

To
ESMA



FINANCE
DENMARK

Response to ESMA consultation on the transparency regime for equity and equity-like instruments, the DVC and the trading obligation for shares

Finance Denmark¹ welcomes the opportunity to respond to ESMA's Consultation Paper "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". Besides responding to the specific questions in the call for evidence, Finance Denmark would also like to make following general comments:

General comments

Initially, Finance Denmark notes the problems with the data quality in general, as also recognized by ESMA. It is Finance Denmark's assessment that these problems also impose uncertainty in relation to the validity of the statistics in general, which should be taken into account in the overall work with the MiFIDII/MiFIR Review.

That said, Finance Denmark is first and foremost very surprised to note the ESMA proposal to remove SIs as eligible execution places for the purposes of the share trading obligation as such proposal will reintroduce a de facto concentration rule and compromise competition within trading. This is neither in line with MiFIDII/MiFIR nor the Capital Markets Union. And this is not in the interests of the clients either. Additionally, trading venues are for profit companies and will use their dominant position to generate inefficient outcome as always is the case for markets with for profit, dominant players. Therefore, such proposal is for obvious reasons unacceptable. In case, ESMA decides that SIs are not eligible execution venues, the share trading obligation must be eliminated in order not to reintroduce the concentration rule. It will not be an acceptable "middle ground" to recognize SIs as eligible execution venues for the share trading obligation above LIS or in illiquid shares only.

Please also note that both the buy- and sell side in Europe (and globally) have stressed for a long period of time and substantially documented that trading venues – and in particular incumbent exchanges – already hold a monopoly position in market data, which has still not been addressed despite of broad recognition of such problems.² Finance Denmark strongly supports the ESMA final report

¹ Finance Denmark is a business association for banks, mortgage institutions, asset management, securities trading and investment funds in Denmark.
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² See e.g. https://www.esma.europa.eu/sites/default/files/library/mifid_ii_mifir_review_report_no_1_on_prices_for_market_data_and_the_equity_ct.pdf and <https://www.efama.org/Pages/Submitted%20after%202018-03-12T16%2022%2007/Reasonable-Market-Data-Costs-Benefits-the-Real-Economy.aspx> and https://efsa-securities.eu/wp-content/uploads/2020/02/200207_EFSA_Joint-Statement-on-Market-Data-Costs.pdf

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on measures to handle these market data problems, and that the suggested actions are implemented.

Second, as will be further elaborated in this response, Finance Denmark welcomes more transparency requirements for SIs, where relevant, as well as a clarification of the eligible activity for SIs.

Third, SIs provide clients with more efficient execution, more choices and at lower costs than trading venues. For retail clients, SIs can provide immediate execution at a known price. For wholesale clients, SIs can minimize market impact when executing larger orders, which trading venues in general are unable to support. This is not at least due to the poor quality of the trading venues' order books with low volume and undue interference from non-genuine "liquidity-providers" which is a consequence of e.g. inappropriate incentive fee schemes (such as maker-taker fee), high order/trade ratios, insufficient tick sizes and so forth.

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.

Finance Denmark strongly urges to remove the DVC as the cap is an unnecessarily complicated instrument to handle the problems with a misuse of particular the Reference Price Waiver (RPW), where even small orders can benefit from the waiver.

ESMA should rather remove the RPW as Finance Denmark believes that the LIS waiver captures what the RPW should have done, but failed to do.

The Negotiated Trade Waiver (NTW), however, should not be limited in usage as this waiver is an important tool not at least in smaller markets and markets with lower liquidity levels and indeed to the benefit of retail investors, where many are directly affected via investments in pension funds. Furthermore, to our knowledge, the NTW has not been a source of misuse as the case has been for the RPW.

Smaller markets may not have sufficient depth of liquidity on the order book to match orders above a certain size at a particular point in time. This means that orders even slightly larger than average (but below a size which would qualify for the large in scale waiver) can negatively impact on the market resulting in increased price volatility to the detriment of investors. Even shares classified as "liquid" under MiFIDII/MiFIR can still go through periods of lower liquidity when the use of the NTW becomes more critical in order to reduce increased price volatility and support trading activity.

Increasing the possibility of using the NTW for liquid shares during lighter trading periods will have the effect of increasing the investor appetite in such shares, at least in the smaller markets.

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Negotiated trades are recognized as on-exchange transactions which are handled subject to the rules of the trading venue as supervised by the relevant regulator. In the Nordic regions, the negotiated transactions are made at or within the volume weighted spread on the lit order book of that trading venue. All negotiated transactions in equities are:

- Supervised by the same surveillance department that is also supervising the transparent order book,
- Reported in immediately to the trading venue and executed subject to the trading rules of the market, and
- Published immediately in the trading venue's post-trade system and integrated into one data feed with order book deals, thereby included in all price statistics, including index calculations and the official closing price.

