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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 | London Stock Exchange Group plc |
| 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>

London Stock Exchange Group (LSEG) welcomes the opportunity to respond to the ESMA consultation paper (CP) on MiFID II/ MiFIR review report on the transparency regime for equity and equity-like instruments, the double volume cap mechanism and the trading obligations for shares.Please find below our introductory remarks, summarising the input further detailed under the relevant questions.

* **Scope and the overall compound impact of the proposed changes**. As an operator of regulated markets (RMs), multilateral trading facilities (MTFs) and other market infrastructures across EU-27 and in the UK, we support the overall key objectives of MiFID, such as transparency which is key to fair price formation and investor protection. We welcome ESMA’s launch of this debate and would like to stress that introduction of several, even smaller, changes in the market structure simultaneously should be assessed against the overall compound impact they are likely to have, in order to avoid any undue disruptions.
* **Policy objectives with emphasis on best execution.** In addition to transparency, MiFID is underpinned by other key objectives as well, such as best execution. Balancing these key objectives will allow healthy capital markets to flourish, as outlined in the Capital Markets Union (CMU) initiative, and therefore we believe that different levels of transparency would be appropriate for different instruments or types of trading functionality that are delivering best execution.
* **Waivers.** We believe that the retention of the waiver mechanisms is an important element in maintaining and further developing the European capital markets. Market liquidity stems from an ecosystem made of different venues of execution, and trading waivers are therefore complementary to lit trading, delivering different execution outcomes according to investors needs and in line with best execution requirements. It should not be assumed that liquidity will remain constant in any market structure design; consequently, it cannot be assumed that removing the reference price (RPW) and negotiated trade (NTW)waivers would automatically lead to more liquidity being traded on lit markets. In addition, we believe that the double-volume cap (DVC) regime could be operationally simplified.
* **SIs**. We believe that it is key to ensure a level playing field between different execution channels. In this context, SIs pre-trade and post-trade transparency requirements should be maintained to ensure and reinforce and their capability to effectively deliver best execution also in terms of price should be taken into account.
* **OTC trading**. The significant amount of “pure OTC” trading in shares is highly surprising, particularly given this should only be undertaken in “non-systematic, ad-hoc, irregular and infrequent” cases. It ranges from 23-39% of overall EU trading in shares according to ESMA’s data set. Addressing this would be a simpler and lower-risk way of encouraging more activity onto lit order books than seeking to amend the waiver regime.
* **Share Trading Obligation**. We agree that the scope of the STO needs to be reviewed. We continue to believe that EU’s equivalence determination of the UK would be the least disruptive solution for the market participants, including from EU-27.

<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>

We support the retention of the waivers as they fulfil an important function in the market, and they are largely complementary to lit trading. No market failure has been identified that would warrant their removal. RP and NT waivers trading is part of the current microstructure in financial markets, which allows investment firms to reduce costs of trading, achieve best execution and ultimately benefit end-investors by executing at the midpoint of the best available transparent bid and offer or negotiating a trade price bilaterally. MIFID II has delivered choice to the end investor which has been beneficial and should be retained and appropriately balanced with the need to maintain a strong price formation process, in particular when small trades are executed within such waivers.

We would also note that in line with MIFiD II requirements, trades are time-stamped to a precision of one microsecond, with a maximum drift of 100 microseconds, and are then trade-reported in real-time. The precise and instant nature of post-trade reporting contributes to pre-trade transparency for the next trade. This applies whether the orders originate in lit order books or non-display order books. It should therefore be recognised that even if trades occur under a waiver, the immediate post-trade transparency delivered (assuming no deferral is in operation, which is the case for the majority) the market derives significant information benefits that are relevant and contribute to the price formation process of the next trade.

Based on ESMA’s assessment and consistent with our views, there has been significant growth in the use of the Large in scale (‘LIS’) waiver. In contrast, NT and RP waivers appear to have become, in comparative terms, less used over time. As the trend towards LIS waiver trading and away from NT and RP trading appears to be occurring anyway, we do not see the regulatory imperative to remove NT and RP waiver trading, particularly as there is no proven market failure in this space. we believe that the removal of NT and RP waivers would be unlikely to result in this flow migrating wholesale to pre-trade transparent order books but would instead more likely migrate to alternative execution channels with lower regulatory requirements. This applies not only to equites but also to ETFs.

