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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 | Euronext NV |
| Activity | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |  |
| Country/Region | Europe |

# Introduction

Please make your introductory comments below, if any:

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

Euronext, as the operator of the Amsterdam, Brussels, Dublin, Lisbon, Oslo, and Paris stock exchanges, welcomes this opportunity to comment on the transparency regime for equity instruments in Europe.

We believe this consultation needs to be placed in a broader context and recognise that market structure improvements are a prerequisite for a successful CMU. This is underpinned by three framing principles:

1. Transparent, lit, multilateral markets are the basis of price formation;
2. There are certain natural tensions in financial markets:

*Between producers and takers of reference prices*: specifically, between (a) the interests of investors who ***produce*** reference prices as the result of their interaction in lit, price-forming, multilateral markets, and (b) those who ***consume*** these reference prices in various dark, ‘grey’ and bilateral mechanisms.

*Between individual and collective interests*: that is, between (a) the ***private*** interests of individual investors who wish to conceal their trading interests from the wider market by trading in the dark, and (b) the ***public*** interest of having an efficient price formation process which relies on pre-trade transparency.

1. The regulatory and supervisory framework at EU and national levels should supply appropriate legislative tools to manage the balance *between lit and dark*, *between reference price producers and consumers* and *between the individual and collective interests*.

In our view, these principles should be translated into a series of recommendations to support a **European market structure that delivers financing of the real economy by being built on**:

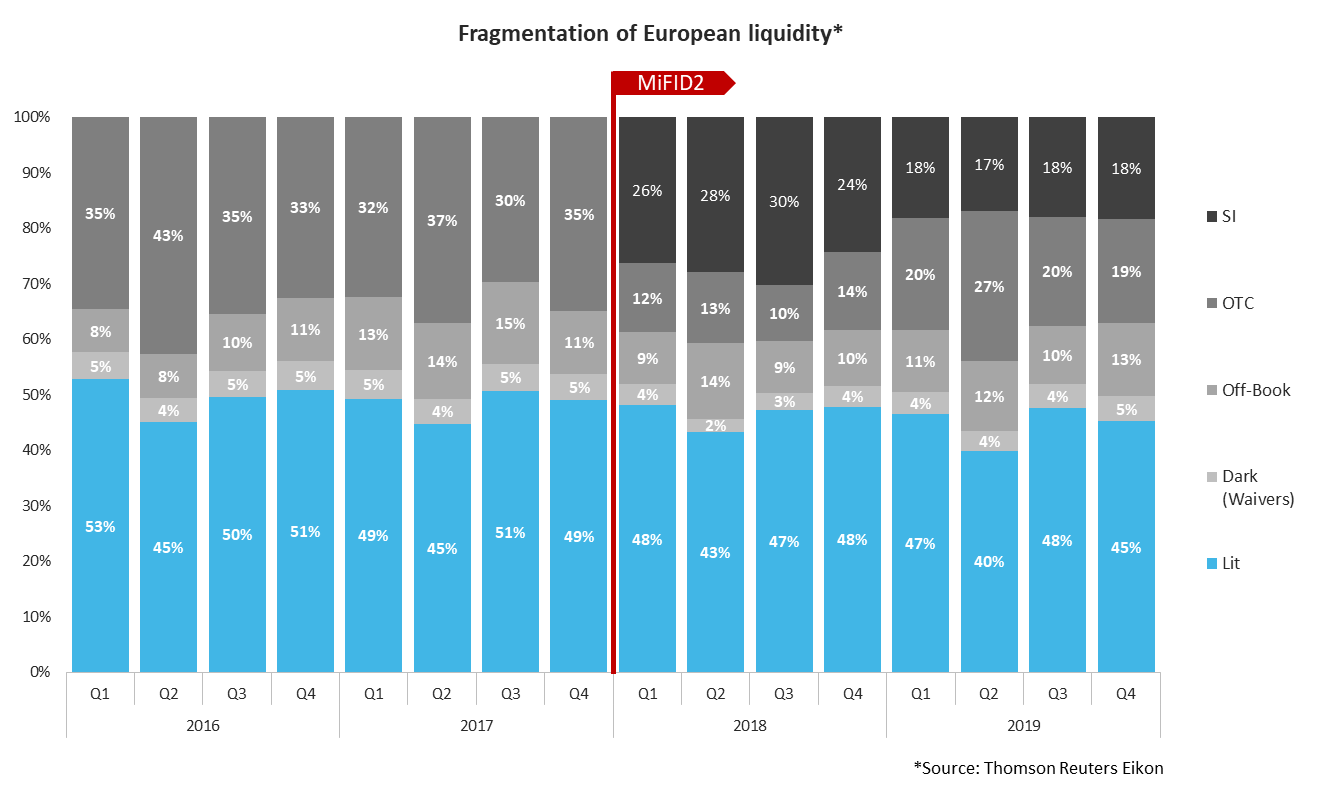
1. Market models that support price formation and the generation of reference prices;
2. More inclusive markets, facilitating and encouraging access for pan-European, national and local banks;
3. An enhanced offer to investors (big or small, retail or institutional) of better ways of interacting with transparent markets.

