discriminatory way, the clients to whom they give access to their quotes. To that end, systematic internalisers shall have in place clear standards for governing access to their quotes. Systematic internalisers may refuse to enter into or discontinue business relationships with clients based on commercial considerations such as the client credit status, the counterparty risk and the final settlement of the transaction."

- Delete the first paragraph of Article 18(6) i.e. "Systematic internalisers shall undertake to enter into transactions under the published conditions with any other client to whom the quote is made available in accordance with paragraph 5 when the quoted size is at or below the size specific to the financial instrument determined in accordance with Article 9(5)(d)"; and

- Delete Article 18(7) i.e. "Systematic internalisers shall be allowed to establish non-discriminatory and transparent limits on the number of transactions they undertake to enter into with clients pursuant to any given quote."

65. The only obligation left for SIs in liquid instruments would be to publish the quote provided to a client. ESMA does see value in maintaining this pre-trade transparency obligation as part of the role played by SIs in the price formation process in non-equity instruments.

66. As regards SIs' pre-trade transparency obligations in relation to package orders, the Level 2 does not set out the test to be performed by an investment firm to quality as an SI for package orders. The SI test is always performed at the level of the components of the package.

67. As reflected in the above-mentioned Q&A[12], ESMA therefore considers that the quoting provision of Article 18(11) for packages apply to package orders only when the investment firm is an SI in all components of the package and sees currently no legal basis for extending the quoting obligation beyond those circumstances.

68. Given the overall feedback received on SI pre-trade transparency obligations, ESMA is not minded proposing an amendment to Level 1 to mandate further clarification in SI quoting obligations for package orders. No data was provided in the CP on SIs' quoting activity for package orders due to the limited amount of data collected from market participants in this area.

69. ESMA took note of the comments received on the assessment of non-equity instrument liquidity or on the concept of ToTV. Those issues will be dealt with in ESMA's Final Report on the transparency regime for non-equity instruments and the trading obligation for derivatives.

3.3.1.4 Arrangements for the publication of quotes

Analysis

[12] Section 4, Question 4(c) of ESMA's Q&A on MiFID II and MiFIR transparency topics

Table 10: SIs who responded to the ad-hoc data request, per country and asset-class

117. The tables below show, for each SI, the percentage of quoting and trading activity (both in terms of volumes and number of quotes/trades) according to four different buckets:

- Below SSTI;
- Between 100% and 101% of SSTI;
- Between 101% and 105% of SSTI;
- Greater than 105% of SSTI

118. The analysis is performed per asset class and includes only instruments which have a liquid market in the MiFIR sense (as the obligation to publish firm quotes only exists for liquid instruments). Some SIs reported only trading activity while others reported only quoting activity. Hence the population of SIs in the tables related to quoting and trading behaviours may differ.

119. Finally, due to the data quality issues described in Annex 6.3 and in particular the possible inconsistent methodologies for reporting quoting activity, ESMA has voluntarily refrained from aggregating data across SIs. It is however assumed that the data is consistent at the level of each SI.

4.1.2 Bonds - quoting and trading activity in relation to the SSTI

Analysis

120. The analysis in relation to bonds (excluding ETCs and ETNs) is provided in the four tables below: quoted volumes in Table 11, traded volumes in Table 12, number of quotes in Table 13 and number of trades Table 14.

121. Regarding ETCs and ETNs, only 5 SIs provided data and out of those, only 2 reported volumes on liquid instruments. This coverage was considered insufficient to allow for a meaningful presentation. Therefore, in the rest of the analysis “bonds” should be read as “bonds excluding ETCs and ETNs”

122. Filtering the SIs that provided figures on *liquid* instruments reduced the population of SIs from 54 (as shown in Table 10) to 27. This means that several SIs only reported volumes on *illiquid* bonds.

123. Both for traded volumes and quoted volumes (Table 11 and Table 12), the most striking feature is the very low volume of activity close to the SSTI thresholds, i.e. between 100% and 105% of those thresholds. Instead, the activity as measured by volumes is in most cases concentrated above 105% of the SSTI thresholds. For a few SIs, it is concentrated below the SSTI thresholds.

Count	SI Code	Quoted volumes below SSTI	Quoted volumes]100-101% SST	Quoted volumes]101-105%] SST	Quoted volumes > 105% SSTI
1	SI 58	0.0%	0.0%	0.0%	100.0%
2	SI 37	0.0%	0.0%	0.0%	100.0%
3	SI 34	0.0%	0.0%	0.0%	100.0%
4	SI 28	0.0%	0.0%	0.0%	100.0%
5	SI 47	0.1%	0.0%	0.0%	99.9%
6	SI 39	0.1%	0.0%	0.0%	99.9%
7	SI 13	0.1%	0.0%	1.3%	98.6%
8	SI 50	0.1%	0.0%	0.0%	99.9%
9	SI 38	0.2%	0.0%	0.0%	99.8%
10	SI 31	0.3%	0.0%	0.0%	99.7%
11	SI 30	0.3%	0.0%	0.0%	99.7%
12	SI 1	0.3%	0.0%	0.0%	99.7%
13	SI 40	0.4%	0.0%	0.0%	99.6%
14	SI 15	0.8%	0.0%	0.0%	99.2%
15	SI 27	1.4%	0.0%	0.0%	98.5%
16	SI 41	1.7%	0.0%	0.1%	98.2%
17	SI 48	2.0%	0.0%	0.0%	98.0%
18	SI 49	2.4%	0.0%	0.0%	97.6%
19	SI 26	3.7%	0.0%	0.0%	96.3%
20	SI 9	9.5%	0.0%	0.0%	90.5%
21	SI 16	26.4%	0.0%	0.0%	73.6%
22	SI 2	33.3%	0.0%	0.0%	66.7%
23	SI 60	37.0%	0.0%	0.0%	62.9%
24	SI 4	72.5%	0.0%	27.5%	0.0%
25	SI 43	97.5%	0.0%	0.0%	2.5%
26	SI 23	100.0%	0.0%	0.0%	0.0%
27	SI 29	100.0%	0.0%	0.0%	0.0%

Table 11: Bonds having a liquid market – Quoted volumes against SSTI

Count	SI Code	Traded volumes below SSTI	Traded volumes]100-101% SST	Traded volumes]101-105%] SST	Traded volumes > 105% SSTI
1	SI 22	0.0%	0.0%	0.0%	100.0%
2	SI 40	0.0%	0.0%	0.0%	100.0%
3	SI 37	0.0%	0.0%	0.0%	100.0%
4	SI 34	0.0%	0.0%	0.0%	100.0%
5	SI 60	0.0%	0.0%	0.0%	100.0%
6	SI 28	0.0%	0.0%	0.0%	100.0%
7	SI 39	0.0%	0.0%	0.0%	100.0%
8	SI 50	0.1%	0.0%	0.0%	99.9%
9	SI 13	0.1%	0.0%	1.3%	98.6%
10	SI 38	0.2%	0.0%	0.0%	99.8%
11	SI 54	0.2%	0.0%	0.0%	99.8%
12	SI 30	0.3%	0.0%	0.0%	99.7%
13	SI 1	0.3%	0.0%	0.0%	99.7%
14	SI 48	0.3%	0.0%	0.0%	99.7%
15	SI 47	0.4%	0.0%	0.0%	99.6%
16	SI 49	0.6%	0.0%	0.0%	99.4%
17	SI 15	0.7%	0.0%	0.0%	99.3%
18	SI 41	0.7%	0.0%	0.0%	99.3%
19	SI 27	1.2%	0.0%	0.0%	98.8%
20	SI 16	2.3%	0.0%	0.0%	97.7%
21	SI 26	5.7%	0.0%	0.0%	94.2%
22	SI 9	23.1%	0.0%	0.0%	76.9%
23	SI 2	33.3%	0.0%	0.0%	66.7%
24	SI 4	81.4%	0.0%	18.6%	0.0%
25	SI 43	97.5%	0.0%	0.0%	2.5%
26	SI 23	100.0%	0.0%	0.0%	0.0%
27	SI 29	100.0%	0.0%	0.0%	0.0%

