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_PO\_27>

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

<ESMA\_QUESTION\_MIFID\_PO\_28>

FESE believes that the draft RTS would result in a much more restrictive pre-trade transparency regime for package orders than for individual transactions. Furthermore, the proposed regime for package orders is inconsistent with the regime for individual transactions regarding the methodology used: while the pre-trade transparency regime for individual transactions is based on quantitative methodology, the regime for package orders is based on qualitative criteria.

From an exchange and exchange-traded derivatives (ETDs) point of view, the proposed rules would in effect negate the waiver for package orders in Level 1, as ETDs automatically fulfil the 'general criteria', and the majority would also fulfil the 'asset-specific criteria', for being considered liquid. This is particularly the case for equity derivatives, and to a lesser degree for credit and interest rate derivatives.

We would also like to emphasise that Article 9(6) of MiFIR states:

*"In order to ensure the consistent application of points (i) and (ii) of paragraph (1)(e), ESMA shall develop draft regulatory technical standards to establish a methodology for determining those package orders for which there is a liquid market. **When developing such methodology for determining whether there is a liquid market for a package order as a whole, ESMA shall assess whether packages are standardised and frequently traded.**"*

However, the proposed methodology concentrates on characteristics of individual components of the package rather than assessing the package as a whole. In this context, it is important to point out that while the individual components of a package may indeed be liquid, that does not automatically translate into the package as a whole being liquid. Furthermore, the proposed rules do not include the 'frequently traded' criterion. Therefore, we would recommend that ESMA considers some quantitative criteria, some of which should assess the package order as a whole. Hence, we propose that a package should be deemed liquid if the following criteria are fulfilled (to be applied cumulatively):

- There are three or more investment firms which hold themselves out as market-makers in relation to the specific package order in question; and
- Transactions which occur as a result of such a package order account for at least 25% of the total transactions in each component of the package (calculated on an annual basis); and

- The average daily number of total transactions in the package as a whole is 10 or more (calculated on an annual basis).

FESE would also like to emphasise that trading venues need to be able to continue to use the LIS waiver, either for individual legs of the package order or for the package order as a whole, in order to facilitate large package orders. In the obvious case where all components are above their individual pre-trade LIS thresholds, an implicit pre-trade transparency waiver for the whole package should be granted. Failing to do so would critically damage the ability of liquidity providers to hedge the risk they undertake. Large package orders cannot be put on the order book, which means that in the absence of such as LIS waiver, these packages would disappear from exchanges, and be traded OTC which would greatly reduce the liquidity on trading venues, increase liquidity fragmentation, and negatively impact the overall level of transparency compared to current levels.

It is hard to conceive a situation where a package order based on components that can avail of the pre-trade LIS waiver when traded individually (e.g. common equity derivatives strategies) could not be granted any pre-trade transparency waiver even when above the min block trade size.

<ESMA\_QUESTION\_MIFID\_PO\_28>

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

<ESMA\_QUESTION\_MIFID\_PO\_29>

	Total Nominal amount traded, including packages (in euros) Sept 2015-Sept 2016		% of packages (including EFPs)		% of packages (with only financial instruments as components)	
	Trading venues	OTC	Trading venues	OTC	Trading venues	OTC
<b>Interest rate derivatives</b>						
Euro						

USD						
GBP						
Other currencies (please specify)						
<b>Equity derivatives</b>						
Euro						
USD						
GBP						
Other currencies (please specify)						
<b>Credit derivatives</b>						
Euro						
USD						
GBP						
Other currencies (please specify)						
<b>Commodity derivatives</b>						
Euro						
USD						
GBP						
Other currencies (please specify)						

<ESMA\_QUESTION\_MIFID\_PO\_29>

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

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

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

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

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

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

<ESMA\_QUESTION\_MIFID\_PO\_30>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_PO\_30>



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

<ESMA\_QUESTION\_MIFID\_PO\_31>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_PO\_31>

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

<ESMA\_QUESTION\_MIFID\_PO\_32>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_PO\_32>

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

**very low;**

**low;**

**medium; or,**

**high.**

<ESMA\_QUESTION\_MIFID\_PO\_33>  
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<ESMA\_QUESTION\_MIFID\_PO\_33>

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

<ESMA\_QUESTION\_MIFID\_PO\_34>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_MIFID\_PO\_34>