The objective of strengthening transparent multilateral markets was already at **the core of the MiFID II reforms**: it now is critical that the current review addresses the clear shortcomings of the regime and ensures that these objectives are finally delivered upon.

This introduction sets out a factual summary of the main relevant developments under the MiFID framework, **namely the trends in lit/dark trading, market consolidation** and **investment firm execution workflows, as well as a summary of our recommendations.**

***Lit / dark trading trends***

MiFID II has singularly failed in one of its primary objectives, namely to shift dark OTC trading to transparent multilateral trading venues in order to increase transparency and improve price formation and investor protection.



Instead of achieving this objective, MiFID II has seen a significant increase in Systematic Internaliser (SI) activity, despite the prohibition of Broker Crossing Networks. At this point in time, the aggregated levels of OTC and SI trading in terms of turnover represent 22% and 18% respectively for 2019 based on data from Big xyt.

In assessing this trend, it is important to distinguish between the two types of Systematic Internaliser that have emerged:

* + **Bank-run Systematic Internalisers** account for the significant increase in SI volumes. The wholesale adoption by the large investment banks and transfer of OTC activity to SIs was not anticipated in the drafting process of MiFID II. At the same time, it is unclear to what extent volumes are categorized as price forming and non-price forming, nor the extent to which swap constructions are used to functionally facilitate multilateral trading;
  + **Liquidity provider-run Systematic Internalisers** account for around 2-3% of overall equities volumes. They provide semi-lit liquidity (non-binding quotes which are not visible by all market participants) on a bilateral basis alongside MTFs and Regulated Markets;
  + OTC volumes have halved as the business has been reflagged by banks as SI.

Dark **MTF trading has continued under the reference price waiver system**, albeit under a system of arbitrary volume caps. However, capped volumes have not transferred to lit venues but rather to ‘grey’ markets such as periodic auctions.





Venues and trading execution mechanisms that *consume* reference prices account for over half of overall European volumes.

***Concentration of order flow***

Today, **over 50% of flows** on cash equity come to Euronext through the smart order routers operated by six large global investment banks based in the City of London**[[1]](#footnote-2)**. As markets have become more fragmented, technologically complex and difficult to navigate, there has been a natural economic trend towards a concentration of order flow. This has been reinforced by MiFID II unbundling rules that have penalised smaller European brokers in particular.

This trend has been particularly evidenced in **flows from Tier 2 and 3 European regional banks and brokers** being channeled through the workflow of the Tier 1 banks[[2]](#footnote-3). This provides benefits to these smaller brokers in terms of navigating complex market infrastructure.

However, this concentration of flows within a particular type of workflow has implications for the operation of lit, price forming markets.

This is because large investment firms have developed a multitude of execution possibilities upstream from the lit markets. Large investment firms will seek to match off flows against offsetting client flows as well as against their own proprietary flows or Central Risk Books under a variety of matching frameworks (Systematic Internalization, OTC and proprietary dark MTFs). Lit markets are generally positioned at the end of this ‘liquidity waterfall’.

