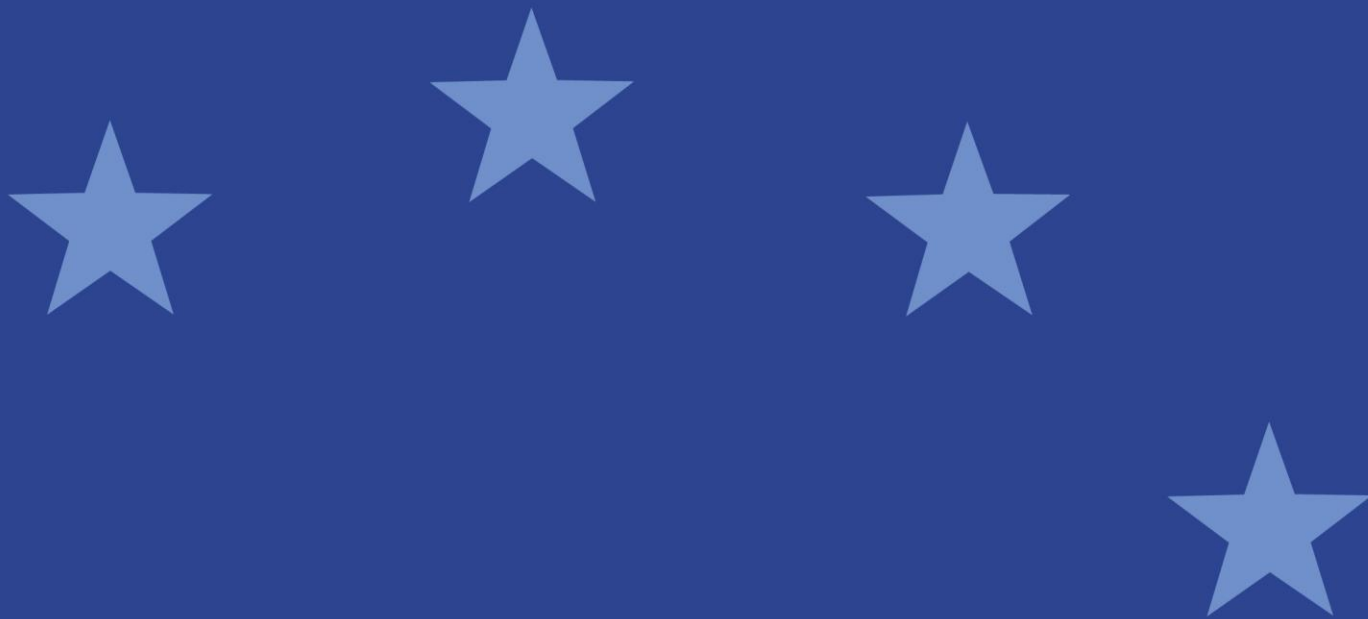




European Securities and  
Markets Authority

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



## Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation Paper on the transparency regime for equity and equity-like instruments, the double volume cap mechanism and the trading obligations for shares MiFID II/ MiFIR review report published on the ESMA website.

### **Instructions**

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA\_QUESTION\_CP\_MIFID\_EQT\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

- if they respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

### **Naming protocol**

In order to facilitate the handling of stakeholders' responses please save your document using the following format:

ESMA\_CP\_MiFID\_EQT\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

e.g. if the respondent were ESMA, the name of the reply form would be:

ESMA\_CP\_MiFID\_EQT\_ESMA\_REPLYFORM or

ESMA\_CP\_MiFID\_EQT\_ANNEX1

### **Deadline**

Responses must reach us by **17 March 2020**.

All contributions should be submitted online at [www.esma.europa.eu](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

Name of the company / organisation	Nasdaq
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	<input type="checkbox"/>
Country/Region	Europe

## Introduction

**Please make your introductory comments below, if any:**

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

Nasdaq welcomes the review of equity market transparency by ESMA. Nasdaq is of the view that a few basic principles should be guiding the review and the further development of the regulatory framework for European equity markets.