Examples:

• Turquoise Global Holdings Limited operates an MTF within LSEG, which operates an order book making use of the RP waiver. The average trade size YTD on Turquoise Plato™ is €18.4k. Using data from Big XYT, in the CAC 40 the spread at €25k depth was 4.17 bps in January 2020 on the primary exchange and nearly double that on the MTFs. Being able to trade using the RP waiver at the midpoint provides significant cost savings to end investors and limits the market impact, particularly when orders are larger than available pre-trade transparent size.

• On the Turquoise Plato Block Discovery™ service, which makes use of a combination of waivers, in February 2020 the average spread saving by trading at mid was 5.45 basis points (calculating the difference between the mid and the top of the book for every trade). The largest value saved in one trade was €8,983. This simple calculation significantly underestimates the benefits and savings by being able to trade at the midpoint of the Primary Market Price because it does not take into account market impact, availability of liquidity at the top of book, or costs of working child orders over a prolonged period of time compared to a single trade at midpoint. In any case this example serves to underline the benefit which end investors, including asset managers and pension funds, receive by being able to trade at midpoint.

<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>

Changing the LIS waiver thresholds for ETFs could result in trading migrating away from order books to SIs and RFQs further fragmenting liquidity. Participants may be deterred from using hidden orders which are a good source of liquidity and price improvement on central limit order books.

We estimate that most of the LIS waiver usage on venue is from RFQ trading. It is worth noting that the ESMA analysis (e.g. Figure 14) does not distinguish between central limit order book and RFQ trading waiver usage. Around 59% of all ETF trading is on-venue according to Figure 10, and of that we estimate around 65% is RFQ. We feel the proposed change will have a marginal benefit in terms of transparency but will be significantly offset by the detrimental negative impact of liquidity on central limit order books which currently benefit from passive trading participants resting LIS hidden orders in sizes of €1m-€5m. Around 10% of total LSE ETP order book value traded is from hidden liquidity.

We note ETFs are currently characterised by large transactions and mainly traded on RFQ, although we are observing the development of ETF specific trading algorithms to support the rise of passive trading, breaking down large parent orders which are usually traded only via RFQ on risk with a market maker. Amending the LIS waiver threshold for ETFs could stymie this positive but nascent market development.

<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>

The scope of application of the DVC mechanism should not be extended to NT for illiquid instruments as it could be detrimental for the trading of illiquid shares. A comparatively small amount of trading occurs through the use of the NT waiver in illiquid instruments in any event.

Considering only on-book volume on LSE, negotiated trades reported to LSE, and OTC and SI reported trades (admittedly this is only part of the whole market), on average “OILQ” trades account for less than 1% of trading while the average trade size was 13x times larger than the on book average trade side. This suggests that participants find the NT waiver a useful mechanism for achieving above average size executions, albeit still in limited cases. In light of the low amount of negotiated trading in illiquid instruments, we do not feel that the proposed change would significantly improve on venue transparency or market quality in illiquid shares. At the same time, however, the proposed change would remove an important means of achieving best execution with minimal market impact, a notable point when there is limited liquidity on pre-trade transparent order books in less-liquid securities.

While we believe the expansion of the DVC scope is neither necessary nor desirable, we do acknowledge the operational benefit of simplifying the DVC process i.e. there would no longer be a need to distinguish between liquid and illiquid stocks for and the purposes of DVC implementation.

<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>

Trading venues should be allowed to apply a combination of waivers. The current usage of pre-trade waivers allows a greater variety and number of trading participants to interact in the same orderbook, which helps increase liquidity and drive better execution outcomes to the ultimate benefit of the end investor. If combinations of waivers were to no longer be allowed, this could lead to a situation where trading venues setup two distinct orderbooks (e.g. one for RPW and another for LIS, or one for NTW and one for LIS), leading to increased fragmentation and complexity, with a greater number of small liquidity pools, and lower liquidity overall to the detriment of the end investor. In our experience, the current functioning of combination of waivers is seen as being beneficial and should be retained.

We would like to clarify that systems which allow a combination of waivers, such as RPW and LIS, do not provide preferential regulatory treatment in terms of being captured by the DVC. For example, if a sub-LIS order matches with an above LIS order in the Turquoise PlatoTM Order Book, the resulting transaction is reported and published with the MiFID II post trade transparency flag of “RFPT”, indicating it is a reference price waiver trade. This is in clear contrast to the instance of two orders that are both above LIS matching together, in which case the trade is reported and published as using the pre-trade LIS waiver. So, although sub-LIS and above-LIS orders may interact together in one system this is yielding the benefits of efficiency and greater liquidity overall, far from being undermined the integrity of the DVC mechanism is assured.