Table 12: Bonds having a liquid market – Traded volumes against SSTI

Count	SI Code	Number of Quotes below SSTI	Number of Quotes]100-101% SSTI	Number of Quotes]101-105%] SSTI	Number of Quotes > 105% SSTI
1	SI 37	0.0%	0.0%	0.0%	100.0%
2	SI 58	0.0%	0.0%	0.0%	100.0%
3	SI 28	1.4%	0.0%	0.0%	98.6%
4	SI 34	4.6%	0.0%	0.0%	95.4%
5	SI 39	6.9%	0.0%	0.0%	93.1%
6	SI 47	8.0%	0.0%	0.0%	92.0%
7	SI 50	12.1%	0.1%	0.2%	87.7%
8	SI 13	14.3%	0.0%	7.1%	78.6%
9	SI 31	15.9%	0.0%	0.5%	83.6%
10	SI 38	26.3%	0.2%	0.0%	73.5%
11	SI 40	28.6%	0.0%	0.0%	71.4%
12	SI 9	30.0%	0.0%	0.0%	70.0%
13	SI 30	32.2%	0.0%	0.1%	67.7%
14	SI 1	39.9%	0.0%	0.0%	60.1%
15	SI 15	45.8%	0.0%	0.0%	54.2%
16	SI 41	47.7%	0.0%	0.6%	51.7%
17	SI 27	48.5%	0.0%	0.3%	51.2%
18	SI 26	49.2%	0.0%	0.1%	50.7%
19	SI 49	57.9%	0.0%	0.0%	42.1%
20	SI 2	63.2%	0.0%	0.0%	36.8%
21	SI 48	76.4%	0.0%	0.2%	23.4%
22	SI 16	85.7%	0.0%	0.0%	14.3%
23	SI 43	95.8%	0.0%	0.0%	4.2%
24	SI 4	96.4%	0.0%	3.6%	0.0%
25	SI 60	97.2%	0.0%	0.0%	2.7%
26	SI 23	100.0%	0.0%	0.0%	0.0%
27	SI 29	100.0%	0.0%	0.0%	0.0%

Table 13: Bonds having a liquid market – Number of quotes against SSTI

Count	SI Code	Number of trades below SSTI	Number of trades]100-101% SSTI	Number of trades]101-105%] SSTI	Number of trades > 105% SSTI
1	SI 22	0.0%	0.0%	0.0%	100.0%
2	SI 37	0.0%	0.0%	0.0%	100.0%
3	SI 40	0.0%	0.0%	0.0%	100.0%
4	SI 28	1.9%	0.0%	0.0%	98.1%
5	SI 39	3.1%	0.0%	0.0%	96.9%
6	SI 34	4.6%	0.0%	0.0%	95.4%
7	SI 54	8.3%	0.0%	0.1%	91.6%
8	SI 50	11.0%	0.1%	0.1%	88.8%
9	SI 60	11.2%	0.0%	0.0%	88.8%
10	SI 13	14.3%	0.0%	7.1%	78.6%
11	SI 47	16.2%	0.0%	0.0%	83.8%
12	SI 30	32.2%	0.0%	0.1%	67.6%
13	SI 49	33.3%	0.0%	0.0%	66.7%
14	SI 41	35.9%	0.0%	0.0%	64.1%
15	SI 38	39.0%	0.0%	0.0%	61.0%
16	SI 15	39.8%	0.0%	0.0%	60.2%
17	SI 1	40.5%	0.0%	0.0%	59.5%
18	SI 27	54.3%	0.0%	0.3%	45.4%
19	SI 9	60.0%	0.0%	0.0%	40.0%
20	SI 2	63.2%	0.0%	0.0%	36.8%
21	SI 26	63.3%	0.0%	0.1%	36.6%
22	SI 16	66.7%	0.0%	0.0%	33.3%
23	SI 48	82.5%	0.0%	0.1%	17.4%
24	SI 43	85.7%	0.0%	0.0%	14.3%
25	SI 4	98.0%	0.0%	2.0%	0.0%
26	SI 23	100.0%	0.0%	0.0%	0.0%
27	SI 29	100.0%	0.0%	0.0%	0.0%

Table 14: Bonds having a liquid market – Number of trades against SSTI

136. For securitised derivatives (Table 25 and Table 26) the outcome seems slightly different, with more SIs subject to pre-trade transparency for an important proportion of their activity as measured by the number of quotes/trades. For credit and equity derivatives, a similar conclusion is more difficult to draw due to the limited number of SI included in the analysis.

Feedback to the CP

137. ESMA requested feedback on this analysis of derivatives data and the relation with the SSTI thresholds (Question 12). The responses to this question were largely the same as those collected in the previous question related to bonds. Most stakeholders commented that ESMA's findings were in line with industry expectations, that there was no evidence of circumvention of the pre-trade transparency regime via the SSTI thresholds and the levels of the SSTI thresholds were appropriate.

138. Several stakeholders also agreed with ESMA's statement in para. 89 of the CP that the level of the SSTI thresholds was so low for some asset classes that by construction almost any quote would be above SSTI. In those instances, the comparison between trade flows above and below the SSTI thresholds is somehow meaningless. Some suggested to remove the SSTI thresholds and align them with the levels of the LIS.

Conclusions and proposals on derivatives' quoting and trading activity in relation to the SSTI

139. As for bonds, the feedback received tends to confirm the conclusions deriving from ESMA's analysis of the derivatives data, i.e. that SIs quote either mainly above the SSTI thresholds, or mainly below them (depending on their client base), but that there is no significant quoting or trading activity "just beyond" those thresholds.

140. The sections below present the detailed numbers for each asset-class.

4.1.3.1 Interest rate derivatives - quoting and trading activity in relation to SSTI

141. The analysis in relation to interest rate derivatives (IRD) is provided in the four tables below: quoted volumes in Table 15, traded volumes in Table 16, number of quotes in Table 17 and number of trades in Table 18.

142. Filtering the SIs that provided positive figures on liquid instruments reduced the population of SIs from 18 (as shown in Table 10) to 13 (for quote data) and 12 (for trade data). This means that a few SIs only reported positive volumes on illiquid interest rate derivatives.

Count	SI Code	Quoted volumes below SSTI	Quoted volumes]100-101% SSTI]	Quoted volumes]101-105%] SSTI	Quoted volumes > 105% SSTI
1	SI 31	0.5%	0.0%	0.0%	99.5%
2	SI 28	0.6%	2.5%	0.0%	96.8%
3	SI 26	1.2%	0.0%	0.0%	98.8%
4	SI 48	1.2%	0.0%	0.0%	98.8%
5	SI 39	1.8%	0.0%	0.0%	98.2%
6	SI 50	2.4%	0.0%	0.0%	97.6%
7	SI 34	3.6%	0.1%	0.1%	96.3%
8	SI 1	7.4%	0.0%	0.0%	92.6%
9	SI 30	15.7%	0.9%	0.9%	82.5%
10	SI 38	17.4%	0.0%	1.3%	81.3%
11	SI 49	39.5%	0.0%	0.0%	60.5%
12	SI 24	100.0%	0.0%	0.0%	0.0%
13	SI 40	100.0%	0.0%	0.0%	0.0%

Table 15: IRD having a liquid market – Quoted volumes against SSTI

Count	SI Code	Traded volumes below SSTI	Traded volumes]100-101% SSTI]	Traded volumes]101-105%] SSTI	Traded volumes > 105% SSTI
1	SI 26	0.0%	0.0%	0.0%	100.0%
2	SI 48	0.8%	0.0%	0.0%	99.2%
3	SI 28	1.2%	4.9%	0.0%	93.9%
4	SI 39	1.7%	0.0%	0.0%	98.3%
5	SI 54	2.2%	0.0%	0.0%	97.8%
6	SI 50	2.4%	0.0%	0.0%	97.6%
7	SI 34	3.6%	0.1%	0.1%	96.3%
8	SI 1	4.2%	0.0%	0.0%	95.8%
9	SI 30	15.6%	0.9%	0.9%	82.6%
10	SI 38	21.3%	0.0%	1.5%	77.2%
11	SI 49	29.7%	0.0%	0.0%	70.3%
12	SI 24	100.0%	0.0%	0.0%	0.0%

