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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

|  |  |
| --- | --- |
| Name of the company / organisation | Optiver |
| Activity | Investment Services |
| Are you representing an association? |[ ]
| Country/Region | Netherlands |

# 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>

Before removing any waivers, we would like to ask ESMA to carefully assess the potential impact. In any circumstance, it should be prevented that small order matching occurs in dark pools as opposed to the lit markets. Optiver is concerned that, if the RP and/or NT waivers are removed entirely, smaller trades will move somewhere else than on-exchange. This could be for example an SIs or a new way of matching smaller price forming trades that are within the boundaries of regulation, but would still harm the overall transparency and efficiency of the market.

Optiver supports ESMA's aims to simplify and improve pre-trade transparency, as we are convinced that markets function best when they are transparent. To create a transparent market, it is especially important that smaller size trades are traded via the order book and subjected to pre and post trade transparency. At the same time, a waiver for negotiated trades above LIS has a legitimate function in each market: protecting market participants from adverse market movements. To be able to factor in the differences between instruments, the LIS threshold ideally factors in the different instrument characteristics while still being simple to apply.

In any case, ESMA should carefully analyse the consequences of making any changes to the waivers, as more trades moving to SIs would be a worse outcome for the overall market quality. In the meantime, to ensure that smaller size trades are matched on the lit markets, Optiver supports the idea of the implementation of a minimum threshold above which transactions under the NP and NT are allowed.

<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>

Optiver, being one of the largest market makers in ETFs in Europe, does not support an increase in the ETF LIS threshold to EUR 5 mln.

ESMA states that 'for ETFs, 50% of the volume executed on venue benefits from an LIS waiver. In addition: 88% of volume and 11% of transactions executed under the LIS waiver.' Optiver would like to point out the different characteristics of ETFs indicating a different approach compared to equities:

ETFs are generally traded in larger size and to a large extent with wholesale and institutional parties that need to trade at NAV/close.

ETFs are also predominately traded via the RFQ mechanism instead of via an order book.

Furthermore, ETFs are in many ways derivative instruments, giving the holder exposure to the assets contained within the ETF.

This means that ETFs trade fundamentally differently than equities. Optiver believes that ETFs should have a specially designed transparency regime that considers these characteristics of ETFs, instead of applying one bucket of the Equities transparency regime equally to all ETFs.”.

<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>

 Optiver does not agree with removing this possibility. Optiver believes that trading venues should be allowed to combine waivers in novel ways that can bring genuine innovation to the marketplace. Optiver notes that some of the most promising and utilized new trading models in recent years make use of combinations of waivers. This innovation should not be stifled.

Instead of a blanket ban, ESMA and the NCAs should look closely at the merits of each application of waivers and judge if it is simply a way to avoid transparency or an actual innovation.

We also note that some of this issue would be resolved by applying a minimum size threshold to trades done using the RP/NT waivers or in Sis/other non-order book mechanisms (as proposed in question 1).

<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>

Optiver suggests to remove SIs as an eligible execution place for the purpose of the share trading obligation for both liquid as well as many illiquid instruments

Since MiFID II came into place, SIs have gained in market share (about 15% of the total market, whereas the lit market now only accounts for 30-35% - this market share for lit markets was >40% pre MiFID II) .

The shift of trading volume towards SIs have led to the following consequences:

1. Led to less transparent markets: Optiver is convinced that transparent markets where exchanges are independent from the parties agreeing on a trade ultimately deliver the best outcome for end-investors. Due to less stringent pre-trade transparency requirements, the current SI regime incentivizes flow moving away from these transparent and independent markets. In this respect, compared to pre-MiFID II, Optiver believes that markets have made step backwards in becoming more transparent (something that is contrary to MiFID II’s aims and therefore needs fixing).
2. Preferential regulatory treatment of SI’s creates an unlevel playing field: due to less regulatory requirements (e.g fees, tailored liquidity, etc) an unlevel playing field is created. When SIs can offer better execution due to for example lower fees, the ability to pick and choose counterparties, and / or a smaller tick size, it automatically prevents investment firms from trading on the public markets (leading to less competitive markets negatively impacting the end investor).
3. SIs are able to choose and pick over order flow: meaning they can choose to only transact with retail flow, leaving the less attractive, informed order flow of institutional investors to the public market. This makes markets less attractive to trade on (or provide liquidity on) ultimately risking its existence in its current form
4. SIs free ride on public markets: as SI pricing depends on public markets, it will come at a cost for price formation. As Sis attract and filter only the most benign and profitable flow for themselves, it becomes less attractive for market participants to quote on lit exchanges. Spreads on lit markets therefore become wider, implicitly increasing transactions costs as internalization harms the quality of the public markets on which it relies.

Due to the negative consequences SIs have on the market and the increasing market share they have to the detriment of the lit markets Optiver suggests to remove SIs as an eligible execution place for the purpose of the share trading obligation for both liquid as well as illiquid instruments.

