



European Securities and
Markets Authority

Reply form for the Consultation Paper on MiFID II/ MiFIR review report on the transparency re- gime for equity and equity-like instruments, the DVC and the trading obligations for shares



Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation Paper on the transparency regime for equity and equity-like instruments, the double volume cap mechanism and the trading obligations for shares MiFID II/ MiFIR review report published on the ESMA website.

Instructions

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

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA_QUESTION_CP_MIFID_EQT_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

- if they respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

Naming protocol

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

ESMA_CP_MiFID_EQT_NAMEOFCOMPANY_NAMEOFDOCUMENT.

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

ESMA_CP_MiFID_EQT_ESMA_REPLYFORM or

ESMA_CP_MiFID_EQT_ANNEX1

Deadline

Responses must reach us by **17 March 2020**.

All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your input - Consultations’.



Publication of responses

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the headings 'Legal notice' and 'Data protection'.



General information about respondent

| | |
|--------------------------------------|---|
| Name of the company / organisation | FIA European Principal Traders Association (FIA EPTA) |
| Activity | Other Financial service providers |
| Are you representing an association? | <input checked="" type="checkbox"/> |
| Country/Region | Europe |

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CP_MIFID_EQT_1>

The FIA European Principal Traders Association (FIA EPTA) represents 28 independent European Principal Trading Firms (PTFs) that deal on own account, using their own money for their own risk, to provide liquidity and immediate risk-transfer in exchange-traded and centrally-cleared markets for a wide range of instruments, including shares, options, futures, bonds and ETFs. As market makers and liquidity providers, our members contribute to efficient, resilient, and high-quality secondary markets that serve the investment and risk management needs of end-investors and corporates throughout the EU. Our members are active participants on almost all European exchanges and platforms. Moreover, our members are important sources of liquidity for institutional investors accessing liquidity pools across Europe.

FIA EPTA supports transparent, robust and safe markets with a level playing field and appropriate regulation for market participants. We consistently support the aim of the market structure reforms laid out in MiFID II/MiFIR and welcome the opportunity to respond to this consultation on the transparency regime for equity and equity-like instruments, including the double volume cap mechanism and the trading obligation for shares. We stand ready to support ESMA with any further information it may require.

As liquidity providers, FIA EPTA members have adapted to the evolving European equities market structure and the regulatory changes thereto. Collectively, FIA EPTA members provide liquidity across all types of MiFID II execution systems (RMs, MTFs and SIs) and trading protocols (CLOB, RFQ, auction-based) for shares and equity-like instruments.

FIA EPTA members strongly support the application of pre-trade transparency as a key mechanism to ensure efficient price formation across execution venues. As such, pre-trade transparency is essential for ensuring effective liquidity aggregation that enables best execution for end-investors. Further, FIA EPTA members support the Share Trading Obligation as a mechanism to ensure that the trading of shares and equity-like instruments takes place, to the greatest extent, in an organised trading environment which is subject to calibrated transparency requirements. FIA EPTA members consider that optimising market transparency for shares and equity-like instruments is essential for facilitating efficient price formation and enabling best execution in a competitive order execution market. All of this benefits end-investors by enabling trading interest to effectively interact, reducing search and trading costs.

For a balanced outcome, any exemptions from the pre-trade transparency regime should be calibrated in a careful manner to ensure appropriate levels of market transparency facilitating best execution for end-investors. FIA EPTA members consider it important, in that regard, that the ensuing waivers are used fairly and appropriately to their purpose. Further, careful consideration should be given to the practical operation of the share trading obligation. FIA EPTA members would welcome ESMA to adopt a pragmatic approach to the scope of the share trading obligation (STO) to ensure that EU firms are able to access the main pool of liquidity for individual shares and the STO does not interfere with firms' ability to meet their best execution obligations. At the same time, FIA EPTA's members have a nuanced view regarding the role of SIs in relation to the share trading obligation.



Finally, in view of the trend towards a greater concentration of orders at the close, FIA EPTA members express concern that this concentration of trading during the closing auction may be detrimental to liquidity during earlier trading sessions. and would support a more even distribution of trading volume throughout the day. This would help to increase the reliability of the price discovery process for market participants and improve execution quality for end-investors over the course of the trading day. FIA EPTA consider that the establishment of EU wide Consolidated Tape as mandated in MiFID II would help to significantly mitigate this trend.

<ESMA_COMMENT_CP_MIFID_EQT_1>

Q1. What is your view on only allowing orders that are large in scale and orders in an order management facility to be waived from pre-trade transparency while removing the reference price and negotiated trade waivers? Instead of removing the RP and NT waivers, would you prefer to set a minimum threshold above which transactions under the RP and NT waivers would be allowed? If so, what should be the value of such threshold? What alternatives do you propose to simplify the MiFIR waivers regime while improving transparency available to market participants? Please explain.