Table 16: IRD having a liquid market – Traded volumes against SSTI

SI Code	Number of Quotes below SSTI	Number of Quotes]100-101% SSTI	Number of Quotes]101-105%] SSTI	Number of Quotes > 105% SSTI
SI 28	4.3%	8.7%	0.0%	87.0%
SI 31	11.5%	0.0%	0.0%	88.5%
SI 48	20.0%	0.0%	0.0%	80.0%
SI 50	22.2%	0.0%	0.0%	77.8%
SI 26	35.9%	0.0%	0.1%	64.0%
SI 34	40.3%	0.4%	0.4%	59.0%
SI 39	41.9%	0.0%	0.0%	58.1%
SI 30	56.7%	1.3%	1.0%	41.0%
SI 38	63.8%	0.0%	2.1%	34.0%
SI 49	66.7%	0.0%	0.0%	33.3%
SI 1	76.5%	0.0%	0.0%	23.5%
SI 24	100.0%	0.0%	0.0%	0.0%
SI 40	100.0%	0.0%	0.0%	0.0%

Table 17: IRD having a liquid market – Number of quotes against SSTI

SI Code	Number of trades below SSTI	Number of trades]100-101% SSTI	Number of trades]101-105%] SSTI	Number of trades > 105% SSTI
SI 26	0.3%	0.0%	0.0%	99.7%
SI 28	7.7%	15.4%	0.0%	76.9%
SI 48	20.0%	0.0%	0.0%	80.0%
SI 50	22.2%	0.0%	0.0%	77.8%
SI 54	27.3%	0.1%	0.1%	72.5%
SI 34	40.3%	0.4%	0.4%	59.0%
SI 39	42.5%	0.0%	0.0%	57.5%
SI 1	44.8%	0.0%	0.0%	55.2%
SI 38	46.3%	0.0%	1.9%	51.9%
SI 30	56.5%	1.3%	1.0%	41.1%
SI 49	70.0%	0.0%	0.0%	30.0%
SI 24	100.0%	0.0%	0.0%	0.0%

Table 18: IRD having a liquid market – Number of trades against SSTI

4.1.3.2 Equity derivatives - quoting and trading activity in relation to SSTI

143. The analysis in relation to equity derivatives (EQD) is provided in the four tables below: quoted volumes in Table 19, traded volumes in Table 20, number of quotes in Table 21 and number of trades in Table 22.

144. Filtering the SIs that provided positive figures on liquid instruments reduced the population of SIs from 8 (as shown in Table 10) to 6 (for quote data) and 5 (for trade data). This means that a couple of SI only reported volumes on illiquid equity derivatives.

Count	SI Code	Quoted volumes below SSTI	Quoted volumes]100-101% SSTI]	Quoted volumes]101-105%] SSTI	Quoted volumes > 105% SSTI
1	SI 50	0.0%	0.0%	0.0%	100.0%
2	SI 58	0.1%	0.0%	0.0%	99.9%
3	SI 40	13.4%	0.0%	0.0%	86.6%
4	SI 43	27.7%	0.0%	0.0%	72.3%
5	SI 26	100.0%	0.0%	0.0%	0.0%
6	SI 49	100.0%	0.0%	0.0%	0.0%

Table 19: Equity derivatives having a liquid market – Quoted volumes against SSTI

Count	SI Code	Traded volumes below SSTI	Traded volumes]100-101% SSTI]	Traded volumes]101-105%] SSTI	Traded volumes > 105% SSTI
1	SI 5	0.0%	0.0%	0.0%	100.0%
2	SI 50	0.0%	0.0%	0.0%	100.0%
3	SI 58	0.2%	0.0%	0.0%	99.8%
4	SI 40	13.3%	0.0%	0.0%	86.7%
5	SI 43	69.6%	0.0%	0.0%	30.4%
6	SI 26	100.0%	0.0%	0.0%	0.0%
7	SI 49	100.0%	0.0%	0.0%	0.0%

Table 20: Equity derivatives having a liquid market – Traded volumes against SSTI

Count	SI Code	Number of Quotes below SSTI	Number of Quotes]100-101% SSTI	Number of Quotes]101-105%] SSTI	Number of Quotes > 105% SSTI
1	SI 50	2.8%	0.0%	0.0%	97.2%
2	SI 58	3.3%	0.0%	0.1%	96.6%
3	SI 43	35.4%	0.0%	0.0%	64.6%
4	SI 40	76.1%	0.1%	0.3%	23.6%
5	SI 49	100.0%	0.0%	0.0%	0.0%
6	SI 26	100.0%	0.0%	0.0%	0.0%

Table 21: Equity derivatives having a liquid market – Number of quotes against SSTI

Count	SI Code	Number of trades below SSTI	Number of trades]100-101% SSTI	Number of trades]101-105%] SSTI	Number of trades > 105% SSTI
1	SI 5	0.0%	0.0%	0.0%	100.0%
2	SI 58	2.9%	0.0%	0.1%	97.0%
3	SI 50	10.1%	0.0%	0.0%	89.9%
4	SI 43	44.4%	0.0%	0.0%	55.6%
5	SI 40	61.7%	0.1%	0.4%	37.7%
6	SI 49	100.0%	0.0%	0.0%	0.0%
7	SI 26	100.0%	0.0%	0.0%	0.0%

Table 22: Equity derivatives having a liquid market – Number of trades against SSTI

4.1.3.3 Securitised derivatives - quoting and trading activity in relation to SSTI

145. The analysis in relation to securitised derivatives (IRD), which are all considered to have a liquid market, is provided in the four tables below: quoted volumes in Table 23, traded volumes in Table 24, number of quotes in Table 25 and number of trades in Table 26.

Count	SI Code	Quoted volumes below SSTI	Quoted volumes]100-101% SSTI	Quoted volumes]101-105%] SSTI	Quoted volumes > 105% SSTI
1	SI 39	0.0%	0.0%	0.0%	100.0%
2	SI 58	5.5%	0.1%	0.3%	94.2%
3	SI 44	13.0%	0.1%	0.2%	86.7%
4	SI 48	25.0%	0.0%	0.3%	74.7%
5	SI 43	42.6%	0.0%	0.0%	57.4%
6	SI 26	45.0%	0.1%	0.5%	54.4%
7	SI 46	80.0%	0.1%	0.5%	19.4%
8	SI 31	100.0%	0.0%	0.0%	0.0%
9	SI 38	100.0%	0.0%	0.0%	0.0%

Table 23: Securitised derivatives having a liquid market – Quoted volumes against SSTI

Count	SI Code	Traded volumes below SSTI	Traded volumes]100-101% SSTI]	Traded volumes]101-105%] SSTI	Traded volumes > 105% SSTI
1	SI 39	0.0%	0.0%	0.0%	100.0%
2	SI 54	0.0%	0.0%	0.0%	100.0%
3	SI 44	9.2%	0.0%	0.1%	90.6%
4	SI 58	15.4%	0.1%	0.4%	84.1%
5	SI 48	32.9%	0.0%	0.5%	66.6%
6	SI 43	42.6%	0.0%	0.0%	57.4%
7	SI 26	51.1%	0.2%	0.7%	48.1%
8	SI 46	77.6%	0.2%	0.8%	21.3%
9	SI 28	95.1%	0.1%	0.3%	4.5%

Table 24: Securitised derivatives having a liquid market – Traded volumes against SSTI

Count	SI Code	Number of Quotes below SSTI	Number of Quotes]100-101% SSTI]	Number of Quotes]101-105%] SSTI	Number of Quotes > 105% SSTI
1	SI 39	0.0%	0.0%	0.0%	100.0%
2	SI 58	42.7%	0.2%	0.9%	56.2%
3	SI 43	80.0%	0.0%	0.0%	20.0%
4	SI 48	87.4%	0.0%	0.3%	12.4%
5	SI 44	96.5%	0.0%	0.1%	3.4%
6	SI 26	99.1%	0.0%	0.0%	0.9%
7	SI 46	99.5%	0.0%	0.0%	0.5%
8	SI 38	100.0%	0.0%	0.0%	0.0%
9	SI 31	100.0%	0.0%	0.0%	0.0%

Table 25: Securitised derivatives having a liquid market – Number of quotes against SSTI

Count	SI Code	Number of trades below SSTI	Number of trades]100-101% SSTI]	Number of trades]101-105%] SSTI	Number of trades > 105% SSTI
1	SI 39	0.0%	0.0%	0.0%	100.0%
2	SI 54	7.5%	0.0%	0.0%	92.5%
3	SI 58	45.8%	0.3%	0.9%	53.0%
4	SI 28	77.7%	0.0%	0.0%	22.3%
5	SI 43	80.0%	0.0%	0.0%	20.0%
6	SI 48	87.3%	0.0%	0.3%	12.3%
7	SI 44	96.1%	0.0%	0.1%	3.8%
8	SI 26	98.0%	0.0%	0.1%	1.9%
9	SI 46	99.3%	0.0%	0.1%	0.6%

Table 26: Securitised derivatives having a liquid market – Number of trades against SSTI

4.1.4 Conclusions and proposals in relation to SSTI

146. As a conclusion to the above analysis, the data collected by ESMA for the purpose of the CP did not provide clear evidence of significant quoting or trading activity "just beyond" the SSTI threshold. Hence it does not appear that SIs would somehow artificially provide quotes at specific levels to make sure that they are not subject to the pre-trade transparency requirements for liquid instruments under Article 18(2).