***Summary of recommendations***

* Recognise the importance of maintaining waivers for large orders from pre-trade transparency by **retaining the Large-in-Scale waiver** (LIS);
* Simplify European market structure by **removing the Reference Price (RPW)**. The RPW detracts from price formation by allowing venues to waive pre-trade transparency and offer investors trading based on a price imported from a fully transparent venue. There is no rationale – below LIS – to allowing certain investors to piggyback on the price formation process enabled by transparent venues and the investors that trade on them;
* Accommodate **Systematic Internalisation** where it is best designed to deliver market benefits, that is to say for the execution of large orders:
  + Above LIS: dark trading, no pre-trade transparency, delayed post-trade transparency – *Systematic Internalisation allowed*;
  + Below LIS: lit trading, real-time pre and post-trade transparency calibrated according to the market model – *no Systematic Internalisation allowed*;
  + Consider lowering the relevant LIS thresholds to accompany these changes.
* When it comes to **OTC trading**, this space should be reserved for purely non-price forming transactions with the following required:
  + ESMA standardization of definitions of price forming orders;
  + Extend the Market Model Typology (MMT) to all execution venues.
* This would allow the current non-price forming activity being reported in SIs to be done through the appropriate OTC category.
* Finally, review the interaction of the execution workflow of the large investment firms with lit markets, assessing the prioritisation of lit markets.

<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>

Euronext 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, there would no longer be a need for the double volume cap (DVC) mechanism.

Instead, Euronext believes that 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 all the while contributing to a much-needed simplification of the current framework. In addition, it makes sense to maintain the OMF waiver as an order in an OMF facility ultimately becomes pre-trade transparent and therefore contributes to the price formation process.

In such a scenario, it would still be important to allow for non-price forming technical trades to be reported off-book on-exchange. Euronext calls for such a reporting tool to be defined at Level 1.

Overall, quality and consistency of reporting and flagging are necessary in order to improve transparency available to market participants. Against this background, Euronext calls for the Market Model Typology (MMT) to be extended and mandated to all execution venues and sees merit in looking at how the technical implementation and interpretation of MMT could be done under the governance of ESMA.

<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>

Euronext agrees to increase the pre-trade LIS threshold for ETFs to EUR 5,000,000. Although this is a step in the right direction, we believe that it is important for ESMA to complement this measure with additional ones to further promote transparency for on-venue trading of ETFs (please see answer to question 6).

<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>

Euronext is in favour of 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 (please see response to question 1).

<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>

Euronext agrees that applying for a combination of different waivers below the LIS threshold should be avoided, in order to strengthen lit trading through an overall simplification of the market structure for equity instruments.

Specifically, Euronext believes that the reference price and negotiated trade waivers should be removed. In such a scenario, only orders that are large in scale and orders in an order management facility would be eligible to be waived from pre-trade transparency.

<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>

Euronext agrees with the proposal to report the volumes under the different waivers separately to FITRS. A more granular approach for reporting volumes under the waivers would be more appropriate. It is quite burdensome to report volumes “total excluding waiver a and b”. It would be clearer to report separately the total volume as well as the volume under each waiver.

<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>

In assessing ways of incentivising lit trading and ensuring the quality and robustness of the price formation process, we believe it is important not to consider measures in isolation and look at market structure holistically.

We believe the following set of measures would re-establish a balance between lit and dark trading:

Waivers from pre-trade transparency

We recognise the importance of maintaining waivers from pre-trade transparency for large orders by **retaining the Large-in-Scale waiver** (LIS), and retaining the Order Management Facility (OMF) waiver for orders that eventually become pre-trade transparent.

We support simplifying European market structure by **removing the Reference Price (RPW)**. The RPW detracts from price formation by allowing venues to waive pre-trade transparency and offer investors trading based on a price imported from a fully transparent venue. There is no rationale – below LIS – to allowing certain investors to piggyback on the price formation process enabled by transparent venues and the investors that trade on them. The same logic applies to the Negotiated Trade Waiver (NTW).

In such a scenario, it would still be important to allow for non-price forming technical trades to be reported off-book on-exchange. Euronext calls for such a reporting tool to be defined at Level 1, supported by ESMA work at Level 2 to implement and enforce appropriate trade flags.

Systematic Internaliser Regime

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

In such a scenario, the large in scale threshold would be used as the main tool to delineate lit and dark trading. Price-forming, below LIS trading should be confined to Regulated Markets and MTFs exclusively. Euronext underlines that rules applicable to MTFs should continue to apply, specifically operators of MTFs would be prohibited from engaging in proprietary trading, running bilateral systems or applying discretionary and discriminatory rules. These trading venues would in principle always be subject to real-time pre- and post- trade transparency requirements thus creating a lit space for trades below LIS. There would no longer be a need for a double volume cap mechanism since pre-trade transparency waivers would be limited to the LIS and OMF.