One key principle is that the framework must be clear enough for market participants to be able to comply, and – importantly – for supervisors to control and enforce, or else the aims will not be delivered in practice. A framework which appears perfect in theory is only useful if it can be practically implemented, enforced and supervised. We believe a more simple regulatory framework would better serve purposes in practice.

Another principle is that the framework needs to support a market for the broad needs of investors and corporates as well as for some specific needs. Both these aspects need to be addressed.

The broad needs are for a transparent multilateral market, where price formation is efficient and where all investors have fair and equal access, be it directly or indirectly.

Also, the market structure needs to cater for certain specific needs. The most important is the possibility to execute large transactions without detrimental market impact. Further, certain ad hoc and irregular transactions can be allowed with less transparency, and also some technical trades.

The transparent and multilateral trading, where investors have fair and equal access is what today happens on the regulated markets and the MTFs. The exceptions are the waivers, the SIs and OTC. Nasdaq agrees with ESMA, that given that the aim of MiFID is to increase transparency, it is surprising how so much of transactions are taking place off-venue or with the use of waivers.

Nasdaq believes a feasible way forward is to take the view that all trading below LIS should be transparent and take place on multilateral and non-discriminatory venues. This means below LIS should take place on regulated markets or MTFs.

Above LIS it is motivated to waive pre-trade transparency and give room for certain post-trade deferrals. Such transactions can also be allowed to take place in the bilateral space which SIs offer.

The above solution should provide for both the broader needs across the market, and for the specific exceptional needs of market participants.

The only further exception to transparency that is motivated would be in order to cater for various types of non-price forming technical trades. Which trades are deemed technical should be specified very clearly in Level 1 legislation.

For the onwards comments to specific Qs, Nasdaq will maintain the principle of LIS being the deciding factor for transparency.



Finally, we would remind that when reviewing the regulatory framework for equity market transparency, one needs to always keep in mind the whole framework. The rules all need to point in the same direction. All parts make up one package.

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

**Q1. What is your view on only allowing orders that are large in scale and orders in an order management facility to be waived from pre-trade transparency while removing the reference price and negotiated trade waivers? Instead of removing the RP and NT waivers, would you prefer to set a minimum threshold above which transactions under the RP and NT waivers would be allowed? If so, what should be the value of such threshold? What alternatives do you propose to simplify the MiFIR waivers regime while improving transparency available to market participants? Please explain.**

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

We agree that OMF and LIS waivers should remain. We support removing RP waiver and NT waivers for trades subject to current market price, i.e. those under MiFIR Art 4(1)(b)(i) and (ii).

As explained in the introductory remarks, Nasdaq believes waivers to pre-trade transparency are needed to facilitate the execution of large transactions without negative impact on the market, and also some technical non-price forming trades. In order to satisfy these specific needs, we believe it is useful to maintain the LIS and the OMF waivers, and also it is important to clearly specify in Level 1 which transactions classify as technical.

It is also important that these technical trades, as well as LIS, are clearly marked as such in transaction reporting. They should be included in a potential consolidated tape in the future, and users need to understand which types of trades have been reported.

If the waivers are properly calibrated (LIS may need to be reassessed, not least as an impact of Brexit) to contain and support only the specified types of transactions, the DVC should also become redundant.

The above also means no distinction in this regard is needed between liquid or non-liquid shares.

This framework would be a more simple solution than currently. It should satisfy the aim of being more easily controllable from the supervisors' side, and thus deliver on the transparency intentions.

In order to fully provide the necessary solutions, we propose a few clarifications for the LIS waiver: It should be possible to trade above LIS sizes without pre-trade transparency using midpoint as defined for current RP, and also to report negotiated trades above LIS size with pre-trade transparency waived.

