European Securities and Markets Authority

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

4 February 2020

Date: 4 February 2020

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	Börse Stuttgart
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	☐
Country/Region	Germany

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CP_MIFID_EQT_1>
Börse Stuttgart welcomes that ESMA consults on the functioning of the transparency regime for equities. This consultation is very timely and should help to inform the debate of the MiFID II/MiFIR Review launched by the European Commission.

The main objective of MiFID II/MiFIR was to restore transparency by strengthening lit trading on multilateral trading venues, i.e. Regulated Markets (RMs) and Multilateral Trading Facilities (MTFs) in an attempt to improve price formation and investor protection. However, more than 2 years after the implementation of MiFID II/MiFIR, the objective has not been achieved.

The equity market share of continuous lit order books is decreasing, while the combined share of OTC and SI trading keeps growing. The aggregated levels of OTC and SI trading in terms of turnover represent 22% and 18% respectively for 2019 based on STOXX 600 data from an external provider (Big xyt). This has led to increased complexity and opacity of equity markets with further fragmentation of liquidity, which is destroying the price formation process.

Börse Stuttgart believes that an adequate equity market structure is a prerequisite for a successful CMU, because a well-functioning market structure supports a robust price formation process, to the benefit of companies and investors. It also enables trading to take place and delivers more efficient and fairer markets (which benefits investors) and lowers the costs of capital for businesses.

Against this background, Börse Stuttgart supports a simplified market structure concept designed to strengthen lit markets by:

- building market models that reinforce price formation rather than fragment it,
- making markets more inclusive, especially for local intermediaries in smaller markets, and
- offering investors (big or small) better ways of interacting with multilateral markets.

In order to achieve this, Börse Stuttgart identified the following key parameters.

SI regime

- The large in scale (LIS) threshold should be used as the main tool to delineate lit and dark trading.
- Below LIS would be confined to RMs and MTFs. These trades contribute to price formation. RMs and MTFs would in principle always be subject to real-time pre- and post-trade transparency creating a lit space for these trades.
- SI activity would be restricted to above LIS only. Above LIS trading constitutes a legitimate dark space in which trades are not subject to pre-trade transparency and would benefit

from delayed post-trade transparency. This applies to both multilateral trading venues (RMs and MTFs) and bilateral execution venues (SI).

Dark and OTC trading

- Dark trading should be limited by reducing the number of available waivers to the large in scale (LIS) as well as order management facility (OMF) waivers. The main purpose of the waiver regime is to protect market participants from adverse market impact. The OMF waiver should be maintained as the orders become pre-trade transparent and thus contribute to pre-trade transparency.
- By limiting the waiver regime to the LIS and OMF waiver, the double volume cap (DVC) mechanism would be repealed.
- OTC would be restricted to trades in shares not subject to the STO.
- The market Model Typology (MMT) should be applied to all execution venues as well as OTC transactions under ESMA governance.

Börse Stuttgart would like to highlight that a number of concerns remain with regard to reporting of reference data such as the consistency of CFI codes. Also, there remain concerns with regard to the exchange of information, in particular in outreach to competent authorities regarding the clarifications of requirements.

This proposal would greatly contribute to a simplification of rules in line with the EU's better regulation principles as well as provide better opportunities for the MiFID II framework to deliver on its intentions since such simplifications would also make the framework more straightforward for National Competent Authorities (NCAs) to enforce.
<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>
Börse Stuttgart supports ESMA's proposal to limit the available waivers under the transparency regime to the large in scale (LIS) and order management facility (OMF) waivers, removing the reference price (RP) and negotiated trade (NT) waivers in order to increase pre-trade transparency. In such a scenario, the double volume cap (DVC) mechanism would be rendered obsolete.

