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| 4 February 2020 |

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| Reply form for the Consultation Paper on MiFID II/ MiFIR review report on the transparency regime for equity and equity-like instruments, the DVC and the trading obligations for shares |
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| Date: 4 February 2020 |

Responding to this paper

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

*Instructions*

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

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

Responses are most helpful:

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

**Naming protocol**

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

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

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

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

ESMA\_CP\_MiFID\_EQT\_ANNEX1

***Deadline***

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

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

***Publication of responses***

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

***Data protection***

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the headings ‘Legal notice’ and ‘Data protection’.

# General information about respondent

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| --- | --- |
| Name of the company / organisation | Austrian Federal Economic Chamber, Division Bank and Insurance |
| Activity | Banking sector |
| Are you representing an association? |[x]
| Country/Region | Austria |

# Introduction

Please make your introductory comments below, if any:

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

TYPE YOUR TEXT HERE

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

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

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

TYPE YOUR TEXT HERE

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

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

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

TYPE YOUR TEXT HERE

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

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

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

TYPE YOUR TEXT HERE

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

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

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

TYPE YOUR TEXT HERE

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

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

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

TYPE YOUR TEXT HERE

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

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

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

TYPE YOUR TEXT HERE

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

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

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

TYPE YOUR TEXT HERE

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

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

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

TYPE YOUR TEXT HERE

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

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

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

TYPE YOUR TEXT HERE

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

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

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

TYPE YOUR TEXT HERE

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

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

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

TYPE YOUR TEXT HERE

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

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

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

TYPE YOUR TEXT HERE

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

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

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

We are of the opinion that an increase of the minimum quoting size to 50% of the SMS (Option 1) is sufficient to improve market transparency and level the playing field between on-venue and SI trading activities. In consideration that SIs are entering into risk taking transactions an increase to 100% (Option 2) seems as an undue burden for SIs.

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

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

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

TYPE YOUR TEXT HERE

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

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

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

TYPE YOUR TEXT HERE

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

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

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

TYPE YOUR TEXT HERE

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

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

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

TYPE YOUR TEXT HERE

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

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

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

TYPE YOUR TEXT HERE

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

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

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

TYPE YOUR TEXT HERE

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

1. Please provide your answer to the following [survey](https://forms.office.com/Pages/ResponsePage.aspx?id=aPIG5OdKgEyJlAJJPaAMA8MbwIo5IbFHiXG6oH-BVkdUNjJUNktLOU1BSVZYUUFEQVUwSVZHSzdZTC4u) (<= click here to open the survey) on the impact of DVC on the cost of trading for eligible counterparties and professional clients.

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

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

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

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

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

TYPE YOUR TEXT HERE

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

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

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

TYPE YOUR TEXT HERE

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

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

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

TYPE YOUR TEXT HERE

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

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

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

TYPE YOUR TEXT HERE

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

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

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

TYPE YOUR TEXT HERE

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

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

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_26>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_26>

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

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_27>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_27>

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

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_28>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_28>

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

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_29>

The publication of post-trade transparency reports within one minute after the time of the execution of a transaction in an equity instrument poses a challenge to market participants as compliance with such obligation requires straight-through processing of transaction information in trading and reporting systems. As the competent regulators also except firms to monitor the data quality of such reports control processes have been implemented which may also require human intervention in certain cases. We are of the opinion that the current situation for post-trade transparency information is sufficient.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_29>

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

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

TYPE YOUR TEXT HERE

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

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

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

We agree that third-country shares should be excluded from the scope of the share trading obligation. Further, we also agree that the identification of third-country shares proves difficult. To ensure an effective and efficient identification process we believe that the EU ISIN approach complemented by third-country shares where the issuer has actively sought admission to trading is the preferred option. Both attributes can be electronically identified either due to the country code of the ISIN or via the FIRDS database and, therefore, the implementation of this solution is feasible and triggers relatively low costs.

In practice, issuers actively pursue listings in other countries than their home countries only if a strong nexus to such country exist. Therefore, the solution set out above does not provide a material incentive to EU issuers to actively pursue listings outside of the EU to avoid the trading obligation.

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

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

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

We support that SIs remain eligible execution places for the purposes of the share trading obligation.

First of all, we do not concur with the argument that SIs contribute to the fragmentation of liquidity. In fact, SIs contribute liquidity to the market as they are willing to enter into risk taking transactions with other market participants. Further, the according to the consultation paper the overall number of SI trades in shares as well as the volume of SI trading in shares is low (paragraph 44 and 47) and, therefore, the market fragmentation cannot be attributed to SIs. In contrast, we rather consider the steadily increasing number of MTFs and the vast number of shares which can be traded on these MTFs as the main driver for the fragmentation of liquidity. While FIRDS database shows that liquid shares of European issuers can be regularly traded on more than 50 EU trading venues, in practice most shares listed on MTFs lack sufficient liquidity to ensure best execution of orders on an ongoing basis.

Second, the regulatory framework applicable SIs ensures an appropriate standard of pre- and post-trading transparency and legal changes such as the introduction of the tick-size regime for SIs in shares led to a level playing field of trading venues and SIs. Therefore, we do not see any unfair competition between trading venues and SIs. Consequently, there is no reason for changing the eligibility of SIs under the share trading obligation.

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

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

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

No. We recommend that this exemption remains available to be used to allow for a certain degree of flexibility in the execution of equity transactions. As of today, we are not aware that this exemption is used by market participant to circumvent the trading obligation. This view is also supported by the figures presented by ESMA in the consultation paper. According to the consultation paper the overall volume of OTC trading in shares seems to be rather high (paragraph 44) whereas the number of OTC trades in shares is very low (paragraph 47).

The exception provided under Art 23 MiFIR are only used under certain specific circumstances. For instance, only a limited number of trading venues do not offer trading segments which can be used for block trading. Block trades are large in volume but occur infrequently and could also be executed on venue in case suitable trading segments were available.

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

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

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

TYPE YOUR TEXT HERE

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

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

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

TYPE YOUR TEXT HERE

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