<ESMA_QUESTION_CP_MIFID_EQT_1>

FIA EPTA members strongly support the application of pre-trade transparency as a key mechanism to ensure efficient price formation across execution venues. As such, pre-trade transparency is essential for ensuring effective liquidity aggregation that enables best execution for end-investors.

For a balanced outcome, it is important that any exemptions from the pre-trade transparency regime are calibrated in a careful manner and that the ensuing waivers are used fairly and appropriately to their purpose. The waiver regime is intended to protect market participants from undue adverse market movements following the execution of orders; therefore we agree with ESMA that the importance of the LIS waiver is undisputed, given that it protects the bona fide interests of institutional end-investors and liquidity providers.

However, some of our members are concerned that the reference price (RP) and negotiated trade (NT) waivers have been overused since the application of MiFID II, in particular for trades in smaller sizes, leading to an undue deterioration of the price formation process. These FIA EPTA members would support, therefore, removing the RP and NT waivers.

By contrast, other FIA EPTA members support the continuation the RP and NT waivers and consider that these afford greater flexibility in achieving best execution for end-investors while still ensuring that the price discovery process is not unduly compromised.

We would suggest to ESMA to assess any potential changes to the transparency and the wider market structure regimes holistically so as to mitigate any unintended consequences. As regards to the NT and RP waivers, should they be maintained, FIA EPTA members consider that such assessment should focus on ensuring that the waivers are used fairly and appropriately for their original purpose, i.e., to ensure that relatively smaller or less sophisticated institutional end-investors can effectively execute on markets where more sophisticated strategies are being deployed.

<ESMA_QUESTION_CP_MIFID_EQT_1>

Q2. Do you agree to increase the pre-trade LIS threshold for ETFs to EUR 5,000,000? Please explain.

<ESMA_QUESTION_CP_MIFID_EQT_2>

FIA EPTA members support a consolidated and consistent approach to the calibration of the LIS thresholds and consider that instruments that behave similarly should be treated in a similar fashion. In that light, we would not support a regime for ETFs that further deviates from the equity LIS. ETFs with smaller trading size and liquidity should not be subject to higher thresholds for pre-trade transparency and deferred publication. Ideally, similar instruments should be subject to the same thresholds and regime as equities or certificates with a similar profile.

With regards to the ETFs that have lower percentages of pre-trade transparency under LIS, FIA EPTA would like to provide some context. We believe ESMA should not only consider the percentage figures for transparency to assess whether the LIS-threshold is 'right' for that instrument (as well as others) but rather take into account end-users' needs and their business cases to trade in differing sizes.



Many ETFs in the EU are traded in large size with wholesale/institutional counterparties who (in turn) need to trade at NAV because that is how their portfolio is marked. This also shows in the figures for ETFs: a number of very large trades will heavily skew statistics in the absence of large amounts of small trades.

Overall, we would suggest ESMA to consider a more granular approach which would more adequately reflect the variety in traded volumes in ETFs, as well as their variety in underlying assets. The trading characteristics of an ETF resemble those of its underlying assets which requires a careful assessment rather than a single high-threshold regime, assuming ETFs resemble highly-liquid equities that trade in high-volume.

Ideally, a unified threshold table acknowledging these dynamics could be based on an axis of liquidity (liquid<>illiquid) and average traded size (as a proxy for retail vs. institutional trading, and corresponding transparency levels). Additionally, we would advise ESMA to take into account median and mode numbers as a potential alternative or additional approach to using averages.

Any transparency table should apply to all equity and equity-like instruments sharing the same characteristics. FIA EPTA members would be happy to provide further technical input to ESMA on these points.

<ESMA_QUESTION_CP_MIFID_EQT_2>

Q3. Do you agree with extending the scope of application of the DVC to systems that formalise NT for illiquid instruments?

<ESMA_QUESTION_CP_MIFID_EQT_3>

Building on our answer to Q1 above, FIA EPTA members, on the one hand, believe that the application of the NT waiver should be as limited as possible to promote maximum transparency to support efficient price formation, particularly below wholesale sizes. In that regard, extending of the DVC may be warranted. However, on the other hand, FIA EPTA members also recognise that illiquid instruments that cannot attract sufficient liquidity in the order book may benefit from the NT waiver and that limiting its use for such specific instances may not be desirable especially where it pertains to shares of SMEs. We would urge ESMA to carefully assess this to attain a proper balance and we consider that our suggestions under Q7 may be helpful in this regard.

<ESMA_QUESTION_CP_MIFID_EQT_3>

Q4. Would you agree to remove the possibility for trading venues to apply for combination of waivers? Please justify your answer and provide any other feedback on the waiver regime you might have.

<ESMA_QUESTION_CP_MIFID_EQT_4>

As set out in our response to Q1, some of our members are in favour of limiting the RP and NT waivers while others see legitimate use cases for these waivers. The same considerations would apply when assessing the use of combined waivers below LIS.