We do however agree that the waiver approval process should aim at avoiding any circumvention of the DVC mechanism. We note that having clear public documentation of waivers and related functionalities approved or rejected by ESMA would also contribute to increase transparency and allowing all TVs to understand the evaluation criteria the regulators are applying when assessing the various waiver applications. Before MiFID II came into force, ESMA (and CESR) used to publish a set of use cases, which detailed the list of approved waiver usage. This document was extremely useful for TVs and the wider market to understand how different pre-trade transparency waivers could be utilised and provide transparency for the whole market. We would encourage ESMA to republish this document to help reduce any perceived complexity in the usage of pre-trade transparency waivers.

<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>

We agree with ESMA’s proposal to report the volumes under the different waivers separately to FITRS.

<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>

We are in favour of a level playing field between different execution channels for both pre-trade and post-trade transparency.

<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>

In LSEG’s view, the most appropriate criteria for the liquidity assessment, also from an operational perspective, is reflected in Option 1 (ADNTE + ADT). We do not see major benefits in the revision of the threshold for the ratio between number of days traded and number of days available for trading. Such revision will result in a higher number of instruments being considered as liquid. However, we would like to point out the additional implications (i.e. different regime applicable in the buy-in process under CSDR for liquid vs illiquid shares).

<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>

We agree with ESMA in changing the approach for ETFs and DRs in assessing liquidity. We consider that the average of daily turnover and the average daily number of transactions are enough to assess liquidity.

<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>

No response.

<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>

We agree with ESMA’s proposal to classify illiquid by default “other” equity financial instruments. From our perspective, this approach will clarify how to manage warrants and closed-end funds constituted in the form of shares for which the current regime is not completely clear. This approach would not have negative impacts on the overall price formation process for equity instruments given the limited number of instruments this would apply to.

<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>

Although the use of FBAs has grown notably since the introduction of MiFID II, they still account for a relatively small part of overall trading activity in Europe. Consequently, any policy proposals should be proportionate and not risk harming nascent and still evolving post-MiFID II market structures through which participants seek compliant and cost-effective ways to execute orders and meet best execution requirements.

Turquoise Plato Lit Auctions™ is one example of a Frequent Batch Auction system that provides customers with access to unique liquidity and high-quality execution outcomes. Any new measures need to be proportionate and measured so as not to risk jeopardising pools of liquidity that can assist end investors obtaining best execution.

With that said, we do see the benefit of separating the definition of conventional periodic auctions and frequent batch auctions, given their different purposes and their different characteristics.

However, it should also be noted that FBAs play a uniquely different role to the other more traditional types of auctions, such as the opening or closing auction of a primary market. FBAs bring together buyers and sellers at discrete points throughout the trading day. In contrast, the more traditional opening and closing auctions of a primary market exist to centralise liquidity events in an orderly way at pivotal points in the trading day, as well as to determine key price reference points for use in the wider market (i.e. opening and closing prices). The leads to a key difference between the two types of auctions – the number of participants active, and the level of overall trading, per auction event in FBA trading systems is significantly lower than in the opening and closing auctions of a primary market.

Consequently, and in that context, we think the current pre-trade transparency during an FBA auction run – indicative quantity and price – is sufficient. We do not agree that all orders in the FBAs should be disclosed because significant and harmful information leakage could occur. This is particularly the case for aggressively priced (and potentially large) orders that participants may otherwise be content to rest over long periods of time in order to receive optimal execution in an FBA trading system. Requiring disclosure of this type of order in an FBA trading system would likely lead to the market moving away from a large buyer or seller, either leading to worse execution outcomes for end investors or leading to participant refraining from entering competitively priced orders at all, thereby undermining the significant benefits and liquidity opportunities that FBAs currently offer.

Comparisons of FBAs to more traditional auction types can be misleading – the liquidity opportunities available in the opening and closing auctions of a primary market are typically much greater, with a greater likelihood of getting business done without information leakage, than the more targeted and discrete nature of liquidity events that occur in FBAs at multiple points throughout the trading day.