This demonstrates that negotiated transactions are a reliable and transparent trading method which provides benefits to the investor but also supplements the price formation process in the transparent order book and provides additional liquidity to the equity markets.

Having regard to the pursuance of the policy goals of price formation and best trading outcomes for investors, the following specific conditions should be attached to the execution of NTW assisted transactions:

- NTW should only be used by trading venues that have lit order books, so that it can provide additional liquidity to that trading venue
- It should only be used for trades that are done on a bilateral basis and reported in immediately to the trading venue's system, so that it is included in index calculations and price statistics
- It must be done under the rules of the trading venue and be subject to full market surveillance
- The trading venue must be obliged to react on any misuse and if the price formation is negatively affected, and to report the same to the competent authority,
- The competent authority, when approving the waiver for the trading venue and also when supervising the activity on the trading venue, retains the rights to withdraw or modify the approval for the waiver, and
- ESMA could be given a coordinating role and, if deemed necessary, could be provided with mandate to introduce restrictions such as requirement on the trading venue that offers the NTW.

By clarifying these specific features for negotiated transactions in MiFIR it will be ensured that the NTW cannot be abused to create new separate dark pools or OTC-trading that could have negative effects on the price formation process.

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

No, as UCITS are classified as ETFs. If the threshold is increased it will most likely imply a delisting of a significant part of the "UCITS-ETF" and thereby even less transparency for clients. Additionally, clients will be forced to trade at subscription

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and redemption prices instead of continuous trading in the secondary market.

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

No, first of all, we believe that the DVC should be removed and if this is not the case, a broadening of the scope will most likely be detrimental to trading and liquidity in shares of smaller issuers. See also our response to Q1.

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.

Finance Denmark does not see the need to remove the trading venues' possibility to apply for a combination of waivers.

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

Finance Denmark does not have any comments to this proposal now.

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.

Finance Denmark would like initially to stress that price discovery is based on trading on execution venues where the price is not taken directly from other sources (e.g. midprice matching by using the Reference Price Waiver (RPW)). That implies that price discovery not only can be attributed to trading via Regulated markets, but also via Multilateral Trading facilities, via Systematic Internalisers and other liquidity providers/mm. As described in Q1, Finance Denmark suggests both to remove the DVC and the RPW to encourage more lit trading.

As will be described in Q35, the incumbent exchanges are increasingly using auctions - and in particular the closing auctions attracts significant liquidity. This increases the market power for the incumbent exchange and leaves a vacuum in the on-venue continuous trading during the day which challenges the price discovery that stems from this kind of trading. This implies that the price discovery increasingly depends on other execution venues, such as SIs.

Finance Denmark agrees that steps should be taken to incentivise lit trading as there is a common interest in supporting trading venues' ability to support the order flow and to offer execution with minimal market impact. However, the trading venues ability to facilitate this is reduced and the development is self-perpetuating: As the market players algorithms increasingly deselect venues with low execution quality, the ability for these venues to support good execution quality decreases even further.

Finance Denmark believes that the quality of the trading venues' order books has decreased considerably since the application of MiFID I in 2007. This is e.g. due to the fragmentation and the trading venues' unhealthy approaches to attract liquidity from each other. For example, the usage of maker-taker fee attracts only shortsighted liquidity which disappears in times of distress and the

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"one-size-fits-all" tick size table in MiFIDII/MiFIR (RTS 11) has resulted in too low tick sizes in some markets and too high tick sizes in other markets:

Research reveals that, for instance, in the Nordic market, the present tick size tables have challenged the ability to provide good execution quality in the shares which faced a tick size decrease under RTS 11:

- In shares where the tick sizes declined, the spreads also declined
- In shares where the tick sizes declined, volumes on the best price level declined
- In shares where the tick sizes declined, the BBO price update frequency increased

All of these factors make it more difficult for market players to execute larger orders with minimal market impact.

Finance Denmark proposes to revise RTS 11 so that shares in the EU face tick sizes which support liquidity and volume on all EU trading venues, and increase the execution quality to the benefit of investors. The following changes should be reflected:

- Turnover velocity (turnover/free float market capitalisation) is a better proxy for liquidity than an average number of trades.
- Behavioral consequences/dynamics should be taken more frequently into account, i.e. by updating the appropriate tick size quarterly, instead of yearly
- Each venue (most liquid/the incumbent exchange) should be able to determine the relevant tick size based on a tick size table with i.e. 3 options. The tick size must be respected by all (in particular relevant if the proposed new tick size table is two dimensional like the FESE tables or if creating options for the most liquid market is not doable)

Tick sizes are defined as the lowest price increment in securities and an obvious conclusion is that lower tick sizes imply lower costs. This is, from an isolated perspective, true.