<ESMA_QUESTION_CP_MIFID_EQT_4>

Q5. Do you agree with the proposal to report the volumes under the different waivers separately to FITRS? Please explain.

<ESMA_QUESTION_CP_MIFID_EQT_5>



FIA EPTA members agree with this proposal and would welcome any additional measures that enable policy makers to better assess and appropriately calibrate the waiver regime.
<ESMA_QUESTION_CP_MIFID_EQT_5>

Q6. What would be in your view an alternative way to incentivise lit trading and ensure the quality and robustness of the price determination mechanism for shares and equity-like instruments? Please explain.

<ESMA_QUESTION_CP_MIFID_EQT_6>

Firstly, FIA EPTA members would stress the importance of ensuring that the existing rules are properly supervised and enforced, in particular in relation to the best execution and conflict of interest requirements for investment firms as well as requirements regarding open access to trading venues and clearing and market transparency.

Investment Firms applying routing or internalisation decisions should strictly adhere to Best Execution rules. Of note, some trading channels do not contribute to price formation by using other prices in the market. This excludes actual interaction in the marketplace with an informed price discovery mechanism, which might lead to a better price for the end-investor.

Secondly, data quality for current reporting streams is essential. APAs and Trading/Execution Venues should publish relevant data in a correct and timely manner. A real-time, post-trade, comprehensive consolidated tape will help to make equities and equity-like instruments more transparent and provide investors with a better overall picture of the market and a better execution experience in a competitive, fragmented trading environment. However, the effectiveness of consolidating price information requires correct and timely source data from trading venues and APAs. **As regards these matters we refer to our previous response to ESMA's Consultation on Market Data Costs and the Consolidated Tape where we provide a more elaborate analysis of these issues.**

In light of transparency we would like to point out that Exchange-Traded Notes should not be classified as debt instruments in FIRDS. For structured products or notes, that actual trading behaviour should be key to determine as to which transparency rules such instruments belong.

Additionally, in order to safeguard trading robustness, transparency and ultimately investor protection, we believe that products like warrants and certain (structured) products such as sprinters, turbos, warrants (and also CFDs) deserve attention: these may appear liquid and transparent to individual investors, but such liquidity is effectively being controlled by a single issuer-affiliated price setter/market maker (and subject to change, in some cases arbitrarily). We are concerned that the conflicts of interest inherent to how such structured products are issued and traded threaten best execution and investor protection standards.
<ESMA_QUESTION_CP_MIFID_EQT_6>

Q7. Which option do you prefer for the liquidity assessment of shares among Option 1 and 2? Do you have an alternative proposal? Do you think that the frequency of trading should be kept as a criterion to assess liquidity? If so, what is in your view the appropriate thresholds for the percentage of days traded measured as the ratio between number of days traded and number of days available for trading (e.g. 95%, 90%, 85% etc.)? Please explain.

<ESMA_QUESTION_CP_MIFID_EQT_7>

FIA EPTA members would support an approach which ensures consistency and simplicity across as many product classes as possible. We believe basing a liquidity assessment on (an adapted) metric as proposed under Option 1 only would suffice.

We believe that including a 'frequency of trading' metric would add unnecessary complexity and does not produce much valuable information as to liquidity in our view. We also note that some instruments can have proper liquidity availability in the order book but see little trading (e.g. certain single stock or more specialized ETFs). Average Daily Volume is the relevant parameter in this regard.

We consider that metric 2 does not yield helpful information on liquidity, as a limited number of small trades may skew the statistics. Daily Volume will provide the most consistent picture.

Further, we consider that metrics 3 and 4 do not say much useful about liquidity. We observe that averages often lead to skewed conclusions, hence, FIA EPTA members would advise ESMA to consider Median and Mode numbers in conjunction with (or instead of) Average Daily Volume. Hence, we believe Median- or Mode-Daily Volume would be helpful to look at. Additionally, we also refer to our analysis in our response to Question 2.

Furthermore, we would encourage ESMA to consolidate volumes traded on a per-instrument / ISIN basis across Europe. The same listing may be available on multiple markets (in multiple currencies). While for purposes of a consolidated tape it would be unwise to lump these and determine an FX conversion rate during live trading, volumes could be calculated on an integrated, single-currency basis if necessary. While it may be true that some instruments have different prices on different value, this is often the result of inherent trading or post-trading costs. It does not skew the liquidity picture within the Union overall for a given instrument.

<ESMA_QUESTION_CP_MIFID_EQT_7>

Q8. Do you agree in changing the approach for ETFs, DRs as proposed by ESMA? Do you have an alternative proposal? Please explain.