<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>

We agree that a convergent application of the “price forming” definition is useful, and we agreed with the factors set out in the ESMA Opinion on “frequent batch auctions (FBAs) and the double volume cap mechanism (DVCM)” published on 1 October 2019 (ESMA70-156-1355).

<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>

We are in favour of a level playing field between different execution channels for both pre-trade and post-trade transparency. Therefore, we believe that the minimum quoting size can be increased without any detrimental effect for SIs while at the same time increasing transparent liquidity available to the market.

<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>

We are in favour of a level playing field between different execution channels for both pre-trade and post-trade transparency. Therefore, we agree with ESMA in extending the transparency obligations under the SI regime to illiquid instruments.

<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>

We agree with the calibration of the SMS on the basis of the ADT but we believe that the same SMS should apply for liquid and illiquid instruments having the same ADT. This will also contribute to a simpler regime, reducing the operating burdens and risks.

<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>

We are supportive of removal of the 4% TV level threshold since our own observations show that when waiver trading is suspended on one venue (i.e. breach of 4%) this trading is then re-distributed amongst other TVs (and an 8% breach subsequently ensues), and of the evaluation of additional measures to reinforce a transparent price formation process.

In this context, a reduction of the 8% cap would represent a further incentive to move trading (in particular, smaller transactions) into transparent order books, but first we would encourage ESMA to analyse the impact of the DVC mechanism using a more comprehensive dataset (i.e. over a longer time period than the current Jan – Sep 2018 time period used in the consultation paper) before significant amendments are made.

<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>

No response.

<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>

We do not agree with ESMA in modifying the current procedure which requests NCAs to issue a suspension notification based on the ESMA publications. We believe that the current regulatory framework allows trading venues to manage this complex process containing the operational risks.

<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>

We agree with ESMA in removing the requirement under art. 5(7)(b) of 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>

To ensure the uniform application of the DVC, the new ISINs should have 12 months of data before being subject to the DVC mechanism. Doing otherwise risks unduly and unnecessarily impacting newly listed instruments.

We acknowledge, as ESMA have stated, that not all ISIN changes resulting from a corporate action will lead to a genuine new company. In these instances, it is sensible for the history to carry over to the new ISIN. However, there are a number of situations when a new company joins a public market, or a corporate action leads to a genuine new company with a new ISIN. In such cases the DVC mechanism should only apply when there is 12 months of data for this new ISIN.

For example, there have been 88 new ISINs with CFI code beginning ‘ES’ on XLON since the start of 2019, of which 27 were the result of IPOs. During the initial listing phase, the shares are often tightly held by the existing shareholders and institutional investors. Gradually as the company spends time on public markets, the shareholder diversity increases as retail investors start to participate, lock-in periods end, and pre-IPO institutional investors decide to sell down their holdings. During the initial phases of the new ISIN given the smaller investor basis, we would argue that this is a period in which the use of pre-trade waivers is very important for market participants. In these situations, new ISINs should not be subject to the DVC mechanism until there is 12 months of data.

If it is not possible to define a clear set of criteria when the history of an old ISIN should continue for the new ISIN then we believe it is better, and creates less uncertainty, to keep the current status quo; an ISIN is only subject to the DVC mechanism once there is 12 month of trading data.

<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>

We do not see any issues if the publications occur after 7 working days instead of 5. At the same time, from a trading venue perspective, we highlight the tight timeline provided for the adaptation. This should be extended by 2 days in order to allow for a safe systems adaptation and members information.

<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>

We agree with ESMA proposal to abolish the mid-month report..

<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>

No response.

<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>

According to ESMA’s figures, the post trade deferrals are applied to a limited number of trades having high counter value, hence in our view there are reason to review such threshold in order to increase market 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>

No response.

<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>

No response.

<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>

We agree with the proposal aimed to allow a clearer understanding of the applicable rules and related duties.

<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 trading venues, the publication of post trade transparency information occurs through automatic systems that make the definition of real time as maximum 1 minute too lenient.

<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>

We agree with ESMA’s current approach that aims to limit unnecessary burdens on investment firms trading in third-country trading venues considered equivalent for transparency purposes through reliance on an Opinion, and therefore no legislative changes are necessary.

<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>

We continue to believe, in the context of Brexit, that the EU’s third country equivalence determination of the UK would be the least disruptive solution for the markets and the markets participants, including from EU-27.

