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| Response Form to the Consultation Paper |
| MiFIR report on Systematic Internalisers in non-equity instruments |

**Responding to this paper**

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex III. Comments 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.

ESMA will consider all comments received by **18 March 2020.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

**Instructions**

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_SINE\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_SINE\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_SINE\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open Consultations” 🡪 “Consultation on MiFIR report on Systematic Internalisers in non-equity instruments”).

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. 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 not to disclose the response 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 heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should read this paper**

This paper is of interest mainly to systematic internalisers active in non-equity instruments as well as clients of such systematic internalisers, and any associations representing their interest.

**General information about respondent**

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| --- | --- |
| Name of the company / organisation | Deutscher Derivate Verband (DDV) – German Derivatives Association |
| Activity | Banking sector |
| Are you representing an association? |  |
| Country/Region | Germany |

**Introduction**

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

<ESMA\_COMMENT\_CP\_SINE\_1>

The Deutscher Derivate Verband (DDV), the German Derivatives Association, welcomes the opportunity to reply to ESMA’s consultation paper on systematic internalisers ("**SIs**") in non-equity instruments as of 3 February 2020 (ESMA70-156-1757) ("**Consultation Paper**" or "**CP**").

The DDV is the industry representative body for the 16 leading issuers of structured products, in Germany. DDV’s members are amongst the most important structured products issuers in Germany, representing more than 90 percent of the total market. DDV’s aim is to improve the general political and regulatory conditions for structured products in Germany and at European level. The objectives of DDV therefore include making the products more understandable and transparent, as well as protecting investors. DDV is an advocate of self-regulation, and it works in conjunction with its members and sponsoring members to set industry standards.

Due to the market making activities (provision of liquidity) in respect of own issuances, the issuers represented by the DDV typically either could meet the respective SI thresholds or opt-in for the SI regime on a voluntary basis. Therefore, the DDV and its members have been closely observing regulatory developments in this context and are strongly supportive with respect to the intention of the regulator to promote the overarching goal of the SI regime for efficient price discovery and a transparent level playing field between trading venues and investment firms.

<ESMA\_COMMENT\_CP\_SINE\_1>

**Questions**

1. : Do you consider that there is a need to clarify what a “firm quote” is? If so, in your view, what are the characteristics to be met by such quote?

<ESMA\_QUESTION\_CP\_SINE\_1>

We consider the guidance given in the answer 5 lit. a) in ESMAs Questions and Answers on MiFID II and MiFIR transparency topics (ESMA70-872942901-35) relating to the quoting obligations under Article 18(1) of MiFIR for liquid instruments is sufficiently clear and do, consequently, not see any merit in clarifying them further. Market participants have a clear understanding of what a “firm quote” is.

<ESMA\_QUESTION\_CP\_SINE\_1>

1. : (For SI clients) As a SI client, do you have easy access to the quotes published, i.e. can you potentially trade against those quotes when you are not the requestor? Do you happen to trade against SIs quotes when you are not the initial requestor? How often? If it varies across asset classes, please explain.

<ESMA\_QUESTION\_CP\_SINE\_2>

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<ESMA\_QUESTION\_CP\_SINE\_2>

1. : What is your overall assessment of the pre-trade transparency provided by SIs in liquid non-equity instruments? Do you have any suggestion to amend the existing pre-trade transparency obligations? If so, please explain which ones and why.

<ESMA\_QUESTION\_CP\_SINE\_3>

Generally speaking, it is our view that the systematic internaliser regime for structured products which broadly classify as securitized derivatives in the MiFID II / MiFIR context works satisfactorily. However, we wish to point out that a few adjustments can still be made in order to further align the regime to the parallel provisions for systematic internalisers in equity instruments.

For the purposes of the continuous quotation obligation for equity instruments, Art. 12 Delegated Regulation (EU) 2017/567 specifies that the respective offers of the SI must be available at any time during the periods which the systematic internaliser has in advance established and published as its normal trading hours. This in particular means that a systematic internaliser in shares can establish trading hours independent of the trading hours of trading venues.

An equivalent provision, however, cannot be found in Art. 18 MiFIR for systematic internalisers in non-equity instruments. This can presumably be explained by the fact that, as currently drafted, Art. 18 MiFIR requires the period client request before the SI must make a quote available. However, since quote streaming has been generally acknowledged by ESMA on level 3 in its Q&As, is established for the market making in structured products, a legislative confirmation, analogous to Art. 12 Delegated Regulation (EU) 2017/567, would be desirable from our point of view.

<ESMA\_QUESTION\_CP\_SINE\_3>

1. : (For SI clients) do you have access to quotes in illiquid instruments? If so, how often do you request access to those quotes? What is your assessment of the pre-trade transparency provided by SIs in illiquid instruments?