<ESMA_QUESTION_CP_MIFID_EQT_8>

We refer to our answer to Question 2. We do not believe that any sub-class should be singled out to apply a different/changed metric. Different instruments may have different ways of trading, but we believe there should be a consistent, transparent and simple framework for defining liquidity in an instrument.

<ESMA_QUESTION_CP_MIFID_EQT_8>

Q9. Do you agree in removing the category of certificates from the equity-like transparency scope? Please explain.

<ESMA_QUESTION_CP_MIFID_EQT_9>

We refer to our answer to Question 2. We do not believe that any sub-class should be singled out to apply a different/changed metric. Different instruments may have different ways of trading, but we believe there should be a consistent, transparent and simple framework for defining liquidity in an instrument.

<ESMA_QUESTION_CP_MIFID_EQT_9>

Q10. Do you agree in deeming other equity financial instruments to be illiquid by default? Please explain.

<ESMA_QUESTION_CP_MIFID_EQT_10>



No, FIA EPTA members do not agree. In line with our answers to Q2 and Q9, we believe that classes of equity (or equity-like) instrument with similar characteristics should be treated similarly on the basis of their volume traded and relative liquidity. Therefore we would encourage ESMA not to declare certain instruments as 'liquid', or 'illiquid' by default, or apply single thresholds to a certain sub-class of equities.

<ESMA_QUESTION_CP_MIFID_EQT_10>

Q11. Do you agree in separating the definition of conventional periodic auctions and frequent batch auctions? Do you agree with ESMA's proposal to require the disclosure of all orders submitted to FBAs? Please explain.

<ESMA_QUESTION_CP_MIFID_EQT_11>

FIA EPTA members consider that market structure should be flexible to cater to a diverse range of investors and recognise that on principle FBAs may provide an alternative trading model satisfying the needs of certain market participants and may allow best execution to be delivered to end-clients. At the same time, FIA EPTA members share ESMA's observation that where FBAs are used to cross a position between two market participants (while this is being labelled as an 'exchange' trade) this should be restricted. We observe that some FBA systems are set up in a manner that seeks to unduly refrain from principles of pre-transparency. Absent a legitimate other purpose, we see no reason why such trades could not take place under full transparency on a regulated market or MTF, e.g., in an RFQ system.

<ESMA_QUESTION_CP_MIFID_EQT_11>

Q12. Do you agree that all non-price forming systems should operate under a pre-trade transparency waiver? Please explain.

<ESMA_QUESTION_CP_MIFID_EQT_12>

FIA EPTA members consider that trading venues should be accessible and subject to an interaction between supply and demand. Thus, we believe that orders should be price-forming and transparent and waivers should be used sparingly and in a well-calibrated manner and for the right reasons only. Importantly, this ties in with an evolving understanding of 'best execution', which has multiple elements, that are addressed by different execution methods and platforms (some focusing on price, others on certainty of execution).

<ESMA_QUESTION_CP_MIFID_EQT_12>

Q13. What is your view on increasing the minimum quoting size for SIs? Which option do you prefer?

<ESMA_QUESTION_CP_MIFID_EQT_13>

FIA EPTA believes there is scope to materially increase the minimum quoting obligation that applies to SIs in liquid instruments. Whether this quoting obligation should be 50% or 100% (or another percentage) depends to a large extent on final decision on the methodology used for determining SMS.

<ESMA_QUESTION_CP_MIFID_EQT_13>

Q14. What is your view on extending the transparency obligations under the SI regime to illiquid instruments?

<ESMA_QUESTION_CP_MIFID_EQT_14>

At this time, FIA EPTA would not support a blanket extension of SI public quoting obligations to all illiquid shares. However, we do believe that the quoting obligation could be extended for at least some illiquid shares and we would encourage ESMA to review this further with the aim to either further increase the number of shares that are classified as liquid or to identify another suitable metric that could be used to determine to which illiquid shares an SI public quoting obligation could reasonably be applied.

<ESMA_QUESTION_CP_MIFID_EQT_14>

Q15. With regard to the SMS determination, which option do you prefer? Would you have a different proposal? Please explain.

<ESMA_QUESTION_CP_MIFID_EQT_15>

FIA EPTA members do not believe the switch to using ADT to determine the SMS is appropriate and would encourage ESMA to retain the use of AVT. However, we recognise that the current SMS buckets are unsatisfactory with too many instruments ending up in the lowest bucket. We would instead encourage ESMA to consider recalibrating the existing SMS buckets using AVT to introduce a more meaningful and better-aligned SMS scale in liquid instruments. In doing so we would encourage ESMA to take an approach that takes into account the final recommendation on the minimum quotation size for SIs with the aim of ensuring that SIs have a meaningful public quote that is proportionate to their role as bilateral market makers.

As stated in our answer to Q14 we do not believe in a blanket extension of the SI public quoting obligations to all illiquid shares. We do however see a need to increase the number of shares that are classified as liquid. In that case we do not see a need for any separate table for to determine the SMS for illiquid shares.