147. In fact, when replying to the ad-hoc data collection exercise, a couple of SIs have provided explanations of two different natures which could shed some light on why, as we see in the data, there is virtually no trading and quoting activity very close to the SSTI thresholds.

148. First, the explanation could be that the level of the SSTI thresholds are, at least for some asset classes, so low that by construction almost any quote would be above the SSTI. This would be for instance the case for some equity derivative contracts (where the SSTI threshold is 20,000 EUR in many cases) where it has been evidenced that even quoting a single lot leads to such quote being above the SSTI threshold.

149. Second, another explanation for certain SIs could be that they provide quotes in relation to two distinct market segments, retail flow which tends to be well below the SSTI thresholds, and wholesale flow which would typically be significantly above the SSTI thresholds.

150. Overall, whether a quote is subject to pre-trade transparency depends on a series of factors: first the instrument should be traded on a trading venue (ToTV)[16], second it should be liquid and third the quote should be above the SSTI threshold. While this paper does not measure the influence of the first two factors on the overall level of pre-trade transparency in non-equity traded on SIs, it suggests that the third one alone does not appear to be used by market participant to circumvent their obligations under Article 18(2).

151. Any reflections around the overall level of transparency (such as the liquidity determination or the level of the SSTI thresholds) is expected to be covered at a more general level (i.e. not for SI only) in the MiFID II/MiFIR report on transparency for non-equity instrument, expected to be published in Q3 2020. ESMA wishes to highlight that any change to the transparency regime may have an impact on the SI regime in Article 18 of MiFIR therefore it is important to perform a holistic review of the relevant Level 1 requirements.

152. With regards to the mandate covered in this report, i.e. the impact of the SSTI threshold on SI's obligation to publish firm quotes in non-equity instruments, ESMA exposed in the CP that in the absence of obvious issues linked to possible circumvention of the pre-trade transparency obligations via the SSTI threshold, no change to the legal framework appeared necessary.

[16] As explained in the Annex 6.3, for the purpose of this analysis all instruments have been considered ToTV.

Feedback to the CP

153. In the CP, ESMA asked market participants their views on the influence of the SSTI thresholds on the pre-trade transparency framework for SI active in non-equity instruments, and whether any changes to the legal framework were necessary (Question 13).

154. Most stakeholders concluded that in the absence of an impact or influence of the SSTI thresholds on the pre-trade transparency framework for SIs active in non-equity instruments no change to the legal framework was needed at this stage.

155. This conclusion was supported by the fact that quotes provided by SIs mainly result from request for quotes from clients, hence SIs are not setting the volume of those quotes.

156. In addition, some SIs stream quotes in non-equities on a continuous basis, typically in the most liquid and widely traded non-equity instruments. For those instruments, prices are available on trading venues as well and liquidity providers are happy to trade on those quoted prices, especially for smaller volumes. Hence there is little to no incentive for SIs to provide quotes in those instruments for sizes just above the SSTI in order to avoid pre-trade transparency.

157. Some stakeholders proposed to change what they consider to be a complex system of variable thresholds to a fixed SSTI threshold, provided that the policy objective of protecting SIs against undue risk is still met. In their view, fixed thresholds would be easier for retail clients to understand, while wholesale clients have more resources to stay informed of changing variable thresholds.

Proposals and conclusions on the influence of the SSTI thresholds on the pre-trade transparency framework for SIs active in non-equity instruments

158. The feedback received from stakeholders largely confirms ESMA's preliminary conclusions set out in the CP: there is no evidence that SIs would artificially provide quotes at specific levels to make sure that they are not subject to the pre-trade transparency requirements for liquid instruments under Article 18(2).

159. ESMA hence confirms its conclusion that in the absence of obvious issues linked to possible circumvention of the pre-trade transparency obligations via the SSTI threshold, no change to the legal framework appears necessary at this stage.

160. The proposals made in the responses to the CP going beyond the mandate of this report, such as overall changes to the way in which SSTI thresholds are calculated, or the relevance of SSTI thresholds as a whole, will be addressed in the broader context of the MiFIR review report on transparency for non-equity instruments.

4.2 Monitoring whether quoted prices reflect prevailing market conditions

161. Article 19(1) of MiFIR states that "Competent authorities and ESMA shall monitor the application of Article 18 regarding […] the degree to which the quotes reflect prevailing

market conditions in relation to transactions in the same or similar financial instruments on a trading venue.". It also states that in the event of "significant quoting and trading activity […] outside prevailing market conditions", ESMA shall submit its report to the Commission in advance of the legislative deadline.

162. This mandate implies that ESMA collects on the one side information on quoted and traded prices and, on the other side, information on prevailing market conditions on the basis of transactions taking place on venue, and finally designs a methodology to compare those two to formulate a general assessment of whether there is any significant quoting and trading activity "outside" prevailing market conditions.

4.2.1 Collecting ad-hoc data from SIs

163. To fulfil this mandate ESMA had initially envisaged to collect quoting and trading data, as well as market prices, directly from SIs for three main reasons. Firstly, data on individual quotes are not part of the transparency data which is submitted to ESMA under MiFIR. Secondly, the post-trade transparency data submitted to ESMA is aggregated per ISIN, trading day and reporting entity, hence there is no information at individual transaction level including on price.

164. Thirdly, the analysis of quotes that SIs are required to publish under Article 18(1) of MiFIR, which could be used in this context, would not allow for a thorough analysis because the quotes subject to publication only concern a limited subset of the total quoting activity (liquid instruments below SSTI) and would not cover the whole mandate. In addition, there is no centralised access point to those published quotes and they prove difficult to capture on a systematic basis (an issue that the recommendation in section 3.3.1.4 aims to address).

165. ESMA therefore initially produced a template to collect data from SIs on quoted and traded prices and whether they reflect prevailing market conditions, as it did to collect the data related to the first part of the mandate (i.e. whether there is a significant trading and quoting activity just beyond the SSTI threshold). When ESMA consulted SIs on this template over the summer 2019, the general feedback was that this exercise would be extremely complex, costly, time consuming or simply impossible.

166. For example, some SIs mentioned that they stored the market inputs used for the fair price but not the prices in the same or similar financial instruments on a trading venue. Others mentioned that there were several sources of "market data" (including sometimes both internal and external sources), and several ways to aggregate them, hence further guidance would be needed on how the "price prevailing market condition" should be calculated/provided.

167. Finally, some SIs also stressed that performing such analysis on a systematic basis (e.g. all quotes from all SIs for a given time period) would produce gigantic amounts of data, rendering the subsequent data analysis very complex. Taken the above feedback into account, ESMA had decided not to collect ad-hoc data from SIs in this context.

168. As suggested by some SIs, there could be alternative ways for ESMA to fulfil its mandate: one possibility would be to source this information from APAs, and the other one to retrieve the information published by SIs under Commission Delegated Regulation (EU) 2017/575 (RTS 27 on Best Execution). Those options, not mutually exclusive, are described below.

4.2.2 Relying on data published under RTS 27

169. RTS 27 specifies inter alia the content, format and periodicity of data relating to the quality of execution to be published by execution venues (i.e. including SIs) in accordance with Article 27(3) of MiFID II (best execution).

170. ESMA has initiated a workstream to search, store and aggregate parts of the data published by SIs under RTS 27, in particular Table 3 of this RTS which includes data at a level of granularity that is compatible with the analysis required (i.e. transaction level).