The LIS threshold should be used as the main tool to delineate dark trading. The main purpose of the waiver regime is to protect market participants from adverse market movements following the execution of large orders and there seems to be little justification for trading small orders via the RP or NT waivers. Using the LIS threshold to delineate dark trading would be an efficient way to incentivise lit trading and address concerns about the impact of dark trading on financial markets and the price formation process. As an order in an OMF facility ultimately becomes pre-trade transparent and therefore contributes to the price formation process, the OMF waiver should be maintained. Hence, Börse Stuttgart supports a much-needed simplification of the current framework.

However, it would still be important to allow for non-price forming technical trades to be reported off-book on exchange. Such a reporting tool should be defined at Level 1.

Overall, quality and consistency of reporting and flagging is necessary in order to improve transparency available to market participants. Thus, Börse Stuttgart sees merit in extending the Market Model Typology (MMT) to all execution venues.
<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
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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>
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<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>
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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
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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>
Börse Stuttgart believes that market structure improvements are a prerequisite for a successful CMU. Equities market structure needs to become less complex and build on lessons learned from MiFID II to truly support lit trading.

The main objective of MiFID II/MiFIR was to restore transparency by strengthening lit trading on multilateral trading venues, i.e. Regulated Markets (RMs) and Multilateral Trading Facilities (MTFs) in an attempt to improve price formation and investor protection. However, more than 2 years after the implementation of MiFID II/MiFIR, the objective has not been achieved. The market share of continuous lit order books is decreasing while the combined share of OTC and SI trading keeps growing.

The overall ambition should be to work on a simplified market structure concept to strengthen lit trading by:

- building market models that reinforce price formation rather than fragment it,
- making markets more inclusive, especially for local intermediaries in smaller markets, and
- offering investors (big or small) better ways of interacting with multilateral markets.

While SIs are regulated under MiFID II as execution venues providing bilateral trading, they provide less transparency than on-exchange trading. This can be problematic when the distinction between purely bilateral and hybrid multilateral trading is blurred. In theory, every trade in an SI must take place against the proprietary account of the operator. SIs are prohibited, when dealing on their own account, from entering into matching arrangements with entities outside their group with the objective of carrying out *de facto* riskless back-to-back transactions in financial instruments outside trading venues. However, some investment firms seem to have developed models by which third party trading firms are able to provide liquidity to the customers of SIs.

Börse Stuttgart believes that restricting SI trading to above LIS only would be an efficient way to incentivise lit trading and ensure the quality and robustness of the price formation process in line with the initial objective of MiFID II/MiFIR.

SI regime

- The large in scale (LIS) threshold should be used as the main tool to delineate lit and dark trading.
- Below LIS would be confined to RMs and MTFs. These trades contribute to price formation. RMs and MTFs would in principle always be subject to real-time pre- and post-trade transparency creating a lit space for these trades.
- SI activity would be restricted to above LIS only. Above LIS trading constitutes a legitimate dark space in which trades are not subject to pre-trade transparency and would benefit from delayed post-trade transparency. This applies to both multilateral trading venues (RMs and MTFs) and bilateral execution venues (SI).

Dark and OTC trading

- Dark trading should be limited by reducing the number of available waivers to the large in scale (LIS) as well as order management facility (OMF) waivers. The main purpose of the waiver regime is to protect market participants from adverse market impact. The OMF waiver should be maintained as the orders become pre-trade transparent and thus contribute to pre-trade transparency.
- By limiting the waiver regime to the LIS and OMF waiver, the double volume cap (DVC) mechanism would be repealed.
- OTC would be restricted to trades in shares not subject to the STO.
- The market Model Typology (MMT) should be applied to all execution venues as well as OTC transactions under ESMA governance.

This market structure proposal would enhance the ability of MIFID II/MiFIR provisions to increase investor protection and further the level playing field amidst concerns about the impact of dark trading on financial markets and the price formation process.

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

<ESMA_QUESTION_CP_MIFID_EQT_10>
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<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>
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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>
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Q13. What is your view on increasing the minimum quoting size for SIs? Which option do you prefer?