Further, to be clarified for the current NT waiver 3<sup>rd</sup> limb (MiFIR Art 4(1)(b)(iii)): It would still be important to allow for non-price forming technical trades to be reported off-book on exchange. Such reporting tool need to be clearly defined at Level 1. Especially in light of this, it could be useful to consider the Market Model Typology (MMT) to be extended and mandated to all execution venues as well as OTC. Quality and consistency of reporting and flagging are necessary in order to improve transparency available to market participants.

We also wish to underline that when LIS becomes the delineating criteria, it means the same transparency criteria applies to all venues, including for SIs. It is also important that all venues are subject to the same rules as regards details. For instance, off-tick matching above LIS should be allowed, and the rules should be the same for regulated markets, MTFs and SIs.

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

**Q2. Do you agree to increase the pre-trade LIS threshold for ETFs to EUR 5,000,000? Please explain.**

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_2>

It is likely that only very few orders in Nasdaq's Nordic markets would qualify for 5 MEUR threshold. In order to better support the needs of the market participants, a lower threshold may be needed. We propose 2 MEUR.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_2>

**Q3. Do you agree with extending the scope of application of the DVC to systems that formalise NT for illiquid instruments?**

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

No. Please see introductory remarks and comments to Q1, which support the deletion of NT waiver, and hence making the DVC redundant.

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

**Q4. Would you agree to remove the possibility for trading venues to apply for combination of waivers? Please justify your answer and provide any other feedback on the waiver regime you might have.**

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_4>

With the retiring of NT and RP waivers, combinations should not be needed.

Currently, Nasdaq Nordic offers combination waivers which include LIS as a component; RP+LIS and NT+LIS. We believe LIS pre-trade transparency should always be granted if RP and NT waivers remain available according to today's framework. From a trading participant perspective, the use of these combinations of waivers allows for seamless user experience, i.e. above LIS orders are not rejected if share is capped via DVC in the RP or NT waiver.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_4>

**Q5. Do you agree with the proposal to report the volumes under the different waivers separately to FITRS? Please explain.**

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

Yes. We agree with more granular approach. In addition, it's quite burdensome to report volumes "total excluding waiver a and b". It would be more clear to report separately total volume and volume under each waiver. As already mentioned, it would be important to ensure that all types of transactions are properly labelled and reported. In case there is a consolidated tape developed, these trades should be on the tape and it needs to be clear which types of trades they are, and if they have been subject to transparency waivers.

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

**Q6. What would be in your view an alternative way to incentivise lit trading and ensure the quality and robustness of the price determination mechanism for shares and equity-like instruments? Please explain.**

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

Nasdaq agrees there is a case to simplify the market structure in order to cater for the general and specific needs in ways which can lead to more transparency in practice. This requires a regulatory framework which is clear and which is in practice controllable by supervisors.

As mentioned in the introductory remarks and in Qs 1 and 3 already, Nasdaq believes a starting point should be that the transparent multilateral trading is the main rule and that waivers to pre-trade transparency should be allowed only for LIS orders and for non-price forming technical trades. Accordingly, a few changes can be envisaged.

As already commented in previous Qs, the waivers needed are for LIS and OMF (as trading participants can replicate this behaviour in their systems without trading venue provided functionality) and those trades that are technical in nature (i.e. subject to conditions other than current market price). In essence, this would provide for transparency for anything below LIS while offering alternatives for above LIS.

We also believe it would serve the purpose of incentivising lit trading and ensuring the quality and robustness of the price determination mechanism to limit SIs to only transactions above LIS. As explained earlier in this reply, we believe the overall purpose with the regulatory framework should be to ensure that the main rule is for transactions to take place in a transparent, multilateral and non-discriminator manner. Transactions below LIS should always take place in such an environment, ensuring an efficient price formation process and fairness for all types of investors. However, given LIS transactions may benefit from waived pre-trade transparency and possibly post-trade transparency deferrals, such transactions could be allowed to take place in the bilateral environment offered by SIs.

LIS being the delineating criteria for transparency/waivers, the same transparency rules for LIS transactions should apply across all venues, on or off-venue, i.e. for regulated markets and MTFs and also for SIs.