<ESMA_QUESTION_CP_MIFID_EQT_15>

Q16. Which option do you prefer among Options A, B and C? Would you suggest a different alternative? Please explain.

<ESMA_QUESTION_CP_MIFID_EQT_16>

FIA EPTA members support option B – to eliminate the 4% trading venue specific threshold and maintain the EU level threshold at 8%.

FIA EPTA members consider that the 4% trading venue specific cap adds unnecessary complexity to the DVC process and penalises venues without providing any tangible benefit to the market structure or end-investors. Lower liquidity names are usually only listed on one or two dark venues despite all venues being able to list those securities if they so wished. As a result, these names can reach the 4% relatively quickly.

FIA EPTA members consider that maintaining the 8% cap or reducing it to 7% would make relatively little difference in practice in terms of improving the transparent price formation process but would expect that the lower level could lead to a greater prevalence of periodic batch auction trading.

<ESMA_QUESTION_CP_MIFID_EQT_16>



Q17. Would you envisage a different system than the DVC to limit dark trading? Please explain.

<ESMA_QUESTION_CP_MIFID_EQT_17>

If the reference price and negotiated trades waivers were to be maintained, then FIA EPTA would support the maintenance of the DVC (subject to removing the 4% TV threshold). FIA EPTA members recognise several flaws of the DVC mechanism in terms of its complexity, calibration and the apparent unintended consequences flowing from its application. However, an alternative approach has not readily presented itself. We would appreciate, therefore, further consultation and engagement with the industry on this question.

<ESMA_QUESTION_CP_MIFID_EQT_17>

Q18. Do you agree in removing the need for NCAs to issue the suspension notice and require trading venues to suspend dark trading, if required, on the basis of ESMA's publication? Please explain.

<ESMA_QUESTION_CP_MIFID_EQT_18>

FIA EPTA members agree with removing this requirement as it often results in a duplication of effort on behalf of ESMA, NCAs and Firms and introduces the possibility of information mix-up between different sources. A single source of suspension notices (i.e., ESMA) used by all trading venues is the most appropriate mechanism.

<ESMA_QUESTION_CP_MIFID_EQT_18>

Q19. Do you agree in removing the requirement under Article 5(7)(b)? Please explain.

<ESMA_QUESTION_CP_MIFID_EQT_19>

FIA EPTA members consider the 4% trading venue caps to be punitive to less liquid, smaller names and add to inefficiencies in the market and therefore support their removal and the removal of the requirement in Article 5(7)(b).

<ESMA_QUESTION_CP_MIFID_EQT_19>

Q20. Please provide your answer to the following [survey](#) (<= click here to open the survey) on the impact of DVC on the cost of trading for eligible counterparties and professional clients.

<ESMA_QUESTION_CP_MIFID_EQT_20>

[CLICK ON THE WORD "SURVEY" IN THE QUESTION IN ORDER TO PROVIDE YOUR ANSWER]

<ESMA_QUESTION_CP_MIFID_EQT_20>

Q21. Do you agree in applying the DVC also to instruments for which there are not 12 months of available data yet? Please explain.

<ESMA_QUESTION_CP_MIFID_EQT_21>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_EQT_21>

Q22. Do you agree foresee any issue if the publication occurs after 7 working days instead of 5? Please explain.

<ESMA_QUESTION_CP_MIFID_EQT_22>
FIA EPTA members agree with this proposal.

<ESMA_QUESTION_CP_MIFID_EQT_22>

Q23. Do you agree that the mid-month reports should not be published? Please explain.

<ESMA_QUESTION_CP_MIFID_EQT_23>
FIA EPTA members agree that these should no longer be published. Feedback from the industry is that usage of the mid-month reports is not widespread and it is considered that they provide little utility.

<ESMA_QUESTION_CP_MIFID_EQT_23>

Q24. Do you agree with ESMA's proposal to include in Article 70 of MiFID II the infringements of the DVC suspensions? Please explain.

<ESMA_QUESTION_CP_MIFID_EQT_24>
FIA EPTA members agree with this proposal. These infringements have been transposed into sanctions legislation in some member states. In the interests of a level playing field, MiFID sanctions should be applied uniformly across the Union.

<ESMA_QUESTION_CP_MIFID_EQT_24>

Q25. Do you agree with ESMA's assessment that the conditions for deferred publication for shares and depositary receipts should not be subject to amendments? If not, please explain.

<ESMA_QUESTION_CP_MIFID_EQT_25>
FIA EPTA members agree with ESMA's assessment that the conditions for deferred publication for shares and DRs should not be subject to amendment. That said, FIA EPTA is in favour of greater transparency and would urge ESMA to look at ways to ensure even higher percentages of shares and DRs are printed as close to real time as technologically possible.