<ESMA_QUESTION_CP_MIFID_EQT_13>
Börse Stuttgart thinks that the current minimum quoting size of 10% of the SMS is too low and leads to very limited mandatory pre-trade transparency for SIs as outlined by ESMA in the consultation paper. A minimum quoting size of 100% of the SMS would be more appropriate (Option 2).

As outlined in Q6, Börse Stuttgart advocates a simplified market structure in order to increase transparency and strengthen lit trading. In case SI activity is limited to trades above LIS only, the question on the minimum quoting size is not relevant anymore. Börse Stuttgart believes that the LIS threshold as the main tool to delineate lit and dark trading would contribute to a much-needed simplification of the current framework.

<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>
The extension of the transparency obligations under the SI regime to illiquid instruments would be an improvement compared to what is in place under the current framework.

However, as outlined in Q6, Börse Stuttgart advocates a simplified market structure in order to increase transparency and strengthen lit trading. In case SI activity is limited to trades above LIS only, the question on extending the transparency obligation under the SI regime to illiquid instruments is not relevant anymore.

Börse Stuttgart would like to highlight the following additional aspects:

1) Importance of flagging SI trades at an EU level: The current flagging is very unclear and inconsistent. A broader implementation of the Market Model Typology (MMT), which currently ensures consistency of exchange data would be a solution. The extension of the MMT would enhance data consistency and contribute to the increase of regulatory oversight of SI activity.
2) Operation of SIs: ESMA should review how SIs operate by looking more deeply into the transactions they conclude and report, in particular with regard to riskless trading. Connectivity hubs that have the potential to link up SIs and counterparties should be monitored to guarantee that they always work on a bilateral basis and in case they do not - but operate an internal matching system - they should operate a MTF. Such activities must be monitored as there is the risk that trading takes place on a multilateral rather than bilateral basis.
3) Registration process of an SI: There does not seem to be specific details of the operation of the business model required unlike what RMs and MTFs have to provide. Hence, a description of the business model and how regulatory compliance is maintained should be provided by SIs to maintain a level-playing field with RMs and MTFs.

<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>
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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>
Börse Stuttgart supports ESMA's proposal to limit the available waivers under the transparency regime to the LIS and OMF waivers thus rendering the DVC mechanism obsolete.

Hence, Börse Stuttgart does not support any of the 3 options for maintaining or adjusting the current DVC system. Instead, the deletion of Article 5 MiFIR is considered to be the best option.

Also against the background to establish a simplified market structure with the aim to increase transparency and strengthen lit trading, it is not desirable to maintain the DVC mechanism.

<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>
The double volume cap has been designed to limit the trading taking place under the RP waiver (Article 4(1)(a) of MiFIR) and the NT waiver for liquid instruments (Article 4(1)(b)(i)) of MiFIR). As set out in Q1, Börse Stuttgart supports the limitation of the waivers to the LIS and OMF waivers. The RP and NT waivers are to be removed. This would also render the DVC mechanism obsolete.

As outlined in Q6, Börse Stuttgart advocates a simplified market structure in order to increase transparency and strengthen lit trading. SI activity should be limited to trades above LIS only. Börse Stuttgart believes that the LIS threshold as the main tool to delineate lit and dark trading would contribute to a much-needed simplification of the current framework.

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

<ESMA_QUESTION_CP_MIFID_EQT_19>
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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>
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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>
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Q23. Do you agree that the mid-month reports should not be published? Please explain.

<ESMA_QUESTION_CP_MIFID_EQT_23>
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<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>
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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>

Börse Stuttgart agrees with ESMA's assessment. As only a small portion of large trades benefit from deferred publication it appears that, in general, the MIFIR deferral regime has delivered on its objectives, i.e. to protect large trades while maintaining a high level of real-time transparency.

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

<ESMA_QUESTION_CP_MIFID_EQT_27>
Börse Stuttgart agrees with the ESMA assessment of the level of post-trade transparency for OTC transactions. There is no need to apply different thresholds for OTC trades on instruments that are traded on a trading venue and on-venue transactions. Börse Stuttgart thinks that trading OTC does not mean that post-trade transparency shall be minimal. In general, OTC transactions shall reach the same level of quality in post-trade reporting.