We also believe OTC should be clarified in order to restrict what is allowed OTC. This would help the framework deliver on intentions.

We would invite ESMA to consider if such a structure could indeed deliver on the general and specific needs of market participants, and at the same time be more controllable than the current framework.  
<ESMA\_QUESTION\_CP\_MIFID\_EQT\_6>

**Q7. Which option do you prefer for the liquidity assessment of shares among Option 1 and 2? Do you have an alternative proposal? Do you think that the frequency of trading should be kept as a criterion to assess liquidity? If so, what is in your view the appropriate thresholds for the percentage of days traded measured as the ratio between number of days traded and number of days available for trading (e.g. 95%, 90%, 85% etc.)? Please explain.**

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

Option 1 (ie. removing the free float criteria) is preferred, since the free float data can in some cases be unreliable and might raise questions whether all venues report this in a same way, resulting in not consistent categorization of Liquid instruments among trading venues. Trading data is accurate and a sufficient basis for assessment of liquidity. Frequency of trading should be kept and the ratio between number of days traded and number of days available for trading should be near to 100%.

This question should be addressed together with the proposal to remove NT waiver and a possible tightening of SI quoting obligations (e.g. extending SI quoting obligation to illiquid shares), depending on which way forward is chosen.

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

**Q8. Do you agree in changing the approach for ETFs, DRs as proposed by ESMA? Do you have an alternative proposal? Please explain.**



<ESMA\_QUESTION\_CP\_MIFID\_EQT\_8>

We consider free-float as defined for ETFs to be not relevant criteria. As for shares, the frequency of trading should be kept near to daily.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_8>

**Q9. Do you agree in removing the category of certificates from the equity-like transparency scope? Please explain.**

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

TYPE YOUR TEXT HERE

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

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

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_10>

Yes. It is not meaningful to include any further equity instrument categories to liquidity assessment.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_10>

**Q11. Do you agree in separating the definition of conventional periodic auctions and frequent batch auctions? Do you agree with ESMA's proposal to require the disclosure of all orders submitted to FBAs? Please explain.**

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

We see a risk in making "conventional" and "frequent batch" the distinguishing factors. There may be auctions which will not fall exactly in those categories.

Auctions are introduced when there is a demand from the market and when an auction can serve useful purposes. Often, the auctions allow participants to actually stay on the lit and multilateral venues instead of going dark, which is a positive effect. We believe a suboptimally defined regulatory framework risks hindering innovation of useful solutions.

The auctions operated by Nasdaq have been finetuned based on feedback from supervisors, and are price forming. We do see a clear distinction between periodic auction systems like Nasdaq Nordic 'Auction On Demand', which we believe is price-forming, vs. others that are obviously not price-forming. Price-formation could be used as a distinguishing factor, although it may also not be a 100% perfect delineation. In case a type of periodic auction does not fulfil the criteria of being price-forming, it should need to operate under a waiver.

Regarding the information to be made public, ESMA suggests that all orders (volume and price) submitted to FBAs should be disclosed to meet the MiFIR pre-trade transparency requirements. We ask for clarification of the exact requirements suggested by ESMA. Especially regarding whether ESMA intends to align the pre-trade transparency requirements for FBAs with those applying to "continuous auction order book trading system" or define new specific requirements.

Our general view is 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 formation provided by auctions.

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

**Q12. Do you agree that all non-price forming systems should operate under a pre-trade transparency waiver? Please explain.**

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

Yes. In line with previous comments in Q11 and on simplifying the market structure, we believe any non-price-forming system can only operate under a waiver. This needs to apply consistently across regulated markets and MTFs, and also for systematic internalisers.

Non-price forming system needs to be clearly defined.

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

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

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

We agree with conclusions provided by ESMA. It is a great concern that SI activity has become more attractive to the detriment of lit multilateral trading.

In line with previous comments on introducing LIS as the main criteria for transparency, yes, quoting up to LIS threshold should be transparent everywhere, including for SIs. We support increasing the minimum quoting size in order to make trading outside trading venue more transparent.