171. The scope of the data published under RTS 27 would by definition not completely overlap with the data needed to cover ESMA's mandate for this report, in two ways: the data does not reflect quoting activity, but only trading activity (when a quote results in no trade, there is no obligation to report it under RTS 27); and SIs activity above the SSTI threshold is exempted from the reporting of intra-day transaction data (such as covered by Table 3) under RTS 27 (see recital 10 of RTS 27).

172. Although the intra-day data expected to be published is limited to four specific points in time for each day (9.30, 11.30, 13.30 and 15.30), ESMA considers that such time granularity would be sufficient for the analysis to be performed.

173. From the large sample of SIs' RTS 27 reports examined by ESMA, the main limit identified lies in the significant differences in the way SIs make their RTS 27 report publicly available.

174. Finally, Table 3 of RTS 27 mandates SIs to publish information on the "Best bid and offer or suitable reference price at time of execution", which could be considered equivalent to the "prevailing market conditions" and hence provide a valuable source of data for the analysis ESMA is expected to make. However, this specific column of Table 3 of RTS 27 is only mandatory in the situation where "no transactions occurred during the first two minutes of the relevant time periods[17]". The information from the RTS 27 reports alone would not enable a proper assessment of whether the quotes would reflect prevailing market conditions.

4.2.3 Relying on APA data

175. APAs could be a source of information in two different ways. First, in relation to pre-trade data (hence information on SI quoting activity), some SIs are complying with their pre-trade transparency obligation under Article 18(1) by publishing quotes via an APA.

[17] Article 4 point (a)(x) of RTS 27

APAs could hence constitute a centralised source of data in relation to quoted prices, with one limitation being that according to a survey performed by ESMA in November 2019 (covering 40 SIs), roughly only half of the SIs are using such publication arrangement (Figure 2).

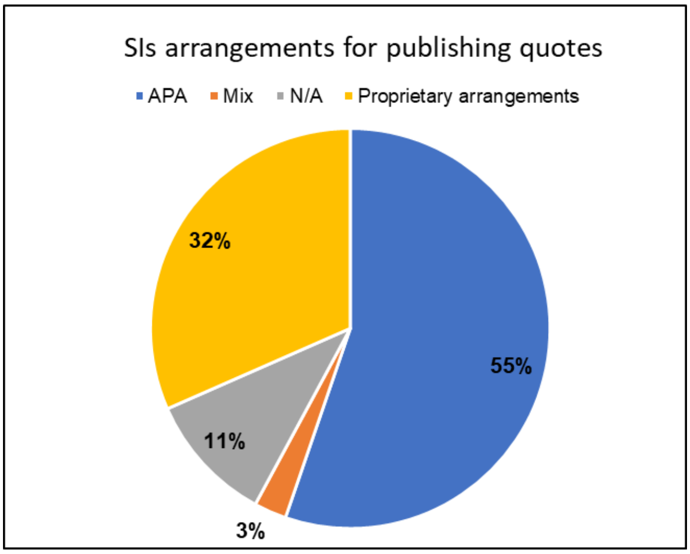

Figure 2: SIs arrangements for publishing quotes (source: SIs survey November 2019)

176. The other SIs that responded to the survey indicated that they are fulfilling this obligation via a trading venue or making the pre-trade information available on their own website. In addition, as mentioned above, pre-trade publication is only mandatory for quotes in liquid instruments below SSTI, hence covering only one part of the Commission's mandate.

177. Second, in relation to post-trade data (hence information on SI trading activity), ESMA could leverage on Article 21 of MiFIR which requires SIs to make public the volumes and prices of all their non-equity transactions through an APA. Opting for this data source would, of course, limit the analysis to trading activity but would cover a broader scope of transactions and instruments compared to pre-trade data, as the APA post-trade reporting is not limited to transactions in liquid instruments below SSTI.

4.2.4 Market data source

178. None of the data sources described above, i.e. RTS 27 reports and APA data, appear to be a reliable source of data concerning the "prevailing market conditions in relation to transactions in the same or similar financial instruments on a trading venue".

179. Based on a preliminary assessment, the possibility to source this data from trading venues has been excluded due to complexity. It would indeed first require mapping each instrument with the (possibly numerous) trading venues on which it is available, then designing data requests which would be ad-hoc to each trading venue and finally re-aggregating the pricing data afterwards. Instead, ESMA is examining the possibility to use external data sources with pre-aggregated data from multiple trading venues, but the extent to which this will be sufficient to deliver a meaningful analysis is yet to be determined.

180. As explained above, ESMA is faced with multiple challenges when it comes to fulfilling the second part of the mandate on whether quoted/traded prices reflect prevailing market conditions. Several options have been identified as possible data sources, but all appear to have their own drawbacks. Choices have yet to be made as regards the scope of the data set (both in terms of instruments, number of SIs and time period) with the view to strike a balance between the representativeness of the sample and its complexity, having in mind the impact on affected stakeholders' as well as ESMA's resources.

Feedback to the CP

181. In the CP, ESMA asked market participants their view on the best way for ESMA to fulfil the mandate related to whether quoted and traded prices reflect prevailing market conditions (Question 14). Market participants overall agreed that there is no simple or obvious solution available in order to fulfil ESMA's mandate. Among the responses received, none recommended using RTS 27 data. Data from RTS 27 was deemed unsuitable because, as discussed above, trade level data is published only in some narrow scenarios and in very diverse formats.

182. With respect to the possible use of APA data, respondents highlighted that indeed APA's data is broad as it includes both pre- and post-trade data. However, respondents noted that not all SIs use APAs and that APAs are not required to aggregate data. Even where data would be available, SIs are not subject to pre-trade transparency obligations when they quote above SSTI, which narrows the scope of the analysis.

183. Regarding the possibility of fulfilling ESMA's mandate through a data request to SIs and trading venues (TVs), some respondents highlighted that if such choice was made the data request should be sent for few, narrowly selected timeslots. In ESMA's view, this would hinder the purpose of the data request as it would limit data availability and not lead to a meaningful analysis.

184. Some respondent suggested that ESMA discusses the relation between quotes and prevailing market conditions directly with SIs, recommending a qualitative approach rather than a quantitative one.

4.2.5 Conclusions and proposals in relation to prevailing market conditions

185. The feedback received from stakeholders confirms ESMA's preliminary view that data currently available through APAs and RTS 27 publications is not suitable to fulfil ESMA's mandate with respect to the degree to which SIs' quotes reflect prevailing market conditions in relation to transactions in the same or similar financial instruments on a trading venue.

186. In light of the responses received, ESMA considers that a suitable way to fulfil its mandate would be to rely on a qualitative analysis, relying on the feedback received from SIs to the data request performed in July 2019. In this data request, SIs were asked to explain how they ensure that quoted prices reflect current market conditions.

187. Overall the responses received highlighted that SIs ensure that their quoted prices are in line with prevailing market condition either by directly using the prices available on TVs as an input for their quotes, or by indirectly using such prices (or in some cases the price of the underlying) as input to their pricing models.

188. Several SIs stated that for those financial instruments where SIs directly compete with trading venues, SIs necessarily take into account on-venue pricing when offering quotes and that quotes are marked against TV prices. SIs which continuously stream quotes in RFQ systems sometimes strictly replicate the trading venues' order book, to ensure that their quotes are in line with market conditions. Others have tools to compare their quotes with on-venue pricing with the same objective.

189. Furthermore, SIs stressed that they might aggregate multiple sources of pricing (e.g. RMs, MTFs and OTFs) in order to ensure that their quotes represent the best available prices. The responses also highlighted that best execution policies, internal pricing policies, as well as pricing models (which are audited and authorised) ensure that quoted prices reflect the current market conditions.

190. Finally, some mentioned that when the SI is a market-maker on a product they have issued, the quote itself is the prevailing market price.

191. Overall, ESMA considers that undertaking a full quantitative assessment at this stage would create disproportionate costs (both to market participants and ESMA) compared to the potential benefit. This position might be revisited upon the establishment of a (pre-trade) consolidated tape, as suggested in some responses to the CP, as the data necessary to fulfil this mandate would then likely be available in the appropriate shape.

192. As of today, relying on the qualitative feedback provided by SIs, ESMA considers that SIs appear to have procedures and systems in place to ensure that their quoted prices are in line with the prevailing market conditions. ESMA further notes that there is no evidence or complaint from SI users pointing to a different conclusion. ESMA will continue to monitor the relation between quoted prices and prevailing market conditions as part of its overall supervisory convergence mandate, e.g. via qualitative surveys encompassing a larger set of SIs.

