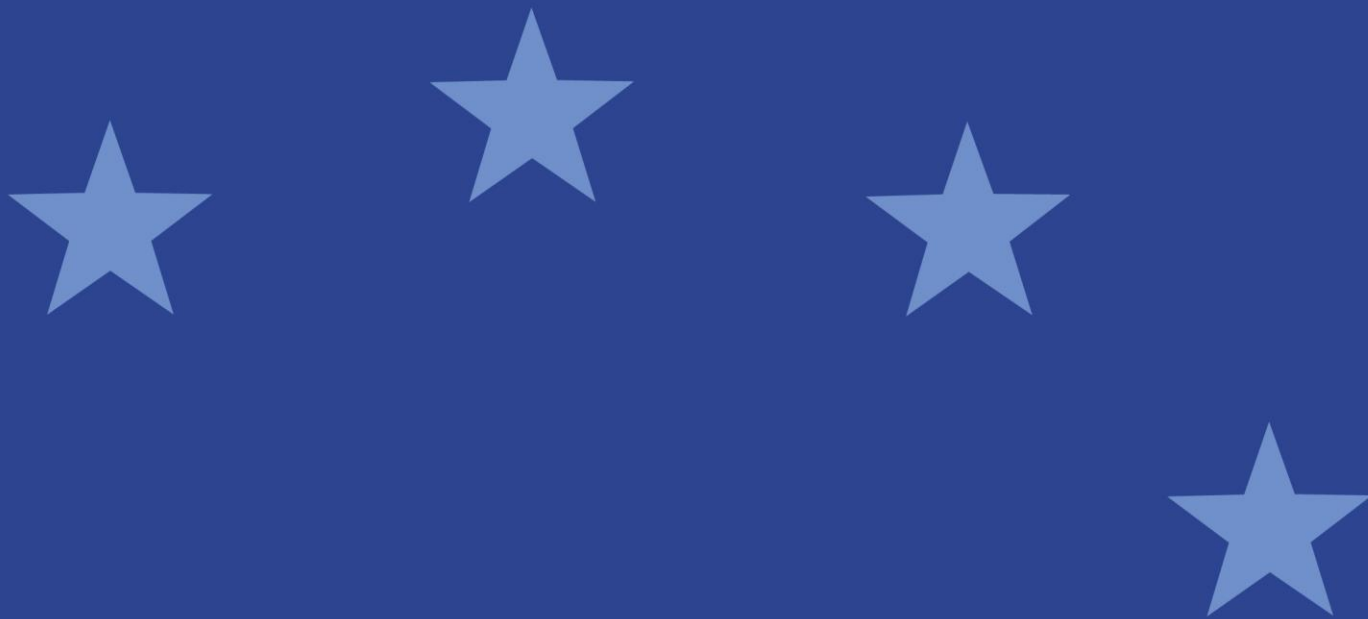




European Securities and
Markets Authority

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	German Banking Industry Committee / Deutsche Kreditwirtschaft
Activity	Banking sector
Are you representing an association?	<input type="checkbox"/>
Country/Region	Germany

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CP_MIFID_EQT_1>

The German Banking Industry Committee (GBIC) is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks.

GBIC welcomes the opportunity to comment on ESMA's considerations but, given the worsening situation caused by the COVID-19 pandemic that has been ongoing for some time, would have expected ESMA to acknowledge this fact by temporarily suspending its deadline for comments. Currently, banks are required to focus on their operational activities. Against this background, it was not possible to obtain the assessments of all affected member banks. We therefore reserve the right to make further comments at a later date.

<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
Generally, we welcome the proposal to use only the average daily number of transactions and the average daily turnover in order to assess the liquidity of an instrument.
However, we note that the frequency of trading is a criterion when assessing whether an institution qualifies as systematic internaliser or not. It seems possible but incoherent to use different sets of criteria and we would like to see a clarification by ESMA with regard to these interlinking aspects.

<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE

<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>

No, we do not agree. Transactions are already reported under the post-trade transparency regime and under the transaction reporting regime under Art. 26 MiFIR. They are flagged with "TNCP", i.e. Transactions not contributing to the price discovery process for the purposes of Article 23 of Regulation EU No 600/2014. Therefore, we oppose any further reporting requirements. The data is already available.