<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>

 Optiver would support an approach which ensures consistency and simplicity across as many product classes as possible. We believe basing a liquidity assessment on (an adapted) metric as pro-posed under Option 1 only would suffice.

We believe that including a ‘frequency of trading’ metric would add unnecessary complexity and will not produce much valuable information as to liquidity in our view. We also note that some instruments can have proper liquidity availability in the order book but see little trading (e.g. certain single stock or more specialized ETFs). Average Daily Volume is the relevant parameter in this regard.

We consider that metric 2 does not yield helpful information on liquidity, as a limited number of small trades may skew the statistics. Daily Volume will provide the most consistent picture.

Further, we consider that metrics 3 and 4 do not say much useful about liquidity. We observe that aver-ages often lead to skewed conclusions, hence, we would would advise ESMA to consider Median and Mode numbers in conjunction with (or instead of) Average Daily Volume. Hence, we believe Median- or Mode-Daily Volume would be helpful to look at.

Furthermore, we would encourage ESMA to consolidate volumes traded on a per-instrument / ISIN basis across Europe. The same listing may be available on multiple markets (in multiple currencies). While for purposes of a consolidated tape it would be unwise to lump these and determine an FX conversion rate during live trading, volumes could be calculated on an integrated, single-currency basis if necessary. While it may be true that some instruments have different prices on different value, this is often the result of inherent trading or post-trading costs. It does not skew the liquidity picture within the Union overall for a given instrument.

<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>

Optiver believes that ETFs and DRs, because they are in many ways derivative instruments, should be assessed based on the liquidity of their underlying constituents and not based on the trading characteristics of the instruments themselves.

<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>

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<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>

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<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>

Optiver does agree with the separation of the definition of FBAs from conventional auctions. Optiver however does not feel that FBAs need to be held to a higher order disclosure standard than conventional auctions, which Optiver notes are not required to disclose all orders submitted.

<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>

 Yes, Optiver agrees that non-price forming systems should operate under such a waiver.

However, Optiver cautions that the definition of what is a “price forming” trade must be carefully considered. For example, a large trade at midpoint is in our opinion still very much price forming as it indicates a fair level at which two parties are willing to transact in large size, thereby giving the market a good impression of the perceived value of an instrument.

<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>

From the options that ESMA proposes, Optiver prefers option 2 but would like to propose a more rigorous increase, like 200% of the current SMS. This can be justified by the fact that SI’s have knowledge of who their counterparties are and thus run less risk when quoting to these counterparties compared to market makers who quote on public, anonymous markets. However, the correct percentage also depend on the SMS as discussed in Q15. If the proposals as outlined in Q15 are adopted, Optiver would support a move to 100% of SMS for the minimum quoting size 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>

Optiver agrees. Although we recognize that imposing transparency obligations on all illiquid instruments would be counterproductive for efficient price formation in many instruments, our experience in the markets is that too many instruments are currently not subject to transparency obligations. Therefore, we would support to expand these requirements to (more) illiquid instruments or alternatively ensure that more instruments qualify as liquid.

<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>

As stated in Q14 we feel that currently too few instruments are classified as liquid and subject to transparency obligations when traded on SI’s. While we feel that an ideal solution would be to make sure many more instruments classify as liquid, of the two proposals on the table we prefer illiquid instruments to be included in the transparency obligations and therefore prefer Option 1.

<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>

Our preference is for option c – to eliminate the 4% trading venue specific threshold and reduce the 8% EU level threshold to 7%.

In market participant experience the 4% cap adds unnecessary complexity to the DVC process and penalises venues without providing any tangible benefit to the market structure or the end investor. Lower liquidity names are usually only listed on one or two dark venues despite all venues being able to list those securities if they so wished. As a result, these names can reach the 4% quite quickly.

As discussed in Q1, Optiver believes that instead of - or in addition to - the DVC as currently designed, a minimum trade size threshold should be applied to trades occurring under the RP/NT waivers and we propose 25% of LIS for that threshold..

<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>

As stated earlier, Optiver believes that instead of or in addition to the DVC as currently designed, a minimum trade size threshold should be applied to trades occurring under the RP/NT waivers and we propose 25% of LIS for that threshold.

Optiver also does not see the value in the DVCs applying for only 6 months. Optiver believes that a clearer and more permanent limitation of dark trading should be in place instead of a periodic ban following by a temporary re-allowing of dark trading.

<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>

Yes Optiver supports the removal of an extra step in the suspension process

<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>

Yes Optiver supports the removal of this requirement.

<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>

Yes Optiver agrees, applying the DVC should not depend on lack of data, otherwise it seems like allowing dark trading for the first 12 months without a good reason. As ESMA indicates, these instruments usually are not new, but just have new ISINs due to a corporate action. As soon as a product starts trading, MiFID II rules should apply and dark trading should be capped.