Börse Stuttgart would also like to emphasize that the availability, quality and consistency of OTC post-trade data is a major issue. As ESMA underlined in the MiFIR II/MiFIR Review Report No. 1 there are significant shortcomings on data quality in particular for OTC trades. It can be observed that SI and OTC data quality, reliability and consistency is not fit for purpose. Most sources of reliable data, such as exchange data, are consolidated by market data vendors and made available to users. The low levels of off-venue post-trade data quality, reliability and consistency of SI and OTC transactions hampers the accessibility, readability and consolidation of such data.

<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>
TYPE YOUR TEXT HERE
<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>
For electronic order book systems, Börse Stuttgart considers that 1 minute would be too long and that the timeframe could be much shorter. Allowing up to 1 minute to report opens up for potential misuse. Exchanges strive to publish the information as fast as possible, based on the type of trade executed; 1 minute is too generous for such systems. The maximum delay should be equal for all execution venues including SIs.

For technical, non-price forming trades the 1-minute timeframe is appropriate and should be maintained.

<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>
TYPE YOUR TEXT HERE

<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>
Börse Stuttgart agrees with ESMA's proposal to limit the trading obligation to EU shares.

The Swiss case is a prominent example that a similar scenario for future third countries lacking an equivalence decision by the EC should be avoided. Due to Switzerland not being considered as equivalent anymore, Swiss shares could not be traded in the EU anymore according to Article 23 MiFIR (STO). Figures from Börse Stuttgart show that Swiss shares amounted to 9,8% for 2018 and 10,3% for the first half of 2019 compared to the overall number of third country shares listed at Börse Stuttgart. This translates into the fifth largest trading volume with regard to third country shares as shown in figure 1. Whereas the US and Canada were without doubt the top 2 ISINs in terms of trading volume, the ones from Australia, Japan and Switzerland were rather close by in the first half of 2019. Figure 2 illustrates the significant effect of the suspension of trading Swiss shares. Switzerland was replaced by the Cayman Islands ISIN, which only has half of the trading volume in the second half of 2019 compared to the trading volume of Swiss shares in the first half of 2019. Börse Stuttgart believes that limiting the STO to EU27 shares would prevent a similar scenario in the future where – as in the case with Switzerland – one of the top 5 ISINs of third country shares would not be tradable anymore at Börse Stuttgart or any other EU trading venue.

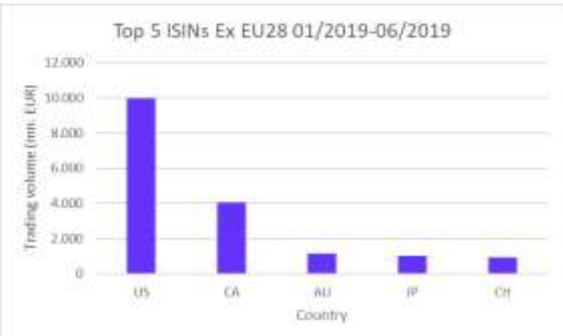

Figure 1: Top 5 ISINs third country shares 01/2019-06/2019

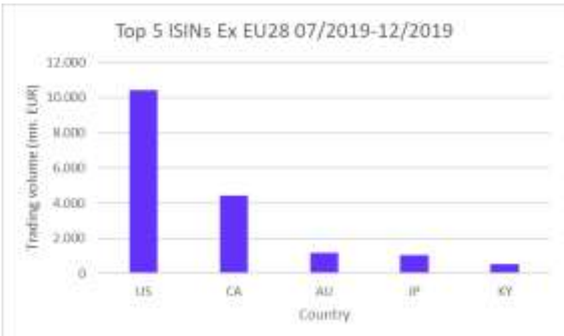

Figure 2: Top 5 ISINs third country shares 07/2019-12/2019

The share trading obligation (STO) remains necessary and is an important cornerstone of the overall aim of MiFID II/MiFIR to enhance the efficiency, resilience and integrity of financial markets in the EU. For the STO to be fully functional, further work on clearly determining which shares should be considered EU shares is necessary. The approach should avoid undue complexity and be based on predictable and meaningful criteria.