SIs activity would be restricted to above LIS only. Above LIS trading constitutes a legitimate dark space in which trades are not be 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 (SIs) and would result in an appropriate limitation of dark activity and a welcome simplification of the fragmented execution landscape. Below LIS, trades should contribute to price formation since those trades have more limited market impact. This type of execution should operate in a trading venue, under non-discretionary and non-discriminatory rules, and comply with the tick size and transparency requirements.

To support this approach, a lowering of the relevant LIS thresholds (for equities) could be considered.

In addition, we hear from market participants that many have opted to become SIs in light of reporting rules placing the responsibility of trade reporting on SIs, so that none of their clients would have to put in place the infrastructure to report trades. We would support a review of the current reporting rules to determine whether they might have contributed to the stark increase in the number of SIs, and whether alternatives such as delegation of reporting might be explored to ensure the reporting obligations do not fall to the clients in cases where the brokers are not SIs.

OTC trading

When it comes to **OTC trading**, this space should be reserved for purely non-price forming transactions with the following required:

* + ESMA standardization of definitions of price forming orders, building on the existing list of exemptions from the STO;
  + Extend the Market Model Typology (MMT) to all execution venues as well as OTC transactions, under ESMA’s governance.

This would allow the current non-price forming activity being reported in SIs to be done through the appropriate OTC category.

Midpoint trading

Euronext would also take this opportunity to point out that while some would argue that mid-point is a valid execution price since it is predictable and based on tick sizes, any order pegged at midpoint means that some orders are entered in between tick sizes, which was not foreseen by MiFID II/MiFIR for trading venues’ lit order books. It should also be noted that mid-point is a non-displayed order and therefore plays a role in reducing market transparency.

Against this background,mid-point orders get executed at the expense of participants willing to set or display a price. Ultimately, the idea that a mid-point price is fairer is flawed as pegging can in some circumstances act similar to a reference price without being subject to a waiver. Any review of MiFID II/MiFIR should address these concerns. In consistence with other comments throughout this consultation response, Euronext thus believes that for below LIS orders, mid-point pegging should not be allowed in the central limit order book, but for above LIS orders mid-point pegging should be available.

Request for Quote systems for ETFs

MiFID II introduced increased transparency requirements applicable to ETFs however the fundamental concern is that the large majority of trading - approximately 90% - still takes place on alternative trading systems, as opposed to on-exchange lit markets. Therefore, Euronext suggests that ESMA investigates this liquidity shift from lit order book trading to Request for Quote (RFQ) trading and assesses its potential long-term impact on ETF market structure. ESMA should propose mitigating measures if this trend is perceived to be non-compliant with ESMA’s objective to ensure the quality and robustness of the ETF price determination mechanism for all types of investors. Therefore, Euronext would suggest that RFQ trading systems should only be made available for ETF transactions above the LIS thresholds (1,000,000 EUR) so that trading in smaller sizes is executed on transparent all-to-all trading platforms thereby contributing to the price formation process.

Share Trading Obligation

Euronext proposes to modify the share trading obligation (STO) in relation to the scope (regarding the third country dimension and dual-listed securities), exemptions and application to asset classes:

1. the STO should apply to those shares with an ISIN starting with a country code corresponding to an EU27 Member State plus those starting with a non-EU country code but where the issuer has its primary listing within the EU27;
2. The STO should not apply to those shares with an ISIN starting with a country code corresponding to an EU27 Member State where the issuer has its exclusive listing in a third country (although this can only be implemented if the following point regarding dual-listed securities is also accepted);
3. In cases where the security is dual-listed on both an EU trading venue and a non-EU trading venue at the specific request of the issuer, we propose that the STO should still apply but that there is an exception in the provision to allow for trading to take place on the non-EU trading venue where the issuer has admitted the security, in addition to the EU venues;
4. Exemptions should be removed where trades are “non-systematic, ad-hoc, irregular and infrequent”, instead exemptions should only apply for those trades that do not contribute to price formation based on a clear and consistent list of qualifying non-price forming trades; and
5. The scope of the STO should be extended to ETFs in order to incentivise lit trading and investor protection in this growing asset class.

“Listing” in this sense is always made upon request of the issuer and involves various obligations for initial listing and for maintaining a listing.

<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>

Euronext is of the view that using ADNT and ADT as parameters to assess liquidity would be an improvement in comparison to the four conditions currently used. Euronext would caution against looking at market capitalisation as a parameter since this would introduce undue complexity. It should also be noted that free float data can in some cases be unreliable.

