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| 4 February 2020 |

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| 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 |
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| 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](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

***Publication of responses***

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

***Data protection***

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the headings ‘Legal notice’ and ‘Data protection’.

# General information about respondent

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| --- | --- |
| Name of the company / organisation | Bundesverband der Wertpapierfirmen e.V. (bwf) |
| Activity | Investment Services |
| Are you representing an association? |[x]
| Country/Region | Germany |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_CP\_MIFID\_EQT\_1>

[bwf comment] The Bundesverband der Wertpapierfirmen e.V. (bwf) is a trade association representing the common professional interests of securities trading firms, market makers and investment firms with various other business models throughout Germany\*. In this capacity, we expressly welcome the possibility to comment on ESMA’s Consultation Pape on MiFID II/ MiFIR review report on the transparency regime for equity and equity-like instruments, the DVC and the trading obligations for shares.

ESMA’s consultation focusses on the transparency regime for equities which of particular importance for many bwf member firms since share trading is paramount for the business models of most of them. As market makers and liquidity providers bwf members play an important role for the functioning of equity markets in general and in particular for the trading of small- and mid-cap shares. While bwf members traditionally conduct their business as members of the various German exchanges, nowadays – mainly as a result of the MiFID II framework – some of them also act as Systematic Internalisers. In both capacities – on and off exchange – bwf members employ their own capital and absorb market risk when they provide liquidity and play an active role in supporting a robust and fair price determination process.

\* bwf is listed on the EU register of interest representatives under the ID 258694016925-01.

<ESMA\_COMMENT\_CP\_MIFID\_EQT\_1>

1. 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>

[bwf comment] Responses from bwf member firms on whether and how the current pre-trade transparency waiver regime should be revised do not show a homogenous picture. While some member firms are rather undetermined, others clearly support ESMA’s proposal to remove the reference price and negotiated trade waivers.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_1>

1. 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>

1. 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>

[bwf comment] Many of our members are market makers on the various German exchanges, in particular in less liquid shares of smaller issuers. From this perspective, we have sympathy for ESMA’s attempt “to broaden the scope of application of the DVC to waivers provided under Article 4(1)(b)(ii) of MiFIR, i.e. to also encompass negotiated trades in illiquid instruments in order to also efficiently limit the amount of dark trading permitted for the larger part of the population of instruments within the scope of MiFIR” (cf. CP, paragraph 75).

ESMA’s concern “that extending the DVC to illiquid instruments might be detrimental to trading in shares of smaller issuers” (cf, CP paragraph 75) might not be completely unfounded since trading of SME shares in fully electronic open limit orderbook markets is often restricted by the lack of base liquidity. Therefore, intermediaries based trading where investment firms act as “liquidity providers” can generally be considered a more appropriate form of trading. It also demonstrates that there efficient alternatives for dark-pool trading for illiquid instruments.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_3>

1. 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>

1. 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>

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<ESMA\_QUESTION\_CP\_MIFID\_EQT\_5>

1. 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>

[bwf comment] Dark trading, in particular on the basis of reference prices, can be economically described as a free-rider strategy. While orders in the lit market which contribute to the price formation process are subject to indirect trading costs to the extent that the order itself might move the price in a direction which is unfavourable for the investor (a factor usually described as “market impact”), reference price based dark trading avoids these indirect trading costs by “exploiting” the reference price. Furthermore, the higher the percentage of dark trading, the lower the liquidity in the lit markets, which in tendency increases the market impact of orders executed on the price forming venues. This disadvantage of lit markets in form of indirect trading costs to be anticipated is structural in nature and cannot be avoided as long as dark trading is not prohibited.

Legislators therefore have to very carefully strive a balance between the interests of investors which, for the reasons described above, might find it economically favourable to execute orders in the dark and the regulatory imperative to insure fair and transparent price determination. We therefore think that only orders large or very large in scale (which, when executed in the lit market, contain a high risk of market impact for the investor) should be eligible for dark trading. In reverse, orders which are not large in scale (and accordingly with a limited or even negligible market impact) should be executed in lit markets where they contribute to the price formation process on a mandatory basis.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_6>

1. 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>

[bwf comment] The feedback received from our members does not support the view that the current methodology to determine illiquid shares would be inappropriate. Accordingly, we do not see a need for regulatory change here.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_7>

1. 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>

1. 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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<ESMA\_QUESTION\_CP\_MIFID\_EQT\_9>

1. 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>

1. 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>

[bwf comment] Our opinion with respect to FBAs is basically the same as laid down in our response from 11 January 2019 to ESMA’s “Call for evidence: Periodic auctions for equity instruments” from 9 November 2018 (ESMA70-156-785). In particular, we acknowledge that the call phase of an auction cannot be reduced indefinitely without questioning the multilateral characteristic of an auction and consequently negatively affecting the quality and nature of the price formation process.