To determine which shares should be considered as EU shares, Börse Stuttgart thinks that ISIN should be the main indicator. However, as recognised by ESMA, this approach is not suitable in all cases. Complimentary criteria are therefore necessary. First, the ISIN should be used. Second, the primary listing venue should be considered, i.e. in case where the issuer is domiciled in a third country and listed in the EU and vice versa. Third (i.e. for dual-listed companies), the investment firm should consider best execution, meaning the venue where this can best be achieved. The scope of the STO should be extended to ETFs in order to incentivize lit trading and investor protection in this growing asset class.

Equally, Börse Stuttgart advocates applying the same approach to the tick size regime. An analysis of Börse Stuttgart reveals that the mandatory tick size regime for shares, in which the minimum amount prices can move up or down, have had detrimental effects on the retail participation in capital markets. 98,1% of the shares traded at Börse Stuttgart, which were affected by the newly calibrated tick size regime, need to be traded at unfavorable prices since the end of September 2019. Börse Stuttgart estimates that the trading costs for retail investors increase by up to 2.000% corresponding to 12,64 Euro on average. Börse Stuttgart believes that the tick size regime has to be reassessed.

EU trading venues are caught in a situation where trading venues outside the EU become more attractive due to favorable tick size requirements. As the affected instruments are often third country shares, retail investors may be driven out of the EU resulting in less trading volume on EU trading venues. The application of the tick size regime to third country shares traded on EU trading venues results in larger spreads and higher costs for these shares.

Börse Stuttgart believes that the tick size regime should be treated analogous to the share trading obligation (STO). The tick size regime should only cover EU27 shares with a EU27 ISIN. Third country shares, that are traded on EU trading venues, would remain outside the scope. Consequently, retail investors would be able to trade these shares to similar prices compared to the share's home markets. In addition, EU trading venues would be able to compete with trading venues outside the EU as third country shares would not be affected by larger spreads and higher costs due to the tick size calibrations. In this way, trading volume on EU trading venues could be ensured. Nevertheless, Börse Stuttgart considers this only to be a short- to mid-term solution to the problem of too highly calibrated tick sizes. We find that a reassessment of the tick size regime is necessary, in order to offset the impediments for retail investor participation caused by large spreads and thus higher trading costs for – in particular third country – shares.

<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>
SIs should stay eligible execution places for the purpose of the STO but their activity should be limited to trades above LIS.

As outlined in Q6, Börse Stuttgart advocates a simplified market structure in order to increase transparency and strengthen lit trading. SI activity should be limited to trades above LIS only. Börse Stuttgart believes that the LIS threshold as the main tool to delineate lit and dark trading would contribute to a much-needed simplification of the current framework.

<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>
Börse Stuttgart supports deleting the first exemption under the STO as we consider that it has not been clarified in a conclusive manner. It has been subject to discretionary interpretation and therefore not worked in practice.

<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 counter-parties"? Please provide arguments supporting your views.**

<ESMA_QUESTION_CP_MIFID_EQT_34>
Börse Stuttgart supports retaining this exemption and strictly limiting its use to transactions not contributing to the price discovery process. In practice, this would mean that the OTC space is limited to technical trades. In order to allow for clear and efficient rules, Börse Stuttgart supports reviewing the current Level 2 list of eligible transactions under this exemption and tying its enforcement to an appropriate flagging of trades via MMT under the governance of ESMA.

The list should be clear and exhaustive in order to ensure that the STO will be applied in the same way by all market participants. For proper reporting of these trades, the MMT should be extended to all execution venues as well as to OTC transactions.

<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>
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