If not LIS, Option 2 (i.e. 100% of SMS) for liquid instruments is preferred. The percentage needs to be increased substantially to ensure consistency across trading venues and SIs.

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

**Q14. What is your view on extending the transparency obligations under the SI regime to illiquid instruments?**

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

We support extending the transparency obligations to illiquid instruments. We agree with the arguments provided by ESMA. For illiquid instruments, minimum quoting obligation should be aligned to LIS.

In case SMS is used as basis for minimum quoting obligation, the percentage of SMS used as minimum quoting size does not necessarily need to be in line with liquid instruments.

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

**Q15. With regard to the SMS determination, which option do you prefer? Would you have a different proposal? Please explain.**

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

From the options presented, we prefer option A since that captures also the illiquid instruments.

However please note that this question does not include any reference to percentage used for minimum quoting size. We would suggest that ESMA clarifies whether the current 10%, or the proposed percentages (50%/100%) in Q13, or no percentage at all would be used together with the SMSs proposed in this question. In our view, the percentage should be 100%.

Also, we again remark that we believe quoting up to LIS should be transparent across regulated markets, MTFs and SIs.

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

**Q16. Which option do you prefer among Options A, B and C? Would you suggest a different alternative? Please explain.**

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

As mentioned in previous Qs, we support to limit the available waivers under the transparency regime to the LIS and OMF (and to include the NT 3<sup>rd</sup> limb), making DVC redundant. Given that the basis for this question is to maintain RP and NT waivers, we do not have strong preferences between B and C. From the given options, option A is least preferred.

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

**Q17. Would you envisage a different system than the DVC to limit dark trading? Please explain.**

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

Please refer to our answer to Q1. We support removing RP and NT 1<sup>st</sup> and 2<sup>nd</sup> limb waivers..

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

**Q18. Do you agree in removing the need for NCAs to issue the suspension notice and require trading venues to suspend dark trading, if required, on the basis of ESMA's publication? Please explain.**

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

We do not fully agree, as there might be higher risk that trading venues overlook some suspensions while others are able to catch all requests to suspend. We see value in NCAs notice.

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

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

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

Yes, as it is difficult to accurately follow the EU wide trading.

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

**Q20. Please provide your answer to the following [survey](#) (<= click here to open the survey) on the impact of DVC on the cost of trading for eligible counterparties and professional clients.**

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_20>

[CLICK ON THE WORD "SURVEY" IN THE QUESTION IN ORDER TO PROVIDE YOUR ANSWER]

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_20>

**Q21. Do you agree in applying the DVC also to instruments for which there are not 12 months of available data yet? Please explain.**

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

Please refer to Q1, where we explain that we agree with ESMA's proposal to delete NT and RP waivers, thus making the DVC redundant.

If DVC mechanism is kept, we do not have strong preferences. Both the current and the proposed scenario have certain drawbacks.

We agree that a case where an instrument is "new" due to new ISIN resulting from corporate action, undermines the effectiveness of DVC. However, genuine new instruments should have sufficient data before DVC can be applied.

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

**Q22. Do you agree foresee any issue if the publication occurs after 7 working days instead of 5? Please explain.**

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

We do not foresee issues provided that the time for trading venues to implement the suspension after the NCA's notice is unimpacted.

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

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

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

Yes we agree. We do not see any value in mid-month publications as, like ESMA explains, they do not trigger any suspensions.

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

**Q24. Do you agree with ESMA's proposal to include in Article 70 of MiFID II the infringements of the DVC suspensions? Please explain.**

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

Our NCAs already have measures for DVC infringements in place. However, we support level playing field in this area.

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

**Q25. Do you agree with ESMA's assessment that the conditions for deferred publication for shares and depositary receipts should not be subject to amendments? If not, please explain.**

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

Yes, we agree.