5 Summary of proposals

193. ESMA proposes to:

1) Allow SIs to withdraw quotes at any time (and not only under "exceptional market conditions"), by amending Article 18(3) of MiFIR.

2) Simplify the requirements applicable to quotes in liquid non-equity instruments, by deleting in MiFIR: Article 18(5), the first paragraph of Article 18(6) and Article 18(7);

3) Set out at Level 2 the requirements for SIs in non-equity instruments for publishing their quotes, via an amendment to Commission Delegated Regulation (EU) No 2017/567,

which would extend to non-equity instruments the requirements currently applicable to equity instrument (Article 13 of Commission Delegated Regulation (EU) No 2017/567);

4) Simplify the requirements applicable to quotes in illiquid non-equity instruments, by deleting Article 18(2) of MiFIR.

6 Annexes

6.1 Annex 1: Feedback from the Consultation Paper

Q 1: Do you consider that there is a need to clarify what a "firm quote" is? If so, in your view, what are the characteristics to be met by such quote?

With two exceptions, none of the respondents considered it necessary to further clarify what a firm quote is. Most of them considered that there was a clear understanding among market participants, SIs and clients of what a firm quote was.

Many respondents were also concerned that introducing a new definition that would not be aligned with market practices would be a source of additional costs and would further complicate the rule.

A couple of respondents said they understood a firm quote to be an executable quote.

One responded that there is sufficient clarity in the market as to the meaning of a firm quote, in particular given ESMA's Q&A on MiFID II and MiFIR Transparency topics.

One respondent referred to the SSR of 2012 where "firm quotes" are mentioned, without having required any need for further clarification.

The minority view was expressed by a trading venue that supported clarifying that all quotes provided by SIs that contain all necessary information in order to agree on a trade have to be considered a "firm quote" to help levelling the transparency regime playing field between SIs and multilateral trading venues. Another stakeholder noted that "firm quote" allows for multiple interpretations, with each SI adopting different conventions that best suit their needs but did not explicitly call for a clarification of the term.

Q 2: (For SI clients) As a SI client, do you have easy access to the quotes published, i.e. can you potentially trade against those quotes when you are not the requestor? Do you happen to trade against SIs quotes when you are not the initial requestor? How often? If it varies across asset classes, please explain.

Seven stakeholders responded from an SI client perspective. About half of them considered that the market has no need for pre-trade data from SIs with respect to non-equity instruments. Institutions/clients typically have a business relationship with a limited number of SIs, and no one would be willing to bear the costs of entering into a new relationship just to benefit from a "better quote". As regards the quotes published by SIs they already have a relationship with, clients will always ask directly for a quote as the quote is priced considering the characteristics of each client. In addition, clients turn to SIs for specific demands, which are of no use for other clients.

Some stakeholders stressed that pre-trade quotes are indeed difficult to access due to the variety of channels that can be used but even easier access would not make much difference considering their limited usefulness. Those stakeholders further stressed that pre-trade transparency is only a burden that prevent small and medium-sized firms from registering as SIs, thereby reducing market competition. Two respondents noted that quotes are indeed available but confirmed that clients would rather trade on published axes and inventory rather than MiFIR based SI quotes.

One buy-side firm noted that most of the bilateral negotiations seem to be carried out via voice or via Bloomberg chat, without knowing most of the time whether trading with the counterparty takes place under the SI regime, so pre-trade transparency is not helpful.

Q 3: What is your overall assessment of the pre-trade transparency provided by SIs in liquid non-equity instruments? Do you have any suggestion to amend the existing pre-trade transparency obligations? If so, please explain which ones and why.

Apart from three respondents, all stakeholders provided negative feedback on the non-equity SI pre-trade transparency framework for liquid instruments based on multiple grounds.

A large majority of respondents stressed that there is no demand for SI quotes due to the bespoke nature of each request. Buy-side firms (market participants/institutional investors) continue to use consistently updated market data streams for the purposes of price discovery, together with axes and runs published by dealers as a source of information for price discovery. Quotes just disappear in a black hole whilst being a burden for SIs.

One stakeholder further stressed that there is no point in having as a regulatory objective to have the quotes accessed by other clients due to their bespoke nature. Having those quotes used for price discovery would require clients to build multiple data feeds with their SIs, which they will not do. According to this respondent, SI quotes may only be useful in the context of a pre-trade consolidated tape. Another respondent noted that quotes are made public almost at the same time as the resulting transactions. It is therefore almost impossible to trade on those quotes, which are difficult to access in the first place. Only the more sophisticated market players may take advantage of those quotes for their own trading and pricing strategies. Many respondents stressed that pre-trade is anyhow limited to a very small number/percentage of instruments qualifying as ToTV that are liquid.

Based on the above, some respondents suggested deleting Article 18 to focus on post-trade transparency.

Many respondents expressed concerns about the scope of pre-trade transparency rules for OTC derivatives and the uncertainty/burden arising from the ToTV concept which should be reconsidered. A couple of respondents suggested disapplying pre-trade transparency rules to all OTC derivatives.

Other concerns expressed relate to bond liquidity misclassification, to the need to review pre-trade trade transparency calibration for some derivatives (e.g. IR options, commodity derivatives), to increase SI thresholds to concentrate on larger, more meaningful SIs and to disconnect SI status from post trade transparency rules.

Two respondents noted that the CP did not evaluate the level of pre-trade transparency being provided by SIs for package transactions and call for an amendment to Section 4, Question 4(c) of ESMA's Q&A on MiFID II and MiFIR transparency topics on this topic, which leaves too much room for circumvention by SIs.

One respondent insisted on the poor data quality of the pre trade data and suggested that additional level of standardization of ISINs, CFI codes etc. would help addressing the issue.

Q 4: (For SI clients) do you have access to quotes in illiquid instruments? If so, how often do you request access to those quotes? What is your assessment of the pre-trade transparency provided by SIs in illiquid instruments?

Seven stakeholders responded to this question. Most respondents noted most non-equity instruments are illiquid and that most SIs benefit from a waiver. Therefore, no quote is available to clients. A couple of stakeholders stressed that they have no interest in the bespoke quotes provided to another client and that the focus should be on post-trade transparency, also referring to their responses to Question 2 and 3.

Q 5: (For SIs) Do you disclose quotes in illiquid instruments to clients upon request or do you operate under a pre-trade transparency waiver? In the former case, how often are you requested to disclose quotes (rarely, often, very often)? Does it vary across instruments / asset classes?

Half of the respondents to this question benefitted from an illiquid pre trade transparency waiver, while one did not.

All respondents not benefitting from the waiver stressed that the cases where they have been asked by another client to disclose a quote in illiquid instruments were rare or negligible. Like for liquid instruments, clients do not have an interest in a quote that would have been tailor made to another client request, and even more so in illiquid instruments.

One respondent mentioned the risks associated with "quote fishing" practices by those with no intention to trade that could compromise the trading strategies and hedging abilities of the parties involved in a bilateral transaction.

Q 6: Do you consider that there is an unlevel playing field between SIs and multilateral trading venues active in non-equity instruments, in particular with respect to pre-trade transparency? If so, please explain why and suggest potential remedies.

The vast majority of stakeholders who responded to this question either directly or through their trade association were banks/sell side firms. They stressed that MiFIR recognises the need for transparency requirements to be calibrated for different types of financial instruments taking into account the interest of issuers and market liquidity, hence the different rules that apply to trading venues and SIs.

According to those respondents, SIs are at a disadvantage compared to trading venue because they have to give access to their quotes to other clients, firm quotes ‘available to other clients’ and ‘enter into transactions’ under the published conditions (although acknowledging that they have managed risks through their commercial policy). Furthermore, their quotes are not anonymous. Article 18 should therefore be amended to level the playing field between SIs and trading venues by deleting Article 18(6), (7) as well as (5). Another source of unlevel playing field quoted is the burden arising from the uncertain application of the SI regime to non-ToTV instruments. Sell-side firms also anticipated the trading venues’ responses by stressing that the concerns arising from network of SIs are only relevant for the equity space, not for non-equities.