We also recognise there are wider 3rd country considerations relevant to the STO and we welcome the fact that ESMA is looking to set a proportionate scope for the STO relevant to third countries i.e. shares that have their primary market or main pool of liquidity outside of the EU.

However, we disagree with the proposal of using the first two letters of the ISINs as a proxy for EU listed shares. As ESMA acknowledges in the CP, this is an imperfect approach that leads to the scope being misaligned with the stated policy intent in a number of cases and should therefore be avoided.

We think that ESMA’s proposal to consider whether the issuer sought to actively admit to a market is a sensible suggestion. In our view, this would not be a determinative factor in European issuers exclusively seeking admission to trading on venues outside the EU to avoid being caught by the trading obligation because, as a group that operates several Regulated Markets including in EU-27, we believe that there are other more important factors which influence an issuer’s decision as to which public market to list on.

We believe that ESMA could achieve its policy goal of proportionate STO implementation through a clearly defined scope enshrined in legislation and subject to consultation, as follows:

- The scope could clearly exclude “third country shares”, defined as a security with an issuer that has a sole listing on a trading venue in a non-EU country.

- Securities that have a dual listing on a trading venue in both an EU member state and a non-EU country should also be excluded from the STO scope. This would recognise the fact that the issuer has chosen to access liquidity pools in two different jurisdictions, and therefore related trade flows tied to that choice should not be artificially impeded by regulatory constructs.

- However, to the extent there was a dual-listed security on two trading venue in the EU, such security should remain in the scope of the STO.

We believe that setting the scope of the STO in a principles-based way would be an effective means of implementation. Whilst we recognise that ESMA could also follow a more quantitative approach to define a list of ISINs subject to the STO we would not recommend it. This is because it would entail constant update and revision, and any such list would likely be an imperfect proxy against the stated policy goal. For example, even if ESMA used a combination of “EU ISINS” and the “issuer request for admission” flag in FIRDs, this would not accommodate the complexities of dual-listings, resulting in an STO that was drawn too widely and unnecessarily limiting EU investors’ access to liquidity pools.

<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>

The removal of SIs as eligible execution place or reducing their scope to illiquid shares would represent a significant change in the EU market structure, as such it would need careful evaluation.

We are in favour of a level playing field between different execution channels. The level playing field should be reinforced, covering the pre- and post-trade requirements for SIs, as well as the best execution requirement:

• Best Execution – e.g. the price conditions: for the same quantity, SIs should not deliver worse prices than those available on Trading Venues;

• Pre-trade transparency – e.g. Trading Venues are subject to Pre-Trade Transparency Q&As (Q&A 10 in the ESMA General Transparency Issues Q&As). We suggest that these Q&As also cover pre-trade transparency provided by SIs in order to achieve convergence in pre-trade transparency provided by Trading Venues and SIs.

<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>

If the third-country shares are removed from the STO scope amending Level 1 regulation, we will support deleting the first exemption provided by art. 23 of MiFIR appreciating the increase legal certainty of the STO application.

As a more general point, we also find the level of OTC trading surprising, at 23-39% of overall EU trading in shares, according to ESMA data. Understanding the reasons behind this trend should be a far greater priority than amending the waivers regime. If ESMA was to determine the OTC exemption from the STO was not being used for its intended purpose, ESMA may wish to consider clarifying the scope of the OTC exemption through an Opinion. This is likely to be a much simpler and lower risk way of encouraging more activity onto lit order books than seeking to amend the waiver regime.

<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>

We agree with the simplification proposed.

<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>

The closing auctions are complementary to the continuous trading phases and in our view the increased volume on the closing auction have not been detrimental to the volume traded in the continuous trading phase.

We believe that closing auctions are a helpful mechanism, which functions well. As a single point-in-time, they help to concentrate liquidity in a transparent and efficient manner. They support price discovery and formation that exists in the market as they aggregate a wide range of trading interests.

Currently there is no obvious market failure, which would require the intervention of a regulator. The market is naturally reacting to the increased volumes in closing auctions; participants will adapt their trading strategies and flow and there are an increasing number of competitors to the closing auction.

For example, on our Borsa Italiana equity market, the closing auctions have been operated for more than 20 years. They are positively evaluated by the institutional investors given that the resulting prices are determined through an efficient process that maximise the buy and sell needs, and as we apply the same trading fee applied in continuous trading.

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