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

**Q26. Do you agree with ESMA's proposal to increase the applicable threshold for ETFs and request for real-time publication for transactions that are below 20,000,000 EUR? If not, please explain.**

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_26>  
Deferrals are rare. We do not have a strong opinion.  
<ESMA\_QUESTION\_CP\_MIFID\_EQT\_26>

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

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_27>  
Yes, we agree.  
<ESMA\_QUESTION\_CP\_MIFID\_EQT\_27>

**Q28. Do you agree with the proposal to report and flag transactions which are not subject to the share trading obligations but subject to post-trade transparency to FITRS? Please explain.**

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_28>  
Yes, we agree. We welcome more transparency.  
<ESMA\_QUESTION\_CP\_MIFID\_EQT\_28>

**Q29. What is your experience related to the publication of post-trade transparency information within 1 minute from the execution of the transaction? Do you think that the definition of "real-time" as maximum 1 minute from the time of the execution of the transaction is appropriate/too stringent/ too lenient? Please explain.**

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_29>  
For equity instruments traded on an electronic orderbook with very low latency, 1 minute seems quite a lenient requirements. However, for negotiated 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; parties need time to report the transaction after the agreement.  
<ESMA\_QUESTION\_CP\_MIFID\_EQT\_29>

**Q30. Do you agree with ESMA's approach to third-country trading venues for the purpose of transparency requirements under MiFID II? If no, please explain.**

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_30>  
We agree to the approach in principle. A few further comments:

Firstly, we support ESMA taking a stronger role on third country issues such as the one described. Assessments on equivalence should be converged, there should not be 27 parallel assessments made. However, it is also necessary for all NCAs to be closely involved, as the effects of certain equivalence decisions in different parts of the EU are best assessed by the local NCAs.

Secondly, once equivalence is granted, the following-up of ongoing equivalence is absolutely crucial. We recognise this is a major challenge. We would support the establishing of mechanisms for monitoring ongoing equivalence as well as for – importantly – managing deviances swiftly. Such mechanisms should include ESMA and third country supervisor(s) as well as local NCAs and indeed also market participants. Often, it is the market participants who discover deviances which are detrimental to the market. If all relevant types of stakeholders from the private and public sector could be engaged in an ongoing and close dialogue within this mechanism, we believe such a mechanism may be useful as to preventing detrimental disruptions and instead finding useful solutions for an efficient and stable financial market.

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

**Q31. Do you agree that the scope of the share trading obligation in Article 23 of MiFIR should be reduced to exclude third-country shares? If yes, what is the best way to identify such shares, keeping in mind that ESMA does not have data on the relative liquidity of shares in the EU versus in third countries? More generally, would you include any additional criteria to define the scope of the share trading obligation and, if yes, which ones?**

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

We agree to limiting the trading obligation to EU shares. It needs to be clearly determined which shares should be considered EU shares. The approach should avoid undue complexity and be based on predictable and meaningful criteria.

There is a 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. The share trading obligation should not restrict such access to this liquidity as this could disincentivise dual-listed issuers to retain their listing in the EU.

The primary determination for what is an EU share should be an EU ISIN code. Further, third country issuers whose securities are only listed in the EU should also be in the scope of the share trading obligation. In cases where the security is dual-listed on both an EU and a non-EU trading venue at the specific request of the issuer, the share trading obligation should also still apply, with the exception that trading on the non-EU venue where the security is listed should also be allowed in addition to on EU venues.

Furthermore, we would also highlight the following points relevant to the STO:

- for transactions executed on third country venues by EU investment firms in instruments subject to the STO there should still be reporting and transparency within the EU;
- any possible case-by-case or general decisions on recognition or equivalence in relation to third countries need to be very carefully considered;
- exemptions from the share trading obligation 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.
- the scope of the share trading obligation 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>

**Q32. Would you support removing SIs as eligible execution places for the purposes of the share trading obligation? If yes, do you think SIs should only be removed as eligible execution places with respect to liquid shares? Please provide arguments (including numerical evidence) supporting your views.**

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

SIs may serve purposes for market participants. Currently however, there is uncertainty as to exactly what benefits SIs are delivering to which types of market participants and for which types of transactions. We

see a case in clarifying and simplifying the framework around SIs. Such additional clarifications on SI activity would support a better functioning market structure, including by ways of supervisory enforcement of the rules. If this is done.