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

<ESMA\_QUESTION\_MIFID\_PO\_35>  
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**Q36. CBAQ8: If so, please explain**

<ESMA\_QUESTION\_MIFID\_PO\_36>

Expected Impact on	Yes/No/NA	Positive Impact	Negative impact
Market structure (changes in trading models, in trading strategies...)	Yes		An inappropriate transparency regime for package orders could lead to volumes moving from on-exchange to OTC
Liquidity (please explain how you measure liquidity)	Yes		A move to OTC trading would greatly reduce the liquidity in the trading venues and the overall level of transparency compared to current situation
End users	Yes		End investors may face significantly higher cost of trading due to the risk the liquidity providers would be exposed in case of an inappropriate transparency regime for package orders
Other (specify)			

<ESMA\_QUESTION\_MIFID\_PO\_36>

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

<ESMA\_QUESTION\_MIFID\_PO\_37>

FESE believes that the draft RTS would result in a much more restrictive pre-trade transparency regime for package orders than for individual transactions. Furthermore, the proposed regime for package orders is inconsistent with the regime for individual transactions regarding the methodology used: while the pre-trade transparency regime for individual transactions is based on quantitative methodology, the regime for package orders is based on qualitative criteria.

From an exchange and exchange-traded derivatives (ETDs) point of view, the proposed rules would in effect negate the waiver for package orders in Level 1, as ETD based packages automatically fulfil the 'general criteria', and the majority would also fulfil the 'asset-specific criteria'. This means that the majority of packages currently offered by our members would be considered liquid under the proposed RTS. This is particularly the case for equity derivatives, and to a lesser degree for credit and interest rate derivatives.

FESE would also like to emphasise that trading venues need to be able to continue to use the LIS waiver, either for individual legs of the package order or for the package order as a whole, in order to facilitate large package orders. In the obvious case where all components are above their individual pre-trade LIS thresholds, an implicit pre-trade transparency waiver for the whole package should be granted. Failing to do so would critically damage the ability of liquidity providers to hedge the risk they undertake. Large package orders cannot be put on the order book, which means that in the absence of such a LIS waiver, these packages would disappear from exchanges, and be traded OTC which would greatly reduce the liquidity on trading venues, increase liquidity fragmentation, and negatively impact the overall level of transparency compared to current levels.

It is hard to conceive a situation where a package order based on components that can avail of the pre-trade LIS waiver when traded individually (e.g. common equity derivatives strategies) could not be granted any pre-trade transparency waiver even when above the min block trade size.



<ESMA\_QUESTION\_MIFID\_PO\_37>

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

<ESMA\_QUESTION\_MIFID\_PO\_38>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MIFID\_PO\_38>

**For trading venues only**

**Q39. CBAQ11: Do you offer trading in packages?**

<ESMA\_QUESTION\_MIFID\_PO\_39>

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<ESMA\_QUESTION\_MIFID\_PO\_39>

**Q40. CBAQ12: If so, please describe, per asset class, the categories of packages for which pre-trade transparency is currently provided. Please also state whether you consider those packages as liquid and the criteria taken into consideration (e.g. spreads, volume traded, number of transactions, number of market participants). If no sufficient space is available to respond, please provide the information in an annex.**

<ESMA\_QUESTION\_MIFID\_PO\_40>

Package Categories with pre-trade transparency	Currency	Tenor	Reference index	Other characteristics (please identify)	Liquidity assessment (Y/N) and underlying criteria
<b>Interest rate derivatives</b>					
<b>Equity derivatives</b>					
All standardized and tailor-made equity and index option strategies	All currencies			Same UL for all components and max 4 components	Not liquid as each package order-book trades very infrequently as described in Q2
Index and single stock future calendar roll	All currencies			Same UL for all components and max 2 components	Not liquid as these packages trade only in conjunction to the expiration of

					contracts as described in Q2
<b>Credit derivatives</b>					
<b>Commodity derivatives</b>					
<b>Others (please specify)</b>					

<ESMA\_QUESTION\_MIFID\_PO\_40>