<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>

Euronext agrees with changing the approach for ETFs and DRs as proposed by ESMA.

<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>

Euronext in principle sees merit in correctly distinguishing between various types of auctions. One of the relevant distinctions could be whether the auction includes an element of price formation or not along with other features like the length of the call phase. Trading venues operating auctions is nothing new, on the contrary, auctions are widely used to orderly open and close trading sessions and many venues also organise intra-day auctions. Euronext is of the opinion that auctions without a price-forming element should in principle operate under a waiver, see question 12.

The various auctions are modelled to serve the market participants’ needs for efficient trading within the overall transparent and multilateral environment. Regarding the information to be made public, “ESMA suggests that all orders (volume and price) submit-ted to FBAs should be disclosed to meet the MiFIR pre-trade transparency requirements.” Euronext would need more information on the exact requirements suggested by ESMA as it is unclear whether ESMA would want to align the pre-trade transparency requirements for FBAs with those applying to “continuous auction order book trading system” or define new specific requirements. As such, Euronext considers that any consideration of regulatory measures in this area should be based on a thorough analysis of the overall market structure paying special attention to the price-forming nature of auctions.

<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>

Euronext believes that trading models allowing for non-price forming transactions combined with insufficient levels of pre trade transparency should operate under a pre-trade transparency waiver, provided that this does not prejudice the possibility of reporting non-price forming technical trades as off-book on-exchange. Such a reporting tool should be formulated at Level 1.

Consistently with supporting repealing the negotiated trade waiver and the reference price waiver (see our answer to question 1), trading models allowing for non-price forming transactions and insufficient pre-trade transparency would either operate under one of the remaining pre trade transparency waivers under MiFID II, namely LIS and OFM waivers or not be allowed anymore.

In addition, Euronext would caution against distinguishing between price-forming and non-price forming systems. Rather, and in the interest of consistency and simplicity, Euronext supports working off the current Level 2 framework on non-price forming transactions (RTS 1 Article 2 and Article 13 provide a list of such transactions). This would prove more effective than a definition of non-price forming/price forming models as it would avoid potential loopholes. We would also suggest extending MMT to all execution venues and OTC under ESMA governance to ensure proper flagging of trades.

<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>

Euronext acknowledges that the current minimum quoting size of 10% of the SMS is incredibly 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 than what is currently in place.

That being said, Euronext believes that any review of MiFID II market structure should focus on designing a market structure concept strengthening lit trading. In order to achieve this, Euronext proposes (as outlined in response to question 6) to confine SI activity to above LIS only.

<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>

Euronext is of the view that extending the transparency obligations under the SI regime to illiquid instruments would be an improvement compared to what is in place under the current framework.

Although it has not been mentioned in the Consultation Paper. Euronext would like to draw ESMA’s attention to 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. Euronext is convinced that 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. One question is about riskless trading. Euronext believes that 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. If that were not to be the case, existing rules on operating an internal matching system and registering as an MTF should be applied. 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 any 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.

Euronext reiterates that any review of MiFID II market structure should focus on designing a market structure concept strengthening lit trading. For this, Euronext proposes to restrict SI activity to above LIS only (as outlined in response to question 6).

<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>

If the transparency obligations under the SI regime are extended to illiquid instruments, determining the SMS on the basis of the ADT for illiquid instruments and for liquid instruments would make sense.

Euronext supports ESMA’s proposal to have different tables for liquid and illiquid instruments for shares, DRs, certificates and other financial instruments in order to have calibrated SMS for different ADT classes for each asset class (option 1).

However, for ETFs, Euronext prefers table 2 (the SMS for liquid instruments) also for illiquid instruments. The liquidity of an ETF is primarily determined by the liquidity of the underlying market rather than the ADT of an ETF. Correspondingly, ETFs tracking similar underlying markets typically demonstrate similar liquidity profiles in terms of average spreads. Hence, both liquid and illiquid ETFs should be subject to the same SMS. As a result, the table needs to be populated accordingly with appropriate SMS figures for the ADT classes below 500 000 EUR.

That being said, any review of MiFID II market structure should concentrate on putting in place a market structure concept strengthening lit trading. In order to achieve this, Euronext proposes to restrict SI activity to above LIS only (as outlined in response to question 6).

<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>

Euronext supports ESMA’s proposal to limit the available waivers under the transparency regime to the LIS and OMF thus rendering the DVC mechanism obsolete (Section 3.1.2.1 – B. Conclusions and Proposals).