Trading venues considered that they were at a disadvantage compared to SIs. They first noted that the distinction between bilateral trading and multilateral trading is being blurred due the setting up of network of SIs, which ESMA is invited to further look into. It was also noted that some SIs do not comply with the prohibition, when dealing on their own account, from entering into matching arrangements with entities outside their group to carry out de facto riskless back-to-back transactions through arrangements with third party liquidity providers. Trading venues also claimed that BCN trading volumes under MiFID I have shifted to SI reported trading instead of moving to multilateral trading venues, which demonstrates the failure of MiFID II to move more trading to lit venues. This analysis was also supported by another stakeholder who pointed at increased complexity and market fragmentation under MiFID II. To address the issues identified, some trading venues suggested mandating trading below LIS on RMs, MTFs, and OTF (with a 100,000 EUR threshold for bonds and securitised derivatives).

One trading venue further noted the unlevel playing field arising from the fact that it is unclear whether SIs must formally apply for a waiver, whereas TV waivers as subject to in-depth scrutiny by NCAs and ESMA.

Q 7 (for SIs who are also providing liquidity on trading venues): What are the key factors that determine whether quote requesters (your clients) want to receive the quote through the facilities of a trading venue or through your own bilateral trading facilities?

Most respondents quoted the size of the trade and the liquidity of the instrument as key differentiating factors for trading on an SI or a trading venue. Large size trade in low liquidity instruments would be executed with SIs, while trading venue would attract trades in more liquid instruments such as equity derivatives or retail bond trading. According to those respondents, trading with SIs in large size minimise the risk of information leakage. Clients would also turn to SIs for illiquid instruments where no pricing is available, when the trade is part of a complex trading strategy or in times of market volatility/uncertainty. Some respondents also referred to lower execution fees and trading costs, and sometimes settlement costs, compared to on-venue trading.

Some respondents noted that trading venues offer the benefit of a fast transaction process and Straight Through Processing, which is valuable for smaller trades.

One respondent has noted an increase in liquidity provision by market makers/SIs on trading venues as trading on trading venues makes it easier to comply with regulatory requirements (transparency, transaction reporting). Trading on trading venues also facilitates compliance with best execution requirements.

Q 8: What is your view on the proposal to simplify the requirements in relation to SI quotes in liquid non-equity instruments under Article 16(6) and 18(7)?

Apart from three stakeholders, all respondents supported the deletion of Article 18(6) and 18(7), noting that the requirement to trade with other clients on the quote displayed does not apply to dealers/market makers on trading venues. A couple of respondents further noted that the deletion of Article 18(6) and 18(7) will just result in the current de facto situation implemented through the commercial policies of the majority of SIs, building as well on ESMA's Q&A that allows the SI to trade on the displayed quote with one client only. Some respondents commented or reiterated earlier comments that the quote provided by an SI responds to a specific client's requests and therefore cannot be extended to other clients

Some respondents suggested to also delete Article 18(5). If the SI is no longer required to trade with other clients at the displayed quote, then there is no need for the SI to "give access" to its quotes. In their views, the publication of the quote would be enough. Two stakeholders further suggested to get rid of pre-trade transparency requirements altogether for SIs and focus on post-trade transparency.

The two trading venues that responded to the question were opposed to the deletion of Article 18(6) and 18(7). One trading venue stressed that although trading on the quote displayed with only one client may indeed be the actual SI behaviour, this is not in line with the MiFID objectives. Deleting Article 18(6) and 18(7) would make SIs like any other investment firm while qualifying as execution venues. According to this trading venue, the requirement to trade on the quote published with other clients when that quote is below SSTI allows for appropriate risk management by SIs. The other trading venue considered that a quote against which only a subset of a SI's clients is entitled to trade decreases transparency and liquidity available to the overall market. A quote provided to one client, without the requirement to allow other clients to participate in the execution at this price is bilateral trading and must be avoided below LIS thresholds.

Q 9: Do you consider that the requirements in relation to SI quotes in illiquid non-equity instruments (Article 18(2)) are appropriate? What is your preference between the options presented in paragraph 52 (please justify)?

A majority of responded supported the deletion of Article 18(2), which is considered overly complex and providing little benefit. However, most of those respondents could not support Option 3 as they did not understand what the supervisory convergence tool mentioned in this Option was referring it or were concerned by the additional burden thus created for NCAs and SIs. Option 1 ("do nothing") therefore appeared as their fall-back solution. Some respondents supported Option 1 (do nothing) but nonetheless felt attracted by the deletion of Article 18(2) and said they could consider Option 3 if further clarity was provided on the supervisory convergence tool considered. A couple of respondents were just satisfied with the "do nothing approach".

Some respondents supported Option 3 provided that the supervisory convergence tool mentioned does not prove more burdensome for SIs than the existing Article 18(2) requirements. One banking association agreed with Option 3 provided that those tools are limited to the monitoring of the instruments' classification by SIs (liquid versus illiquid instruments) based on the list of liquid instruments created and periodically updated by ESMA itself. In contrast, one respondent understood that under Option 3, SIs would now oversee determining the liquidity status of non-equity instruments instead of ESMA, which he did not agree with.

Two trading venues were the only stakeholders supporting Option 2 (align the regime for liquid and illiquid instruments, with a waiver for illiquid instruments) in support of more transparency. They also both understood that Option 2 would include a formal waiver application for SIs, which they supported to reduce the unlevel playing field with multilateral trading venues for which the difference in the transparency regime for liquid and illiquid instruments is managed through the application for related waiver for illiquid instruments.

One trading venue further referred to ESMA's consultation paper on equity instruments and supports the approach to remove the pre- trade transparency waivers (non-liquid waiver) except for LIS and OMF also for bonds and securitized derivatives.

Q 10: What is your view on the recommendation to specify the arrangements for publishing quotes?

Stakeholders were split as to whether Level 2 should be amended to further specify the publication arrangements for SI quotes.

About half of the respondents, including banking federations, did not support the proposal to specify in Commission Delegated Regulation (EU) No 2017/567 the arrangements to be met by SIs for publishing quotes, in line with the arrangements to be met for the publication of quotes in equity instruments. The arguments put forward are the lack of convincing regulatory arguments to do so and the additional costs and administrative burden entailed.

The other half supported ESMA's proposal to provide more clarity and legal certainty. However, a couple of them noted that there are elements of Article 13 which relate to equities and are not readily applicable to the bond market and recommended that ESMA reviews Article 13 to ensure that its provisions are practicable in respect of the bond markets.

Three stakeholders (of which one in the first general comment section) noted that the CP suggested to further clarify the concept of exceptional circumstances under which an SI may suspend providing quotes but that there was no question asked on this proposal. One respondent agreed with the proposal. Another one considered that the clarification was not necessary as pre-trade transparency only applies anyway when the SI agrees to provide a quote. The last one stressed that it was important not to copy paste the rules for equities but to ensure that those circumstances are relevant for the different parts of the non-equity market. On many bond and derivatives markets, liquidity is provided by SIs that trade against own account and the exceptional circumstances should relate to distressed situations where that is no longer possible.

Separately, a couple of respondents expressed concerns that SI data (the published prices) are considered by the trading venues to be “unlawful” derived data (from the trading venues own published prices) infringing on the trading venues intellectual property rights to those prices. At present, many venues do not allow SIs to publish this information on the SIs’ webpages or through an APA unless they pay the venues for the data, i.e. SIs need to pay venues for complying with their legal requirements as SIs under MiFID/MiFIR. In practice, this has forced SIs not only to restrict the access to the information on their webpages to a limited number of logged in clients but also to pay unjust fees for the SIs’ compliance with MiFIR. Those respondents suggested that the Commission and ESMA further investigate the matter.

Q 11: Do you have any comment on the analysis of Bond data and the relation with the SSTI thresholds as presented above?

Most stakeholders commented that ESMA’s finding were in line with industry expectations, that there was no evidence of circumvention of the pre-trade transparency regime via the SSTI thresholds and the levels of the SSTI thresholds were appropriate.

According to respondents, the dichotomy identified in the data, between on one side certain SIs mainly quoting below SSTI; and on the other side other SIs mainly quoting above SSTI, reflects the differences between SIs in terms of client base. SIs quoting mainly below SSTI typically serve retail clients, for which pre-trade transparency is important as they may have difficulties to gauge market values. On the other side, SIs quoting mainly above SSTI are likely to serve more active clients, who can rely on various sources of market data and have access to relevant liquidity providers (hence for which pre-trade transparency is of less importance). In that sense, respondents considered that the pre-trade transparency regime for SI was appropriately framed.