However, whether such market-structural considerations require and justify regulatory intervention, should be also assessed under the perspective of overall relevance. To our understanding, up to now, FBAs have been primarily a phenomenon to be observed in the UK market and even there its impact on the trading landscape as a whole, is still limited. Accordingly, in the light of the Brexit decision in the UK, we would like to ask ESMA to reconsider whether a specific regulatory provisions for FBAs are commensurate. To the extent that FBAs can be regarded as a strategy to circumvent the current DVC regime, such an assessment cannot be made without taking into account possible changes to the pre-trade waiver regime and its impact on the DVC mechanism.

Nonetheless, in the case that ESMA should decide to opt for giving FBAs a higher degree of regulatory attention, we would support ESMA’s proposal the market model taxonomy laid down in table 1 of Annex I of RTS 1, should be amended by a new category, specifically addressing FBAs. However, we also think that the existing categories describing auction based trading systems (as well as the other categories of trading systems) have proved effective and appropriate since MiFID I and did not give any reason for regulatory concern. Therefore, they should only be altered if deemed unavoidable in order to clarify the characteristics of FBAs.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_11>

1. 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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<ESMA\_QUESTION\_CP\_MIFID\_EQT\_12>

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

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_13>

[bwf comment] There are mixed views on this issue among bwf member firms with a majority of respondents preferring to leave the quoting obligation obligations as they are.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_13>

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

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_14>

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<ESMA\_QUESTION\_CP\_MIFID\_EQT\_14>

1. 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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<ESMA\_QUESTION\_CP\_MIFID\_EQT\_15>

1. 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>

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<ESMA\_QUESTION\_CP\_MIFID\_EQT\_16>

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

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_17>

[bwf comment] As already mentioned in our answer to question six, in our opinion only orders large or very large in scale should be eligible for dark trading.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_17>

1. 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>

[bwf comment] We agree with ESMA’s view that suspension notices by NCAs are dispensible.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_18>

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

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_19>

[bwf comment] For the reason presented in the CP, we agree with ESMA’s proposal to remove the requirement under Article 5(7)(b).

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_19>

1. Please provide your answer to the following [survey](https://forms.office.com/Pages/ResponsePage.aspx?id=aPIG5OdKgEyJlAJJPaAMA8MbwIo5IbFHiXG6oH-BVkdUNjJUNktLOU1BSVZYUUFEQVUwSVZHSzdZTC4u) (<= 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>

1. 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>

[bwf comment] We would not object to lower the observation period, e.g. to half it to six month. In the case where new ISINS result from a corporate action, data from the old and from the new ISIN should be consolidated where technical possible in an economic meaningful way.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_21>

1. 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>

[bwf comment] We would not mind if the publication deadline would be extended from five to seven days. However, we do not understand how this would solve the problem that currently ESMA is publishing the results with one-month delay (if. CP, paragraph 202).

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_22>

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

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_23>

[bwf comment] According to unanimous feedback from bwf member firms ESMA’s mid-month reports – even if they would be published in time – are not regarded as a necessary or particular helpful piece of information. Accordingly, we would have no reservations if its publication would be suspended.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_23>

1. 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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<ESMA\_QUESTION\_CP\_MIFID\_EQT\_24>

1. 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>

[bwf comment] Feedback from our member firms indicates that they hardly make any use of deferred post-trade publication provisions. Therefore, bwf at this point prefers not to give recommendations and to leave the regulatory and legislative debate to those market participants whose business models would be directly affected by the possible changes.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_25>

1. 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>

[bwf comment] Please see our answer to Q26.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_26>

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

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_27>

[bwf comment] Please see our answer to Q26.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_27>

1. 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>

[bwf comment] Here, our general view is that the core objective of the MiFID II / MiFID review should be to reduce complexity and unnecessary administrative burden and not to make an already complex and expensive framework even more cumbersome for market participants. Accordingly, additional reporting obligations should be avoided.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_28>

1. 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>

[bwf comment] On the one hand, for the vast majority of trades which take place on automated and technologically integrate trading systems where post-trade information is made available without any further human intervention, the current publication deadline of one minute can be easily maintained and it would be possible and eventually desirable to further narrow the timeframe. On the other hand, in the relatively small market segments which are still based on voice brokerage and where manual inputs into – often separate – trading, publication and settlement-systems are required, it is sometimes not feasible to comply with the existing one minute deadline. Therefore, we suggest that the timeframe for trades based on voice brokerage should extended to 15 minutes with a requirement to flag the published trade accordingly. Because of the limited importance of such trades, the proposed alleviation could be introduced without regulatory concern regarding the overall reliability and meaningfulness of the post-trade transparency regime.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_29>

1. 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>

[bwf comment] We agree that investment firms should not be obliged “to republish information in the EU about transactions concluded on a third-country trading venue, which are subject, which are subject to similar provisions to those under the MiFID II framework” (cf. CP, paragraph 247). Even more, we think that pre- or post-trade transparency considerations for trades concluded in third countries should be out of scope from an EU-legislation point, irrespectively of the comprehensiveness and quality of local transparency regimes in these countries.