<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>

The double volume cap has been designed to limit the trading taking place under the RP waiver, provided in Article 4(1)(a) of MiFIR, and the NT waiver for liquid instruments, set out in Article 4(1)(b)(i)) of MiFIR. Euronext is calling to limit the available waivers under the transparency regime to the LIS and OMF waivers. In this case, the DVC mechanism would disappear.

Euronext does not believe that the RP and NT waivers should remain in place nor that the double volume cap should be maintained or adjusted. Euronext believes that restricting dark and SI trading to above LIS only would be an efficient way to incentivise lit trading and ensure the quality and robustness of the price determination mechanism for shares and equity-like instruments.

Please see Euronext’s response to question 6.

<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>

Euronext is calling for a removal of the double volume cap mechanism.

In the current system, it is worth pointing out that there is no harmonisation of NCA notices. Some NCAs send a list of instruments to be suspended and instruments to be reopened. Others send the ESMA files which contain all suspensions and reopening with all historical data, not only those of the relevant month. In this case trading venues need to work on the file to find the instruments traded on their systems and assess whether it is a new suspension/reopening. Other regulators just sent the link to the ESMA website.

We believe markets would benefit from a clear list of instruments to be suspended or reopened month by month.

<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>

Euronext is calling for a removal of the double volume cap mechanism. However, if the double volume cap is maintained, Euronext agrees that it would make sense to remove the requirement for trading venues to monitor that trading under the waivers does not exceed the 4% under Article 5(7)(b) MiFIR.

<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>

Euronext is calling for a removal of the double volume cap mechanism. However, if the double volume cap is maintained, it could potentially make sense to apply the DVC also to instruments for which there are not 12 months of available data yet.

<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>

Euronext is calling for a removal of the double volume cap mechanism. However, if the double volume cap is maintained, Euronext does not foresee any major issue if the publication occurs after 7 working days instead of 5, provided that the time for trading venues to implement the suspension after the NCA’s notice is unimpacted.

<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>

Euronext is calling for a removal of the double volume cap mechanism. However, if the double volume cap is maintained, Euronext agrees that not publishing the mid-month reports may make sense.

<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>

Euronext is calling for a removal of the double volume cap mechanism. However, if the DVC is maintained, article 70 of MiFID II should be amended to include the infringements of DVC suspensions.

<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>

Euronext would agree. 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>

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>

Euronext agrees with ESMA’s proposal to increase the applicable deferred publication threshold for ETFs and request for real-time publication for transactions that are below 20,000,000 EUR.

<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>

Yes, Euronext agrees with the ESMA assessment of the level of post-trade transparency for OTC transactions and considers that there is no need to apply different thresholds for OTC and on-venue transactions. Rather, Euronext thinks thattrading OTC does not mean that post-trade transparency shall be minimal. In general, Euronext is of the opinion that OTC transactions, hence in the case of shares, exemptions to the share trading obligation, shall reach the same level of quality in post-trade reporting; this appears as well necessary to monitor the correct application of Article 23 MiFIR and its exemptions.

Euronext would also like to take this opportunity to reiterate 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 and work needs to be done in this area. Today it can be observed that SI and OTC data quality, reliability and consistency is not fit for that purpose. Most sources of reliable data, such as exchange data, are consolidated by market data vendors and made available to users. However, there is a lack of non-trading venue quality data. This is because low levels of off-venue post-trade data quality, reliability and consistency of SI and OTC transactions hampers accessibility and readability and consolidation of such data. This concerns both the timeliness and content of the data, as well as the inconsistent approaches in respect of flagging trades.

<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>

Yes, Euronext agrees and welcomes more transparency in this area. It is important that exemptions to the share trading obligation are clearly identified and flagged. All transactions identified as not contributing to the price discovery or non-price forming should benefit from an individual flag in FITRS. Again, this would ensure proper application of the exemption possibilities to the share trading obligation.

<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>

For electronic order book systems, Euronext 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.

When it comes to technical, non-price forming trades, we would consider that a 1-minute timeframe is appropriate although a 1-minute timeframe could be too short. Clarification on the momentum of the 1-minute window would be needed. For non-price-forming technical trades it can be too stringent for the trading venue to publish a trade within 1 minute from the time of the parties agreeing on the transactions; as parties need time to report the transaction after the agreement.