One stakeholder commented that bond trading remained opaque and that there was no increase in transparency following MiFIDII/MiFIR, as most trading activity occurs OTC or between bank/SI and retail clients. According to this stakeholder, there should be an obligation to trade bonds below LIS in transparent multilateral markets. This would significantly reduce market fragmentation, add liquidity and increase pre- and post-trade transparency, particularly for retail investors.

Q 12: Do you have any comment on the analysis of derivatives data and the relation with the SSTI threshold as presented above?

The responses to this question (on derivatives) were largely the same as those collected in Question 11 (on bonds): for derivatives markets, most stakeholders commented that ESMA’s finding were in line with industry expectations, that there was no evidence of circumvention of the pre-trade transparency regime via the SSTI thresholds and the levels of the SSTI thresholds were appropriate.

Several stakeholders also agreed with ESMA’s statement in para. 89 of the CP, i.e. that the level of the SSTI thresholds were so low for some asset classes that by construction almost any quote would be above SSTI. In those instances, the comparison between trade flows above and below the SSTI thresholds is somehow meaningless. Some suggested to remove the SSTI thresholds and align them with the levels of the LIS.

Q 13: What is your view on the influence of the SSTI thresholds on the pre-trade transparency framework for SI active in non-equity instruments? Are there any changes to the legal framework that you would consider necessary in this respect?

Q 14: What is your view on the best way for ESMA to fulfil the mandate related to whether quoted and traded prices reflect prevailing market conditions and in particular: (1) the source of data for the SI quotes/trades (RTS 27, APA); (2) the source of market data prices; and (3) the methodology to compare the two and formulate an assessment?

The responses received overall highlighted that there is no simple or obvious solution available in order to fulfil ESMA's mandate. With respect to the possible use of RTS 27 data, no respondent recommended the use of such data. The most common reasons for which RTS 27 data is considered as unsuitable are: (i) the fact that data is published in very diverse formats, and trade level data is published only in some narrow scenarios; (ii) the scope does not overlap; (iii) RTS 27 data is not used by clients of SIs; (iv) it is not suitable for FX, as FX data is published quarterly and most of the fields are not applicable; (v) there is an absence of an obligation to report quotes in those instances where they actually result in no trade entailing that a mismatch may exist between quoting activity and trading activity.

One respondent suggested that the publication of RTS 27 data shall be harmonised both in terms of content and format.

The majority of respondents highlighted that APA data is broader than other sources and could be useful to understand if SI quotes reflect prevailing market conditions. Nevertheless, responses also highlighted that there could be shortcomings also in the use of APA data as: (i) not all SIs use APAs; (ii) APAs are not required to aggregate data; (iii) SIs are not subject to PTT obligations when they quote above SSTI.

One respondent suggested standardising the format of submission of data for APAs.

Few respondents suggested that ESMA discusses with market participants the relation between quotes and prevailing market conditions, recommending a qualitative approach rather than a quantitative one. Furthermore, few respondents argued that the introduction of a consolidated tape (CTP) could help to monitor whether quoted and traded prices reflect prevailing market conditions. Nevertheless, one respondent highlighted that the introduction of a CTP could worsen data availability problems if governance and operations requirements are not calibrated adequately, because consumers would use inadequate data.

Few participants suggested that ESMA proceeds with a data request to SIs and TVs. This would entail a request of data to SI for selected time slots, and a request of data to TVs.

6.2 Annex 2: Legal Mandate

Article 19(1) of MiFIR:

Monitoring by ESMA

1. Competent authorities and ESMA shall monitor the application of Article 18 regarding the sizes at which quotes are made available to clients of the investment firm and to other market participants relative to other trading activity of the firm, and the degree to which the quotes reflect prevailing market conditions in relation to transactions in the same or similar financial instruments on a trading venue. By 3 January 2019, ESMA shall submit a report to the Commission on the application of Article 18. In the event of significant quoting and trading activity just beyond the threshold referred to in Article 18(6) or outside prevailing market conditions, ESMA shall submit a report to the Commission before that date.

6.3 Annex 3: Data collection exercise

6.3.1 Quality of reference data

194. In terms of quality of the reference data, ESMA performed some consistency checks. Minor adjustments were made to the data submitted when such adjustments were straightforward as described below.

195. In relation to the LIQUIDITY flag, ESMA changed the liquidity flag as reported by SI based on the sub-asset class reported, in the following cases:

- Securitised derivatives should all be LIQUID as per Article 13(1)(a)(i) of RTS 2;
- Equity derivatives different from “Other Equity derivatives”, “Swap” and “Portfolio swap” should all be LIQUID as per Table 6.1 of Annex III of RTS 2
- SFP should all be ILLIQUID as per the transitional transparency calculations

196. Other sub-asset classes have a fixed liquidity status (e.g. all FX derivatives are illiquid, all derivatives in the “Other” category are illiquid) but there were no instances of misreporting for those cases.

197. In relation to the field “WAIVER”, which indicates whether the quotes are subject to a waiver under Article 18(3): since this waiver is only available to quotes in illiquid instruments, ESMA changed the flag from “WAIVER” to “NA” on all liquid instruments.

198. SI have been asked to segment the data provided based on whether the instrument was traded on a trading venue (ToTV) or not. For the analysis presented in the CP this breakdown has not been considered for the following reasons:

- For bonds (including ETCs and ETNs) as well as interest rate derivatives, virtually all volumes have been reported as ToTV hence the exclusion of “non-ToTV” data would not have made a difference to the analysis;
- For other derivatives on the contrary, the exclusion of “non-ToTV” data would have led to a significant cut in an already limited sample of data and would have rendered any analysis quite difficult. Given that this CP does not address the question of the ToTV

definition, and that whether an instrument is ToTV may be subject to changes over time, it has been considered reasonable to assess the data irrespective of the ToTV status.

6.3.2 Quality of quantitative data

199. In terms of quality of the quantitative data, the following data analysis should be understood with the following caveats in mind:

- Only a subset of SIs has been invited to provide data even though the overall number of SIs who participated in the exercise is meaningful (about 1/3 of the total SI population);

- SIs who reported data flagged that retrieving the data ex post as framed in the data request has been a complex exercise and they have not always been able to retrieve data for all their activity.

- Some SIs have not reported data in relation to asset classes that are illiquid (e.g. FX).

- The assumptions and methodologies that SIs have used to aggregate quoting data are not always known and are likely to differ from one SI to another. This is relevant for SIs that are streaming quotes on a continuous basis or reproducing the order book of a trading venue. Some have calculated quoted volumes by considering each change of price/quantity as a new quote, leading to extremely high quoted volumes (which are out of proportion compared to their traded volumes, or to the quoted volumes of other SIs). Other SIs have merged quotes with identical quotes details within a specific time period.

200. ESMA also performed a consistency analysis between (1) the traded volumes reported in the ad-hoc data request; and (2) those reported to FITRS by the same SIs over the same period. For bonds, the results turned out satisfactory with a high consistency rate[18], with however non-negligible differences between SIs (some reported higher volumes in FITRS, others reported higher volumes in the ad-hoc data request). In addition, the total volumes reported under the ad-hoc data request represented roughly 60% of the total FITRS volumes reported by all SIs over the same time period, indicating a reasonable coverage of the ad-hoc data sample.

201. For interest rate derivatives and securitised derivatives, the consistency rate as described above also turned out reasonable however the coverage was much lower than in the case of bonds. For equity derivatives, the number of common SI between the two datasets was too small to come up with a meaningful comparison.

[18] Sum of (Volumes reported under the ad-hoc data) divided by Sum of (Volumes reported in FITRS) for the month of June 2019, across SI that have reported in both systems.

202. Such consistency checks on *quoted* volumes were not possible as no other source of data could be identified for the comparison.

203. Taking the above considerations into account, another possible way forward would have been to re-specify the data request and gather data from additional SIs. However, having heard the feedback from SIs on the complexity of retrieving the data already provided, as well as the deadline for providing the report to the Commission, ESMA considered that this would have been disproportionate and lengthy, and opted instead to work on the basis of the data as provided, subject to the corrections and caveats mentioned above.