<ESMA_QUESTION_CP_MIFID_EQT_25>

Q26. Do you agree with ESMA's proposal to increase the applicable threshold for ETFs and request for real-time publication for transactions that are below 20,000,000 EUR? If not, please explain.

<ESMA_QUESTION_CP_MIFID_EQT_26>
FIA EPTA members note that traded values and liquidity of individual ETFs, as well as their relevant underlying assets, vary substantially. These factors determine how trading in the ETF on a market behaves. We refer as well in this regard to our response to Q2.

Notably, as much of the ETF volume is traded institutionally in large size, deferred transparency serves the legitimate purpose of protecting the buy-side (to not immediately show intent) as well as the liquidity



provider (permitting it to hedge its position). FIA EPTA members would caution, therefore, that raising the deferral threshold for all ETFs may not be appropriate for the characteristics of ETFs. We would propose to align transparency regimes for all equity-like instruments sharing the same characteristics. Singling out individual asset classes and applying a single threshold may overlook the variety of instruments in the ETF space.

<ESMA_QUESTION_CP_MIFID_EQT_26>

Q27. Do you agree with ESMA assessment of the level of post trade transparency for OTC transactions?

<ESMA_QUESTION_CP_MIFID_EQT_27>

Yes, FIA EPTA members agree with ESMA's assessment of the level of post trade transparency for OTC transactions.

<ESMA_QUESTION_CP_MIFID_EQT_27>

Q28. Do you agree with the proposal to report and flag transactions which are not subject to the share trading obligations but subject to post-trade transparency to FITRS? Please explain.

<ESMA_QUESTION_CP_MIFID_EQT_28>

Yes, FIA EPTA members agree with ESMA's proposal. We believe this proposal will assist ESMA in giving it a complete and accurate view of transactions which are not subject to the share trading obligation.

<ESMA_QUESTION_CP_MIFID_EQT_28>

Q29. What is your experience related to the publication of post-trade transparency information within 1 minute from the execution of the transaction? Do you think that the definition of "real-time" as maximum 1 minute from the time of the execution of the transaction is appropriate/too stringent/ too lenient? Please explain.

<ESMA_QUESTION_CP_MIFID_EQT_29>

In general, FIA EPTA members believe the current requirement to report trades that occur within market hours as close to real-time as is technically possible and in any case within one minute of the relevant transaction, is appropriate. We note that there does not seem to be an issue with material numbers trades being reported to APAs late (i.e. more than 1 minute after the transaction time) and therefore it would appear that the one minute window is sufficient to allow the reporting of most manual trades. We would highlight that investment firms should not be taking steps to deliberately delay the reporting of trades within the one-minute window and in general, we would see no reason why fully electronic trading could not be reported instantaneously.

We note ESMA's previous statements that "real-time" should mean "as fast as technologically possible" and with the outer bound of 1 minute for high touch or manual trades. To ensure EU markets are as transparent as possible, it is critical this guidance is enforced throughout the EU by relevant national competent authorities.

<ESMA_QUESTION_CP_MIFID_EQT_29>

Q30. Do you agree with ESMA's approach to third-country trading venues for the purpose of transparency requirements under MiFID II? If no, please explain.

<ESMA_QUESTION_CP_MIFID_EQT_30>

Whilst the current approach being taken by ESMA gives firms sufficient certainty as to their post-trade reporting obligations we would suggest that ESMA reverses the presumption so that all TCTVs are deemed to meet the criteria set out in ESMA's opinion letter dated 15 Dec 2017 unless ESMA specifically carves-out a particular 3rd country trading venue i.e. all trades conducted on a TCTV should not be reported in the EU unless the particular TCTV is on a "black list".

<ESMA_QUESTION_CP_MIFID_EQT_30>

Q31. Do you agree that the scope of the share trading obligation in Article 23 of MiFIR should be reduced to exclude third-country shares? If yes, what is the best way to identify such shares, keeping in mind that ESMA does not have data on the relative liquidity of shares in the EU versus in third countries? More generally, would you include any additional criteria to define the scope of the share trading obligation and, if yes, which ones?

<ESMA_QUESTION_CP_MIFID_EQT_31>

FIA EPTA members would welcome ESMA adopting a pragmatic approach to the scope of the share trading obligation (STO) to ensure that EU firms are able to access the main pool of liquidity for individual shares and the STO does not interfere with firms' ability to meet their best execution obligations.

Regarding third-country shares, FIA EPTA members agree that the STO should only be applicable to EU shares and the scope should be reduced to exclude third-country shares. EU investment firms should be allowed to execute transactions in third-country shares on third country venues and these should be as accessible as possible. Any deviation from this would mean that EU firms would become less competitive in comparison with their third-country peers as they would be forced to trade on less liquid venues and therefore incurring increased costs.