Euronext would like to stress that exchanges strive to publish the information as fast as possible, based on the type of trade executed.

We would also like to state that the maximum delay should be equal for all execution venues including SIs.

<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>

Euronext agrees with the approach taken for third-country trading venues regarding transparency requirements, level playing field and ensuring adequate supervision.

<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>

Yes, we agree that the scope of the Share Trading Obligation should be limited to EU shares.

We welcomed the initial STO provision as part of the MiFID II package given its objective to promote transparency and move trading away from OTC on to lit venues. It is an important cornerstone of the overall aim of MiFID II to enhance the efficiency, resilience and integrity of financial markets in the EU. However, it is clear that there are issues with its application, particularly in relation to its extraterritoriality and also its application to dual-listed shares. Therefore we support the view that amendments need to be made to this provision as the approach should avoid undue complexity and be based on predictable and meaningful criteria.

***Extraterritoriality***

Under the current provisions, if equivalence is not granted, non-EU shares traded on third country non-equivalent venues also admitted to trading in the EU would have to be traded in the EU by EU investment firms. These provisions would apply regardless of the liquidity of non-EU shares on EU markets, meaning that shares that are highly liquid on third country venues but for which liquidity on EU markets is low would have to be traded in the EU. While ESMA and the Commission have endeavored to try to address this issue, given the fact that only a handful of equivalence decisions have been adopted and determining equivalence can be problematic, it means there is a lot of uncertainty with respect to this provision, and therefore we agree an alternative approach should be considered.

We agree with the approach to limit the STO provision to exclude third country shares and we acknowledge the challenges that ESMA raises in relation to determining an EU share.

***Dual-listed securities***

In addition, as highlighted by ESMA, there is a further challenge with respect to securities that are dual-listed on an EU and non-EU trading venue as EU brokers may need to access both pools of liquidity. This is of particular concern to us. The STO should not restrict such access to this liquidity as this would harm EU investors and could disincentivise dual-listed issuers to retain their listing in the EU in order to extricate themselves from the STO if their primary liquidity is outside the EU. Therefore, we welcome the proposed solution that ESMA refers to that in such cases where shares are dual-listed on an EU and a non-EU trading venue at the issuer’s request, that there should be an exception to the provision to allow trading by EU brokers to take place on both the EU and non-EU trading venue where the issuer has specifically requested admission to trading.

One final point to mention regarding ESMA’s analysis, is that it is suggested that if an issuer does not actively seek admission on an EU trading venue, then it could fall outside scope of the STO even if the security is admitted to EU MTFs without its consent. The only way this could work is to implement it in parallel with the provision to allow trading in dual-listed securities on both the EU and non-EU trading venue; otherwise, there is a huge risk that this could significantly incentivize certain issuers to delist from an EU trading venue in order to extricate themselves from the STO as this has been a live concern in relation to Brexit developments. However, if the point on dual-listing is accepted, than this would mitigate the risk.

***Determination of EU shares***

Given the various challenges highlighted above in relation to the STO, a careful approach is essential. The ISIN is a simple and straightforward method to use as part of the criteria but we also believe it is important to consider where the issuer has requested an admission to trading. Therefore, in order to determine which shares should be considered as EU shares, we suggest the following approach should be taken:

* the STO should apply to those shares with an ISIN starting with a country code corresponding to an EU27 Member State plus those starting with a non-EU country code but where the issuer has its primary listing within the EU27
* the STO should **not** apply to those shares with an ISIN starting with a country code corresponding to an EU27 Member State where the issuer has its exclusive listing in a third country (although this can only be implemented if the following point regarding dual-listed securities is also accepted)
* in cases where the security is dual-listed on both an EU trading venue and a non-EU trading venue at the specific request of the issuer, we propose that the STO should also still apply but that there is an exception in the provision (as suggested by ESMA in the consultation – para 278), to allow trading to take place on the non-EU trading venue where the issuer has listed the security, in addition to the EU venues.
* “Listing” in this sense is always made upon request of the issuer and involves various obligations for initial listing and for maintaining a listing.

This approach will ensure that the key objective of the STO can still be achieved i.e. more transparency with OTC trading moving to lit trading, and it will also ensure in the case of dual-listed securities, that EU brokers and their investors can still access the main pools of liquidity where the issuer itself has requested its security to be traded and does not in any way disincentivise issuers from listing on EU trading venues.