<ESMA\_QUESTION\_CP\_SINE\_4>

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<ESMA\_QUESTION\_CP\_SINE\_4>

1. : (For SIs) Do you disclose quotes in illiquid instruments to clients upon request or do you operate under a pre-trade transparency waiver? In the former case, how often are you requested to disclose quotes (rarely, often, very often)? Does it vary across instruments / asset classes?

<ESMA\_QUESTION\_CP\_SINE\_5>

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<ESMA\_QUESTION\_CP\_SINE\_5>

1. : Do you consider that there is an unlevel playing field between SIs and multilateral trading venues active in non-equity instruments, in particular with respect to pre-trade transparency? If so, please explain why and suggest potential remedies.

<ESMA\_QUESTION\_CP\_SINE\_6>

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<ESMA\_QUESTION\_CP\_SINE\_6>

1. : (for SIs who are also providing liquidity on trading venues): What are the key factors that determine whether quote requesters (your clients) want to receive the quote through the facilities of a trading venue or through your own bilateral trading facilities?

<ESMA\_QUESTION\_CP\_SINE\_7>

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<ESMA\_QUESTION\_CP\_SINE\_7>

1. : What is your view on the proposal to simplify the requirements in relation to SI quotes in liquid non-equity instruments under Article 16(6) and 18(7)?

<ESMA\_QUESTION\_CP\_SINE\_8>

We support the proposal to simplify the requirements in relation SI quotes in liquid non-equity instruments under Article 18(6) and 18(7) MiFIR. Art. 18(6) MiFIR appears to commit the systematic internaliser to enter into transactions with any other client to whom the quote has been made available. Further, Art. 18(5) allows them, amongst others, to decide, on the basis of their commercial policy and in an objective non-discriminatory way, on the clients to whom they give access to their quotes.

As pointed out in the consultation paper already, it has been standard market practice for many issuers of non-equity instruments to make use of the possibility to limit the number of transactions they wish to undertake in a non-discriminatory and transparent fashion, as provided for in Art. 18(7) MiFIR. This also applies to DDV's members who, by relying on answer 9 in the Questions and Answers on MiFID II and MiFIR transparency topics (ESMA70-872942901-35) usually restrict their commitment to trade to the requesting client only. With respect to their commitment to provide liquidity for their structured products, this clarification is crucial in order to protect the issuers from an exposure to an unlimited fulfilment risk. Therefore, the suggested deletion of the undertaking to enter into transactions in Art. 18(6) MiFIR (and consequently of the corrective to such undertaking in Art. 18(7) MiFIR) would be very helpful and would provide clarity.

<ESMA\_QUESTION\_CP\_SINE\_8>

1. : Do you consider that the requirements in relation to SI quotes in illiquid non-equity instruments (Article 18(2)) are appropriate? What is your preference between the options presented in paragraph 52 (please justify)?

<ESMA\_QUESTION\_CP\_SINE\_9>

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<ESMA\_QUESTION\_CP\_SINE\_9>

1. : What is your view on the recommendation to specify the arrangements for publishing quotes?

<ESMA\_QUESTION\_CP\_SINE\_10>

We support the intention to further specify the arrangements for publishing quotes and in particular to define exceptional market conditions for the purpose of Article 18 (3) MiFIR (as this is the case already for equity instruments as set out in Article 14 of the Delegated Regulation (EU) 2017/567). In particular, the concept of exceptional market conditions set out in the Delegated Regulation (EU) 2017/578 is suitable for the market making for structured products as well.

<ESMA\_QUESTION\_CP\_SINE\_10>

1. : Do you have any comment on the analysis of Bond data and the relation with the SSTI thresholds as presented above?

<ESMA\_QUESTION\_CP\_SINE\_11>

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<ESMA\_QUESTION\_CP\_SINE\_11>

1. : Do you have any comment on the analysis of derivatives data and the relation with the SSTI threshold as presented above?

<ESMA\_QUESTION\_CP\_SINE\_12>

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<ESMA\_QUESTION\_CP\_SINE\_12>

1. : What is your view on the influence of the SSTI thresholds on the pre-trade transparency framework for SI active in non-equity instruments? Are there any changes to the legal framework that you would consider necessary in this respect?

<ESMA\_QUESTION\_CP\_SINE\_13>

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<ESMA\_QUESTION\_CP\_SINE\_13>

1. : What is your view on the best way for ESMA to fulfil the mandate related to whether quoted and traded prices reflect prevailing market conditions and in particular: (1) the source of data for the SI quotes/trades (RTS 27, APA); (2) the source of market data prices; and (3) the methodology to compare the two and formulate an assessment?

<ESMA\_QUESTION\_CP\_SINE\_14>

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<ESMA\_QUESTION\_CP\_SINE\_14>