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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**

|  |  |
| --- | --- |
| Name of the company / organisation | Spanish Banking Asociation |
| Activity | Banking sector |
| Are you representing an association? |[x]
| Country/Region | Spain |

**Introduction**

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

<ESMA\_COMMENT\_CP\_SINE\_1>

AEB welcomes the opportunity to comment and improve the actual Pre Trade Transparency regime for Non Equity Instruments , but we would like to highlight that actual regime is working properly , both for Systematic Internalizers, Trading Venues and clients. So, our main position about this important piece of the Transparency Regime, and specially Article 18, is to maintain without changes except the proposal to delete Art 18.2

In any case we would like to suggest ESMA that any amended proposed  on this Consultation Paper have to be analyzed carefully and with enough industry consensus and understanding.  On that sense, and in the actual social and financial crisis, some member have asked to Spanish CNMV last March 11th  an extension or delay in the actual dead line of  March 18th  with no answer until today.  That means that our answer does not have enough internal analysis and data observance by our respective teams of traders, sales or IT data scientists.

On top of that, it is necessary to ensure that any possible amendments do not result in exposing SIs to undue risk or unlevel playing field when comparing with Trading Venues regime

<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>

AEB does not consider there is a need to clarify this, we consider that there is no possible misunderstanding on what “firm quote” means under the current market customs and practices. SIs, clients, and investment firms, understand properly when and how any quote is “firm” or “indicative”.

It must be noted that a change in the definition of “firm quote” that is not aligned with the market understanding of the concept, may oblige to the SIs to incur in additional costs to carry out additional developments to be aligned with the eventual new definition

<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>

Not applicable

<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>

From AEB members’ experience there has been no demand on quotes published from Pre-Trade Transparency’s requirements from clients as of today.

<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>

Not applicable

<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>

AEB Members: In our case we rarely receive requests from clients to disclose quotes in illiquid instruments

<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>

Finding the right balance between SIs and trading venues is essential for the success of the SIs regime. The main difference between SIs and the rest of the trading venues is that SIs are characterized by risk-facing non- anonymous transactions that impact the Profit and Loss account of the firms, while trading venues are facilities in which multiple third-party buying and selling interests anonymously interact in the system, taking no risk.

Therefore, there is a need of levelling the playing field between both types of market places, by providing the proper tools for SIs to be able to comply with the Pre-trade Transparency requirements. As a first step, the deletion of the obligations to trade on published prices with other clients shall be considered. This is being addressed through the commercial policy, although in line with question 8 it is believed it should be simplified in MiFIR directly.

<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>

Taking into account that non-equities SIs are not functioning as an alternative liquidity provider, it does not normally occur that a client may choose between both alternatives. Determining factors for clients to decide where to request a quote are normally either the type of clients and their needs or the type of trade itself. Also, buy-side firms may decide to request a quote to SIs for large transactions for which they do not wish to make public the demand or for more illiquid products

<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>

AEB agrees on the proposal to delete Article 18(6) and 18(7), in line additionally with the purpose of levelling the playing field for the different types of market places under MiFIR

<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>

In relation to the proposals presented, deletion of article 18(2) seems the best possible option (in line with question 5). Nevertheless, in order to support the ad-hoc supervisory convergence tool, it would be required for ESMA to provide further information on this.

<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 believe it is not necessary to create additional requirements on the arrangements for publishing quotes <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>

We agree with the conclusions showed by ESMA, in relation to not circumventing Pre Trade Transparency requirements through the SSTI Thresholds. Moreover, it is shown the difference in the type of clients between the SIs analysed, between retail clients (mostly trading below the SSTI) and others considered more active. Given that the latter have access to other market data sources, it can be understood that SSTI levels are currently appropriate to make the data available to these retail clients

<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>

Same answer to question 11 applies

<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>

In regards to most active clients, it is not thought that any changes should be made to the legal framework, as SSTI thresholds are key to support market liquidity <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>

AEB considers ESMA is faced with a complex task that will required additional in-depth discussions with market participants.

In addition to the fact that the RTS 27 is not an adequate data source to monitor whether quotes and traded prices reflect prevailing market conditions, it should be emphasized that the lack of harmonization on RTS 27 publications in both terms of format and content among European competent authorities dificults data comparability.Levelling the playing field through the publication of common guidelines at a European level is crucial at this stage

<ESMA\_QUESTION\_CP\_SINE\_14>