***Trade Reporting***

Given our proposed approach to dual-listed securities (as referenced above), there should be a reporting arrangement developed that incorporates the trading activity on the third country trading venue in order to ensure full transparency of these shares in the EU.

***ETFs***

We also suggest that the scope of the STO should be extended to ETFs in order to incentivise lit trading and investor protection in this growing asset class.

<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>

Euronext considers that SI activity should be limited to trades above LIS. Below LIS, this type of execution venue should operate as a trading venue, under non-discretionary and non-discriminatory rules, and comply with the tick size and transparency regimes. We would recommend retaining SIs as eligible execution places for the purposes of the share trading obligation but limiting the activity to trades above LIS.

In such a scenario the large in scale threshold would be used as the main tool to delineate lit and dark trading. Below LIS trading would be confined to Regulated Markets and MTFs exclusively. These trading venues would in principle always be subject to real-time pre and post trade transparency requirements thus creating a lit space for below LIS. The available waivers under the pre-trade transparency regime (Article 4 MiFIR) would be limited to the LIS and OMF waivers and the double volume cap mechanism would disappear.

SI activity would be restricted to above LIS only. Above LIS trading would constitute a dark space in which trades would not be subject to pre-trade transparency and would benefit from delayed post-trade transparency. This would result in an appropriate limitation of SI activity and a welcome simplification of the fragmented execution landscape. Please also see our response to question 6.

<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>

Euronext 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>

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>

Euronext 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, Euronext 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.

<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>

Closing auctions concentrate liquidity over a limited period of time (few minutes only). The more participants in closing auctions, the higher the liquidity, the more efficient the price and the lower the risk of manipulation.

As their name indicates, closing auctions determine the closing price of a share in the best interest of public companies and investors by pooling all liquidity in the auction. They are relevant to set the reference price for a high number of financial instruments (ETFs, derivatives, traditional funds etc.) and allow market participants to replicate exactly the price at which index rebalances are done. In addition, it is the official closing price that is used for calculations for corporate actions and other transactions, and indeed is the generally accepted reference price for many other purposes, such as tax matters or for the determination of settlement prices by CCPs.

Euronext observes that, historically, closing auctions have always concentrated a significant share of the turn-over on trading venues in Europe. But since January 2018, the market share of closing auctions when compared to all other execution venue types grew from 9.7% to 11.7% in June 2019.

**Figure 1**: Market share per venue type for STOXX 600 instruments on European markets

Source: Big xyt data, FESE calculations

The growing importance of closing auctions can be seen as a result of the increase in SIs and OTC trading which make use of pre-trade transparency waivers. The increase in off-exchange trading impacts negatively market quality and the price formation process. Hence, in such an environment, investors actively seek out the closing auction which is the one of the few times in the day when investors truly receive the benefit of centralised liquidity.

Furthermore, as recently noted by the AMF, the growing importance of this end-of-trading phase can also be explained by the expansion of passive management, whose mechanism for creating and cancelling units usually uses the net asset value at the end of day and which requires trading at the closing price for exact replication (Autorité des Marchés Financiers, Growing importance of the closing auction in share trading volumes, October 2019, Risk & Trend Mapping).

The increased market share of closing auctions has sparked allegations that their centralised nature gives primary exchanges too much power. However, it is important to recall that there are currently approximately 170 equity execution venues in Europe, which shows evidence of a highly competitive market. The popularity of closing auctions shows that there is a significant demand from investors for this highly transparent and non-discriminatory mechanism which is in the best interest of investors, public companies and the market as a whole.

We would like to stress that centralisation in itself does not create uncovered stability risks and, with appropriate safeguards on resilience (e.g. MiFID II Art. 48) in place, primary exchanges have proven their value by maintaining trust in their rules and procedures. The centralisation of liquidity in the closing auctions guarantees that the price formed is dependable since it is protected by the rules established by exchanges. Dispersing trading across a large variety of venues and execution modes will come at the cost of deterioration of price formation. The proliferation of order flow across execution venues raises concerns around liquidity aggregation and the quality, reliability and efficiency of price determination.

In this context, Euronext believes it is important that regulators and policymakers consider the range of price formation delivered by trading venues and acknowledge the core value of price formation on exchanges.

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

1. Source: Euronext internal data [↑](#footnote-ref-2)
2. Tier 1 (large global investment firms), Tier 2 (pan European investment firms) and Tier 3 (national and local investment firms) [↑](#footnote-ref-3)