The key determinant as to whether an EU firm should be permitted to trade on a third-country venue, in our members' opinion, should be based on whether EU firms and end investors would be disadvantaged by not being able to access that third-country venue's liquidity (rather than the level of trading conducted in the EU).

With regards to EU shares, as a general rule, FIA EPTA members agree that firms should only be able to trade EU shares on third-country venues that have been deemed equivalent. In our members' opinion, the identification of what is considered an EU share should be based on the first two letters of ISINs. Using this 'issuing country' designation, which is a readily identifiable method that is widely known, will be the most efficient method from an operational perspective.

This could also potentially be supplemented by ESMA guidance referring to specific cases for EU ISINs that barely trade on EU venues based on input initiated by market participants or trading venues.

As regards EU shares that are dual-listed or only listed on third-country venues: As pointed out, the main shortcoming of the ISIN approach is where an ISIN has been issued in an EU country and admitted to trading in a third-country regulated market which becomes its most relevant trading market. In the case of such EU shares, where an issuer has actively sought to have its shares admitted to trading on a third-country regulated market, FIA EPTA members support ESMA's proposal that there should be an exemption allowing EU firms to trade those shares on that particular third-country venue. The focus should be on making sure that firms can still access the most liquid market, regardless of where the first issuance was carried out.

<ESMA_QUESTION_CP_MIFID_EQT_31>

Q32. Would you support removing SIs as eligible execution places for the purposes of the share trading obligation? If yes, do you think SIs should only be removed as eligible execution places with respect to liquid shares? Please provide arguments (including numerical evidence) supporting your views.

<ESMA_QUESTION_CP_MIFID_EQT_32>

As liquidity providers, FIA EPTA members have adapted to the evolving European equities market structure and the regulatory changes thereto. Collectively, FIA EPTA members provide liquidity across all types of MiFID II execution systems (RMs, MTFs and SIs) and trading protocols (CLOB, RFQ, auction-based) for shares and equity-like instruments.

FIA EPTA members support the Share Trading Obligation as a mechanism to ensure that the trading of shares and equity-like instruments takes place, to the greatest extent, in an organised trading environment which is subject to calibrated transparency requirements. FIA EPTA members consider that optimising market transparency for shares and equity-like instruments is essential for facilitating efficient price formation and enabling best execution in a competitive order execution market. All of this benefits end-investors by enabling trading interest to effectively interact, reducing search and trading costs.

Surveying the MiFID II execution landscape, FIA EPTA members note that the growth of SI based trading has been partially driven by unintended consequences where some investment firms opted to become SIs purely in order to meet the demands of their clients to be responsible for post-trade reporting. FIA EPTA members would welcome a change to the post-trade transparency regime allowing investment firms to take on the post-trade reporting obligation. MiFID II's intention was to enforce the seller's obligation in order to eliminate cases of double reporting, however, FIA EPTA members believe there are other ways to achieve this aim without putting the burden on buy-side firms or requiring sell-side firms to become SIs. For example, the obligation could be on the 'non-initiator' of the trade to post-trade report.

Regarding the scope of the STO and the role of SIs therein, FIA EPTA members' views are informed by the fact that they use their own capital for their own risk to provide liquidity to end-investors and markets in a manner that conforms to their firms' objectives and how they can bring these to bear to optimally contribute to the price formation process.

In that regard, it should be noted that some of FIA EPTA's members believe that an all-to-all openly accessible multilateral trading environment leads to the best societal outcome. This view reflects these members' focus to efficiently provide liquidity in CLOB-based systems through passive market making and/or through facilitating counterparties' immediate execution across different trading venues by aggressively crossing the spread in a very short time frame, facilitated by sophisticated trading technology. These members consider that purely bilateral execution systems hurt price formation by operating on an unlevel playing field with trading venues. (It should be noted that some other FIA EPTA members do consider that bilateral market making can facilitate choice and best execution for end-investors as long as this is organised in an openly accessible trading venue environment – through RFQ based trading protocols – rather than SIs)

These members' particular concern in regard to SIs is that SIs make use of public price information to gauge accurate quote valuation levels while not, or not sufficiently, contributing to the over-all price formation process and seeking to steer flow away from the public market (i.e., by not charging execution fees and applying a smaller tick size). These members consider that SIs essentially internalise the flow that is the most profitable for the SI operator while externalising any unattractive ("toxic") flow to the public market. Consequently, these members favour removing SIs from the STO.

By contrast, other FIA EPTA members do consider, however, that SIs offer a welcome and useful execution environment for institutional end-investors which should remain embedded in the EU market structure.

Consequently, these members consider that SIs should be maintained as eligible execution systems for the purpose of the STO.