More as a general comment we like to stress that we do not always agree with the argument that an instrument always needs to be sufficiently liquid before becoming subject to transparency requirements. Indeed the reason for the low liquidity of many instruments is exactly the fact that transparency is so low. Increasing that transparency will often lead to an increase in liquidity.

<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>

Yes, Optiver supports this proposal as it should seek to reduce inconsistencies across jurisdictions.

<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>

No we do not agree to increase the threshold. The higher % in volume of on venue transactions benefitting from a deferral in ETFs can be explained by lower levels (or lack) of retail trading. When establishing deferral thresholds it is important to take into account the different market characteristics (a higher degree of institutional trading in ETFs compared to shares).

As stated earlier, Optiver believes that ETFs should have their own set of transparency rules instead of being one category within the equities transparency rules. This could better reflect the characteristics of individual ETFs and their underlying constituents.

<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>

Optiver agrees with ESMA, we do not see any reason why different deferral thresholds between OTC and on venue transactions should apply.

<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>

Optiver believes strongly in transparent market places. We, like ESMA, note that there is still a significant amount of trading in EU Equities which does not occur in lit marketplaces and is not subject to pre-trade transparency. Very little detail is available to the market about its origin or reason for exemption from the transparency regime. Optiver supports initiatives to require more details to be published about this trading as we believe it will help to incentivize competition and trading across Europe as a whole.

We believe this reasoning should also be applied to SI trading as we also observe large amounts of trading occurring on Sis which does not appear to be bona-fide risk taking.

<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>

In our experience the publication of post trade information within 1 minute is sufficient but can in some cases be quite burdensome. For example, more complex trades such as 'exchange for physicals", basket trades, multi-leg trades require a disproportionate amount of effort to report within 1 minute. For this reason the definition of real time as maximum 1 minute from the time of the execution of the transaction is appropriate. In any case, it should not become more stringent/short.

<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>

As currently no list is published, this creates an arbitrary decision point in the reporting process. The existing approach therefore adds significant complexity and uncertainty. Optiver therefore supports any effort in reducing the complexity and uncertainty.

<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>

Optiver supports ESMA's view, that when the main pool of liquidity is outside the EU, firms should be able to trade third country shares on the venue with the most liquidity. This means that the share trading obligation should be changed and exclude third country shares. When firms are forced to trade shares on an EU venue while the main pool of liquidity lies somewhere else, they become less competitive in their execution which results in higher trading costs for the end investor.

As indicated in the paper, there are a significant number of third country shares that are listed in the EU but where the main liquidity pool lies outside the EU. To fix this, it was stated that when a share is “non-systematic, ad-hoc, irregular and infrequent” it can still be traded outside the EU. However, as this might not give full coverage, Optiver proposes to not base it on the level of trading conducted in the EU, but if EU firms or end investors are disadvantaged by not being able to trade the share on an EU venue. Ideally, third country shares should be identified based on statistics that identify the main pool(s) of liquidity. Given that ESMA does not have this data, the use of ISIN and currency instead of this data is acceptable as an expedient alternative

<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>

Optiver supports removing SIs as an eligible execution place for the purpose of the share trading obligation as a whole. One of the objectives of MiFID II was to make markets more transparent and reduce liquidity fragmentation for the purpose of creating deep liquidity pools for the end investor.

Unfortunately, the SI regime has led to the opposite: never was volume traded on the lit markets as low as it is now: according to TABB research, in December 2019, only 32.5% of volume was traded on the lit markets as opposed to >40% when MiFID II came into place. In that time period, Sis have reached a market share of up to 20%, replacing both lit markets and dark venues as destinations of choice. Unfortunately, there are hundreds of registered Sis that make up that 20% market share. This means that the SI regime has not only made markets less transparent but also created more fragmentation. In order to live up to the intentions of MiFID II Optiver is convinced that removing SIs as an eligible execution venue for the purpose of the share trading obligation is the most fundamental way of making markets less fragmented and transparent again.

<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>

Optiver believes the first exemption provided for under Article 23 of MiFID should be retained and does not support deleting it. We observe situations where firms occasionally need to trade OTC as, for example, it is not always possible to unwind positions in very illiquid equities on the central limit order book.

Should this exemption remain in place, Optiver believes it is essential that ESMA fully define the concept of “non-systematic, ad-hoc, irregular and infrequent” including specific metrics to determine whether a stock meets this definition or not. Optiver considers it is in the interest of all market participants to ensure that this exemption does not result in an un-level playing field, which was observed when the Swiss equivalence decision was revoked last year as individual firms were defining which EU shares could continue to be traded on Swiss exchanges (and which couldn’t) based on similar but differing measures.

<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>

Optiver does not agree with this simplification. By retaining this limitation retail trading is kept squarely within the scope of the Share Trading Obligation, thereby affording such trading a higher protection and obligation.

<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>

Optiver views this increase as primarily due to the rise of passive index tracking and does not view this as a problem for regulators..

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