However, when tick sizes are reduced below a certain level, the incentive for traders to quote is also reduced causing decreasing depth in the order book. While the change in tick size might improve the liquidity for small size orders, institutional traders are worse off. They must bear an increase in trading costs following the decline in depth throughout the entire order book (market impact).

To compensate, larger orders will increasingly be executed outside the lit order books in case tick sizes are too low or too high. This is exactly what has been observed.

Academic research supports to a large extent these considerations. Please see e.g. Kou, Huang & Chen (2010), Bourghelle & Declerck (2002), Yet, Goldstein & Kavajecz (2000), Lau & McInish (1995), Harris (1994), Darlay, Outkin, Palte og Gao (2001)

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During MiFID1 – we faced an actual “tick size war” between trading platforms which reduced tick sizes to attract (low quality) liquidity from each other. This led to an industry-led creation of the so-called FESE tick size tables to harmonise the tick size regime across Europe. One of the good things about these tables was that these took various degree of liquidity in each share into account in a much better way than the present “one-size-fits-all” regime in RTS 11.

Actually, the AMF study based on Euronext³ data apparently supports this approach. Looking at page 4 and 5 in the study, it illustrates a significant change – and mostly an increase - in tick sizes on Euronext compared to the previous FESE tables. With this in mind, the proposal from ESMA to change RTS 1 to tick size validate SI quotes up to Standard Market Size, was as far as we know mainly based on a study on Euronext data. Apparently, this study revealed a significant increase in SI trading at sub-tick below SMS as clients requested price improvement.

With this new information in mind, Finance Denmark believes that the reason for the increase in SI trading at sub-tick could be due to the tick size increase at Euronext compared to the FESE tables. Finance Denmark recommends that this study from Euronext should be replicated for other exchanges as well, since we believe the conclusions will substantiate our claim.

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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.

As mentioned in Q6, Finance Denmark believes turnover velocity is a better proxy for liquidity than an average number of trades.

However, as the consequences of changing the method may be relatively large, Finance Denmark supports a Status Q, i.e. option 1.

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

Finance Denmark has no strong opinion.

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

Finance Denmark has no strong opinion.

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

³ http://www.amf-france.org/en_US/Publications/Lettres-et-cahiers/Risques-et-tendances/Archives?docId=workspace%3A%2F%2FSpacesStore%2F4ee6cbf6-c425-4537-ab74-ef249b9d316d



Finance Denmark supports this approach as the magnitude of instruments is expected to be limited. This is also expected to be the case for the liquidity for the applicable instruments.

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.

No – the definitions should be identical in order to avoid misuse of the auctions.

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

Finance Denmark supports that all non-price forming systems should operate under a pre-trade transparency waiver. However, there is a need to clarify further what is "non-price forming systems" with the RTS 1, art. 2 in mind.

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

Finance Denmark supports increasing the minimum quoting size for SIs. With reference to Q15 and the proposed changes in SMS, Finance Denmark supports to increase the minimum quoting size to 50 %.

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

Finance Denmark does not support the proposed extension of the transparency obligations under the SI regime to cover also all illiquid instruments. First of all because SIs – in contrast to trading venues – put their own capital at risk when publishing quotes, which means they are more exposed to the consequences of transparency. Secondly, because such an extension would dilute the definitions of and differences between liquid and illiquid instruments. And thirdly, because some equities are very rarely requested and traded by investors and therefore illiquid in nature.

Seen from our perspective a better solution to the issue ESMA addresses in relation to lack of transparency in some currently illiquid equities, would be to recalibrate the liquidity measures, so that all truly liquid shares fall under the definition of liquid and thus covered by the transparency obligation under the SI regime. Meaning also that truly illiquid equities will continue to be treated as what they are; illiquid instruments exempted from SI transparency obligations.

Additionally, Finance Denmark would like to stress the urgent problem of the fact that many trading venues', if not all, charge fees from Systematic Internalisers' (SIs) for distributing and publishing the SIs' own quotes. This is one aspect of the problems with increasing market data costs as also documented in Finance Denmark reply to the ESMA consultation on market data and as also reflected in the ESMA final report. Extending the transparency obligation under the SI regime would only increase the market data costs even further.

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

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Finance Denmark supports option B.