In particular, these members consider that SIs enable market makers to provide liquidity to end-investors in a more targeted manner while helping to maintain a competitive order execution market in view of ongoing market structure consolidation. They consider that the added value of SIs is further exemplified by the positive experience of end-investors using these systems (either directly or through a broker). These members also consider that organised bilateral market making for a firm's own risk when operating an SI constitutes a fundamentally different business model from operating a multilateral matching system where the venue operator is not exposed to any market risk. They further note that FIA EPTA members' SI quoting behaviour is essentially the same as their on-exchange market making, with both contributing in their own way to the price formation process.

Consequently, these members do not agree that SIs inherently pose an unlevel playing field risk to the EU market structure. These members do agree, however, as per our response to questions 13-15, that practical steps can be taken to improve order-level market micro-structural convergence between trading venue execution protocols and those of SIs, in particular through harmonising the applicable tick size regime, raising the level of the quoting obligation and recalibrating SMS. This should help to ensure that SIs can more fully contribute to the price formation process and dispelling concerns that order routing to SIs is driven by any other incentive than best execution considerations and end-investor preference.

<ESMA_QUESTION_CP_MIFID_EQT_32>

Q33. Would you support deleting the first exemption provided for under Article 23 of MiFIR (i.e. for shares that are traded on a “non-systematic, ad-hoc, irregular and infrequent” basis)? If not, would you support the introduction in MiFIR of a mandate requiring ESMA to specify the scope of the exemption? Please provide arguments supporting your views.

<ESMA_QUESTION_CP_MIFID_EQT_33>

FIA EPTA members believe the first exemption provided for under Article 23 of MiFID II should be retained and do not support deleting it. FIA EPTA members observe situations where firms occasionally need to trade OTC as, for example, it is not always possible to unwind positions in very illiquid equities on the central limit order book.

Should this exemption remain in place, FIA EPTA members believe it is essential that ESMA fully define the concept of “non-systematic, ad-hoc, irregular and infrequent” including specific metrics to determine whether a stock meets this definition or not. FIA EPTA members consider it is in the interest of all market participants to ensure that this exemption does not result in an un-level playing field, which was observed when the Swiss equivalence decision was revoked last year as individual firms were defining which EU shares could continue to be traded in Switzerland (and which could not) based on similar but differing measures.

<ESMA_QUESTION_CP_MIFID_EQT_33>

Q34. Would you support simplifying the second exemption of Article 23 of MiFIR and not limiting it to transactions “carried out between eligible and/or professional counterparties”? Please provide arguments supporting your views.

<ESMA_QUESTION_CP_MIFID_EQT_34>



FIA EPTA members agree with simplifying the exemption so that it includes all market participants. FIA EPTA members see no reason not to allow all market participants to avail of this exemption when entering into non-price forming trades or foresee any detrimental impact from making this revision.

<ESMA_QUESTION_CP_MIFID_EQT_34>

Q35. What is your view on the increase of volumes executed through closing auctions? Do you think ESMA should take actions to influence this market trend and if yes which one?

<ESMA_QUESTION_CP_MIFID_EQT_35>

In Europe, FIA EPTA members have indeed observed a trend towards a greater concentration of orders at the close; approximately 30% of trading volume is concentrated at the close in major markets. FIA EPTA members express concern that this concentration of trading during the closing auction may be detrimental to liquidity during earlier trading sessions. Trading volumes on European venues during the morning session generally tend to be thin and dispersed. This is illustrated by wider spreads and higher volatility at earlier points during the trading session. The growth of passive investing, particularly funds benchmarked to the close, is considered to be a contributing factor this trend, as benchmarked order flow creates an concentration of liquidity which also draws non-index benchmarked liquidity to the close, compounding the issue.

FIA EPTA members would support a more even distribution of trading volume throughout the day. This would help to increase the reliability of the price discovery process for market participants and improve execution quality for end-investors over the course of the trading day. FIA EPTA members, however, would not regard direct regulatory intervention by ESMA to be an appropriate way to address this trend. Instead, FIA EPTA members would encourage ESMA to contribute to mitigating the trend by supporting, together with market stakeholders and policy makers, the establishment of EU wide Consolidated Tape as mandated in MiFID II. FIA EPTA members consider that a real-time, post-trade, comprehensive Consolidated Tape would facilitate intraday trading. By providing a holistic view of intraday liquidity across all EU venues, it would help to restore the trust in intraday prices and enhance investors' confidence in trading throughout the day, not just towards the close. We see this exemplified in the US, where the market features a post-trade CT, and where disparities between trading volumes in the morning and afternoon sessions are not as pronounced as on European venues (volumes traded at the close average 8%).

In conclusion, FIA EPTA members do not feel that ESMA should intervene at this stage. As illustrated, an EU-wide consolidated tape might help to mitigate the tendency for liquidity to concentrate at the close. The implementation of a reliable consolidated tape, would contribute substantially to distributing intraday trading volume and liquidity more evenly.

<ESMA_QUESTION_CP_MIFID_EQT_35>