Irrespectively, whether the use of ESMAs supervisory tools can be considered to be sufficient to solve the described issue in a legally binding way, for the sake of clarity and in order to foster a non-fragmented framework of legal provisions but also with respect to the importance of the issue, we are strongly in favour of amending the Level I text for this purpose.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_30>

1. 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>

[bwf comment] We strongly agree with ESMA’s proposal and emphatically urge legislators to exclude non EU shares from the share trading obligation. The current application of the STO to non EU shares has many severely negative implications and often unintended consequences, some of them are mentioned by ESMA in the CP. In fact, as it can be observed in the SIX-case, its practical results are often completely opposite to the legislative intent by de facto limiting the access of EU investors to non EU shares and other financial instruments.

The majority of bwf member firms act as market makers on the various German exchanges. In this context, making a broad universe of non EU shares and other financial instruments at competitive conditions, even in small retail sizes, is an important part of their business. However, the availability of non EU shares and other financial instruments at competitive prices depends in most cases also on a lot-size transformation based on the ability of the market maker to cover or unwind positions in the home market of the securities traded. Therefore, we strongly support ESMA’s view that “it does not appear appropriate not to allow EU investment firms to execute transactions in shares from the relevant third country (i.e. shares that have their primary market or main pool of liquidity outside the EU) on the venue with the main pool of liquidity” (cf. CP, paragraph 263).

However, the possibility to do so, currently often depends on the statement published by ESMA and the Commission, published in November 2017, that “the absence of an equivalence decision taken with respect to a particular third country's trading venues indicates that the Commission has currently no evidence that the EU trading in shares admitted to trading in that third country's regulated markets can be considered as systematic, regular and frequent”. However, while this statement was extremely helpful and necessary, it gives the impression of a legal auxiliary construction and an example of exceptional legislative and regulatory “practical creativity” (ibid.). Therefore, a distinct Level I provision to exclude all third country shares from the application of the STO, remains highly desirable.

Furthermore, not only should non EU shares been excluded from the scope of the STO, they also should been exempt from the tick size regime, which currently very often – in particular after the latest recalibration – leads to a situation where EU investors are confronted with significantly higher spreads, and accordingly less favorable prices on EU venues compared with the share’s home market. Such a systematic competitive disadvantage – as a result of regulation – is quite obviously not in the interest of EU investors and severely harms the international competitiveness of trading venues within the EU.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_31>

1. 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>

[bwf comment] Here, we would like to remember that as a result of a new regulatory approach regarding the qualification of certain trading practices as “systemic internalisation”, the number of Sis was significantly increased and those who became Sis have made significant investments in qualified personnel and systems in order to comply with the more demanding regulatory requirements. Accordingly, it is not surprising that the market share of SIs has risen significantly compared to the situation under the previous MiFID I regime. In this context, it is also worth remembering that SIs – contrary to dark trading – contribute to the price discovery mechanism. Accordingly, there should be less regulatory concern with respect to Sis than with respect to dark trading. We therefore are of the opinion that Sis shall remain eligible execution venues for STO purpose for illiquid and liquid shares alike.

Furthermore with respect to liquidity fragmentation (cf. CP, paragraph 283), it must also be remembered that, the wide universe of different trading venues (with an extremely high level of competition among venues) which we observe today and which indeed has led to a significant fragmentation of liquidity, is to a high degree the effect of the regulatory intent of MiFID I with its core objective to abolish the “concentration rule” which at this time was still existent in many EU countries. In this context, Germany, with its comparably high number of securities exchanges, can be regarded as a good example that there can be a competitive landscape not only among Regulated Markets, MTFs and SIs but also among smaller and larger trading venues. We therefore think that it is not the legislators or regulators task to determine the “right number” of trading venues but in the first place to provide a legal framework which ensures a fair competition among trading venues of different legal form and size.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_32>

1. 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>

[bwf comment] We are not aware of any practical problems resulting from a more detailed specification of the meaning of “non-systematic, ad-hoc, irregular and infrequent”. In the contrary, as can be demonstrated on the example of the statement published by ESMA and the Commission in November 2017 with respect to the application of the STO on third country shares (cf. CP, paragraph 263), a certain remaining scope of interpretation can be deemed desirable also from a regulatory point of view. Accordingly, we do not see a need for and would not suggest a further clarification regarding the meaning of “non-systematic, ad-hoc, irregular and infrequent”.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_33>

1. 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>

[bwf comment] In our view, the exemption stipulated in paragraph (b) of Article 23(1) should remain applicable for transactions carried out between eligible and/or professional counterparties only. We therefore do suggest to change the existing provision.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_34>

1. 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>

[bwf comment] There are indeed a number of factors which have contributed to the growing importance of the closing auction and we think that ESMA has correctly identified some of them. Another reason which was not mentioned is the practice that investors instruct their brokers to execute orders through the closing auction which have not been executable at a desired limit during the day. – bwf members have not expressed any concern. regarding the growing importance of closing auctions.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_35>