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

Finance Denmark does **not** support any of the solutions. The DVC should be removed in whole as well as the RPW and keeping the NTW for both liquid and illiquid instruments as elaborated in Q1.

In case the DVC is not removed, Finance Denmark reluctantly prefers option B

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

Yes. Remove RPW, cf. Q1.

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.

Finance Denmark agrees.

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

Finance Denmark does not agree, as this change will increase the trading venues' costs which ultimately will end with the clients. Furthermore, ESMA writes that this is also only possible at ESMA level, which also makes the proposal unrealistic. Finally, Finance Denmark does urge ESMA to remove the DVC, cf. Q1 which will lead the proposal to be superfluous.

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

N.a.

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

Finance Denmark supports this proposal.

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

In case the DVC is not removed as recommended, Finance Denmark does not foresee any issues if the publication occurs after 7 working days instead of 5.

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

In case the DVC is noted removed as recommended, Finance Denmark agrees that the mid-month report should not be published.

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

Finance Denmark has no comments to this question due to our opt-out on Justice and Home affairs.

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.

Finance Denmark agrees.

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.

Finance Denmark has no strong opinion.

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

Finance Denmark agrees and concur with the need for enhancing the data quality – not only for OTC trades but in general as also stated under "general comments".

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.

Finance Denmark supports a proposal which may help in demystifying the apparent concerns of the level of OTC trading and help clarifying any wrongdoings in the reporting. However, requiring the information to be sent to FIRTIS directly would imply significant costs with respect to IT-developments, which is considered disproportionate. The requirements should be included in the existing reporting regime.

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.

Finance Denmark has not observed any problems with the requirement to publish trades within 1 minute from the execution of the transaction and the definition is appropriate in the view of Finance Denmark.

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.

Finance Denmark agrees that the use of its supervisory tools (i.e. an Opinion) is adequate and there is no need to change level 1.

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

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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?

Finance Denmark agrees that is a sensible approach to limit the scope of the STO by excluding third-country shares.

Additionally, Finance Denmark strongly encourages the removal of the STO – in particular if SIs are no longer deemed eligible as execution venues for the STO, in order to avoid a de facto concentration rule and to keep a level playing field.

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.

Finance Denmark strongly opposes the proposal to remove SIs as eligible execution places of the STO. Such step will hurt client execution and reintroduce a de facto concentration rule by removing competition within trading. This is neither in line with MiFIDII/MiFIR nor the Capital Markets Union.

Additionally, trading venues are for profit companies and will use their dominant position to generate inefficient outcome as always is the case for markets for profit, dominant players. Therefore, such proposal is for obvious reasons unacceptable. In case, ESMA decides that SIs are not eligible execution venues, the share trading obligation must be eliminated in order not to reintroduce the concentration rule.

Finance Denmark does not see a problem with an increasing role of SIs as long as the SIs business model complies with the requirements in MiFIDII/MiFIR. One of the fundamental reasons for introducing quantitative requirements and opt-in possibilities for becoming an SI in MiFIDII/MiFIR was to move trading away from pure OTC/BCNs and to increase the number of SIs to strengthen the competition between execution venues to the benefit of the clients and the efficiency in the capital market.

Furthermore, the proposal to limit the STO in liquid share to trading venues only, whereas SI could remain an eligible execution place for illiquid share is equally unacceptable. It will neither be an acceptable "middle ground" to recognize SIs as eligible execution venues for the share trading obligation above LIS. As stressed in Q31, if SIs are not deemed eligible execution venues for the STO, the STO must be removed.

Finance Denmark is uncomprehending to what has made ESMA proposing such a radical step. As for the SIs market share of trading, ESMA should bear in mind that the success of SIs to a great extent is due to the poor quality of the trading venues order books which is not supporting on-venue trading, and in particular with respect to larger size orders, as also described in Q 1 and Q 6.

SIs provide clients with more efficient execution, more choices and at lower costs than trading venues. For retail clients, SIs can provide immediate execution at a known price. For wholesale clients – such as pension funds – SIs can minimize market impact when executing larger orders, which trading venues in general are

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unable to support. This is not at least due to the in general poor quality of the trading venues' order books with low volume and undue interference from non-genuine "liquidity-providers" which is a consequence of e.g. inappropriate incentive schemes and insufficient tick sizes.

For all clients there is a wish to minimize costs and maximise return. There is no reason to punish investors by forcing them to accept higher costs due to lower execution quality. This is not appropriate investor protection. Additionally, eliminating SIs as eligible execution venues will diminish investor choice which is also not in line with MiFIDII/MiFIR.