Alternatively, it might be considered to collect such data from the APAs. This would reduce the setup costs as not all SIs would require a FITRS submission connectivity and the APAs already collect the data in a relatively centralised and standardised way. Additionally APAs are already connected to the FITRS database.

<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>

We think that the definition of “real-time” as maximum 1 minute for the time of the execution is appropriate. What appears to be inappropriate though is the timing and format for the dissemination of post-trade data by the APAs. APAs should disseminate the data in standardised format within 15 minutes after publication.

<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>

ESMA should draw up the list mentioned in point 248 of the consultation paper. A formalised process for recognition would help.

<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>

We agree, that the scope of the STO is overly broad and leads to legal uncertainties and unintended consequences. The STO should be repealed. If this were not possible, the STO should be recalibrated. At least it should focus its application on shares listed in the EU. The discussion about the trading of Swiss shares and the impact of the Brexit on trading has clearly shown that investors' needs to be able to access the most liquid markets must be taken into account. With a view to the CMU, this applies especially to institutional investors such as insurance companies or funds. Moreover, overlapping scopes with third countries must be avoided. We expect that EU shares will continue to be listed on UK trading venues. For banks operating in the EU and in the UK this would lead to conflicting rules that cannot be resolved. The best way to identify shares subject to the STO is the ISIN-approach plus the currency. Concerning dual listings we have experienced contradictory situations with the Swiss measures (e.g. ABB listed in Stockholm and on SIX or Lafarge listed on SIX and Paris Euronext). While the majority of liquidity for these particular examples sits outside the EU, the current EU STO requires firms to execute those transactions on EU trading venues. Therefore, we propose that the ISIN solution should only be a basic rule which should not apply if trading in the EU is below certain liquidity thresholds. However, the easiest way to avoid all these problems would be to repeal the STO.

We strongly welcome such limitation. Identification by the first letters of the ISIN-Code (country of origin should be an EU-member state) as currently used for identifying third-country shares is sufficient.

Furthermore, we would propose to limit the tick size regime to EU27 shares. too. Third country shares that are traded on EU trading venues, would remain outside the scope.

MiFID II requires trading venues to adopt a mandatory tick size regime in shares, including the third-country shares. The tick size regime is calibrated to reflect the liquidity profile of a share and varies with the current instrument price. Details are set out in Commission Delegated Regulation (EU) 2017/588. The minimum tick size applicable to shares is calibrated to the Average Daily Number of Transactions (ADNT) on the most liquid market in the EU. Since for third-country shares the most liquid market is usually outside the EU, the mandatory tick-size hardly ever reflects the correct liquidity in such shares. The established processes are complex and error-prone. New calibrations of the tick-size regime regularly result in a

larger spread, i.e. the difference between the highest bid and the lowest ask price increases. This means that all kind of investors including retail investors have to bear higher costs for trading these shares. In this respect, also Commission Delegated Regulation (EU) 2019/443 amending Delegated Regulation (EU) 2017/588 does not help given the amount of third-country shares concerned, since it requires a case-by-case action by the national competent authorities. Moreover, adjustments are only possible for shares where that average daily number of transactions is equal to or greater than one. However, especially for these rather illiquid shares a correctly calibrated tick size is mandatory to allow proper trading conditions.

<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>

No, if the STO was not repealed, it would be compulsory to keep SIs as eligible execution places for the purposes of the STO as a necessary source of liquidity. Otherwise especially institutional investors wanting to execute large orders without market impact would be penalised. Moreover, we would encourage ESMA to assess the amount of technical trades such as give-up trades reported under the SI regime. When doing so the relatively high execution figures will drop dramatically (this is assumed to be similar for the on-venue off-book trades). Furthermore, we would like to emphasise that combining the removal of the exceptions of Art. 23 MiFIR and repealing the status of SIs as eligible execution venues, investment firms would not be able to support accelerated book-buildings and share buy-back programs anymore as those transactions are currently subject to EU STO according to ESMA Q&A on transparency topics.

<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>

No, this exemption should not be deleted. We do not see any need to better specify the scope of the exemption.

<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>

Yes. Either a transaction contribute to the price discovery process or not. The counterparty type is irrelevant for such assessment.

<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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_CP_MIFID_EQT_35>