The first clarification should be to limit SIs to only transactions above LIS. As explained earlier in this reply, we believe the overall purpose with the regulatory framework should be to ensure that the main rule is for transactions to take place in a transparent, multilateral and non-discriminator manner. Transactions below LIS should always take place in such an environment, ensuring an efficient price formation process and fairness for all types of investors. However, given LIS transactions may benefit from waived pre-trade transparency and possibly post-trade transparency deferrals, such transactions could be allowed to take place in the bilateral environment offered by SIs.

We underline that the transparency requirements for any LIS trading should be the same across all trading venues where they are allowed, be it in SIs or under waivers on regulated markets or MTFs.

Further rules to possibly consider for SIs could be:

- More transparent criteria for client access, i.e. less discretion
- SIs should be open only for eligible counterparties
- SI activity needs to be truly bilateral, i.e. strictly against proprietary capital of the SI. It is already specified that SIs should not be allowed to bring together third party buying and selling interests in functionally the same way as operators of regulated markets and MTFs. Consequently, riskless back-to-back transactions and pooling of orders should not be allowed. We believe there may be room to strengthen the regulatory framework in this regard.
- Pre-screening, or profiling, of clients and flow into different counterparty streams, should also not be allowed, as it may be used to tailoring quotations depending of category of client.
- Low fill-rates should also be avoided. This is because SIs with a low fill rate could accumulate an information advantage vs. other participants during the trading day, and this information advantage may be inappropriately utilized in proprietary trading.

Again, rules need to be enforceable and supervisable in order to at all support markets functioning in a transparent way serving all investors.

Another measure we would propose is to make the trade reporting obligation more flexible, in order to avoid the need to use SIs only for the purpose of managing the reporting burden. This could be done by enabling either party to a trade to take on the reporting obligation (MIFIR art 26 applying to investment firm

As part of the overall regulatory package, we also call for clarification of exactly which transactions are allowed OTC.

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

**Q33. Would you support deleting the first exemption provided for under Article 23 of MiFIR (i.e. for shares that are traded on a “non-systematic, ad-hoc, irregular and infrequent” basis)? If not, would you support the introduction in MiFIR of a mandate requiring ESMA to specify the scope of the exemption? Please provide arguments supporting your views.**

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

We fully support ESMA's proposal to delete the first exemption under Article 23 of MiFIR. If that clause remains, there should be a clearer and stricter definition, leaving no room for interpretations of what it meant by “non-systematic, ad-hoc, irregular and infrequent” basis”.

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



**Q34. Would you support simplifying the second exemption of Article 23 of MiFIR and not limiting it to transactions “carried out between eligible and/or professional counterparties”? Please provide arguments supporting your views.**

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

We support maintaining this exemption and strictly limiting its use to transactions not contributing to the price formation process. In practice, this would mean that the OTC space is limited to technical trades. In order to allow for clear and efficient rules, we suggest reviewing the current Level 2 list of eligible transactions under this exemption and moving it to Level 1. The list needs to be clear and exhaustive for the STO to be applied in the same way by all market participants.

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

**Q35. What is your view on the increase of volumes executed through closing auctions? Do you think ESMA should take actions to influence this market trend and if yes which one?**

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

Closing auctions is one of many types of auctions the multilateral trading venues may offer market participants in order to make trading more efficient. These solutions are developed by demand from and in cooperation with market participants. These auctions actually facilitate trading remaining on the lit venues. Otherwise there is a risk these activities would never come to the transparent markets. As mentioned previously, we believe that auctions which include price forming elements do not need to be operated within a pre-trade transparency waiver. The current regulatory framework regarding auctions, including closing auctions, seems sufficient and we do not see a need for further regulatory changes. We still however underline the importance of a harmonised supervisory approach to auctions across the EU.

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