First step to attract more liquidity to the trading venues, is for the trading venues to improve the quality of their order books as also described in Q 6.

Additionally, as mentioned in Q1, Finance Denmark strongly supports the removal of DVC on NTW, which will lead to more on-venue trading, as trades done under the NTW are reported under the rules of the trading venue and therefore considered "on-venue trades".

If the concerns are that some SIs do not act according to the rules as they apply to SIs (e.g. using risk capital when executing client orders and not operating a multilateral system according to MiFIDII, art. 4 (2) (20)) but instead operating in SI networks, Finance Denmark urges ESMA to investigate and document this allegation in depth before suggesting any alternative steps. In this context, Finance Denmark is missing documentation of the apparent, multilateral business model of some SIs. From a Nordic perspective we cannot recognize this behavior. Finance Denmark is, however, open towards strengthening the description of the compliant SI activity and include this in level 2 regulation rather than in Q&As, if so needed.

Finance Denmark suggests that ESMA, in order to ensure that SIs are acting compliantly, strengthen the content of the supervision on the basis of the following proposal:

- According to regulation 2014/65, article 4(1)(29), a systematic internaliser is an investment firm which, on an organised, frequent systematic and substantial basis deals on own account when executing orders outside a trading venue without operating a multilateral system.
- This is further explained in recital 19 of delegated regulation 565/2017 which states that a systematic internaliser should not be allowed to bring together third party buying and selling interests in functionally the same way as a trading venue. A systematic internaliser should not consist of an internal matching system which executes client orders on a multilateral basis. An internal matching system in this context is a system for matching client orders which results in the investment firm undertaking matched principal transactions on a regular and not occasional basis.
- Under the present regime systematic internalisers in shares are obliged to provide firm quotes in sizes of minimum 10 % of SMS. However, beyond that, they are vital to ensuring liquidity to the market because they normally stand ready to execute orders OTC above 10 % of SMS (and as specified in Q13, we are willing to increase this to 50 %).

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Like all investment firms systematic internalisers are required to act in the best interests of their customers (best execution) and in one of the ways they can do that is by being an alternative to the trading venues, in particular in trading sizes below Large In Scale.

Part of being a systematic internaliser and acting in the best interest of the customers is to bring together trading interests when this can be done without establishing a system resembling the functioning of a trading venue. Key to defining this role is to define what constitutes "an internal matching system". Trading venues have automated systems which assure that multiple trading interests can interact and be combined without human intervention. Thus, this should not be allowed when acting as a systematic internaliser. This would include automated systems which defer the trading so that the buying and selling interests are not combined directly and simultaneously, but where a very short latency is added.

What should continue to be allowed is the manual handling where systematic internaliser finds an opposite trading interest and combines a buy and a sell order. Such processes should not be seen as "a system" since the processes are not automated and since by nature, they will always be ad hoc.

This situation will occur if for instance an investment firm is approached by a customer that wants to sell shares. To act in the best interests of the customer the systematic internaliser shall decide whether to route the order to a trading venue, whether to buy the shares to its inventory or whether to try to find a suitable buyer. Trying to find a buyer in such a situation via a manual process does not resemble the way a trading venue functions in the trading of shares and it cannot be defined as meeting the definition of multilateral trading, nor will there be any rules that govern such matching of opposite trading interests. The clients do not face each and have no access to a system where they can see each other orders.

As for the risk taking, it should be clarified what this refers to. We understand that some SIs may take risk for micro or even nano seconds. This should obviously be investigated further by ESMA as this should not count as risk taking or enable these firms to act as SIs.

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.

Finance Denmark does not support the deletion of the first exemption as this will limit the flexibility for trading and potential harm the execution quality. However, we agree that it would be beneficial with further guidance from ESMA in specifying the scope of the exemption.

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.

Finance Denmark agrees with the proposal as non-price forming trades are not only carried out between eligible and/or professional counterparties.

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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?

Finance Denmark is concerned with the increasing volume in the closing auctions.

First, this development undermines the continuous transparency and price discovery during the day by trading venues. Thereby, the SIs are compelled to take over the role as execution venues which provides the requested execution, transparency and price discovery during the day as liquidity providers. However, such development is another clear evidence of the poor quality of the trading venues orderbooks, which should be taken seriously cf. our response to Q1 and Q6 instead of blaming the SIs in general.

Second, the concentration of volume during closing gives the trading venues – and in particular the incumbent exchanges – even more significant market power, as the need to participate in these auctions are self-fulfilling as the volume increases.

Third, it should be considered to introduce a limit on the share of the trading allowed in the closing auction. In case the share is exceeded, the usage of closing auctions should be limited even further.

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