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| Reply form for the Consultation Paper on MiFID II/ MiFIR review on the functioning of Organised Trading Facilities (OTF) |

**Responding to this paper**

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions summarised in Annex I. 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 **25/11/2020.**

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\_FOTF\_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\_FOTF\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_FOTF\_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 the functioning of the Organised Trading Facility regime”).

**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 document will be of interest to (i) alternative investment fund managers, UCITS management companies, EUSEF managers and/or EuVECA managers and their trade associations, (ii) distributors of UCITS, alternative investment funds, EuSEFs and EuVECAs, as well as (iii) institutional and retail investors investing into UCITS, alternative investment funds, EuSEFs and/or EuVECAs and their associations..

**General information about respondent**

|  |  |
| --- | --- |
| Name of the company / organisation | TransFICC Ltd |
| Activity |  |
| Are you representing an association? | [x]  |
| Country/Region | Europe |

**Introduction**

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

<ESMA\_COMMENT\_FOTF\_1>

**Introductory remarks**

TransFICC is an eTrading technology company providing a service for the Fixed Income and Derivatives Markets. Website [www.transficc.com](http://www.transficc.com/)

We offer a single product to banks and asset managers called "One API for eTrading". An application programming interface (API) is a computing interface which defines interactions between multiple software intermediaries.

**What is TransFICC?**

A single API that enables clients to connect and trade on multiple FICC trading venues. TransFICC translates the many different trading venue API's into a single format, to allow for easy/single integration - so when clients connect to a new venue only a simple configuration change is required. API changes or updates are also managed by TransFICC. As a hosted service, all hardware and venue connectivity issues are all managed by us.

TransFICC offers an efficient connectivity service, allowing MTFs and OTFs to connect to multiple users, translating each individual API into a common language. The service facilitates access to regulated trading venues. Creating a level playing field provides banks and asset managers with market access at a lower cost, enabling full competition between all trading platforms. TransFICC encourages FinTech innovation in Europe through an enhanced straight through process, which connects a wide group of buy- and sell-side trading firms with both established and new innovative trading venues. In lay language it can be compared to the post office delivering messages to a broad community of users.

**What TransFICC is not?**

TransFICC does not accommodate price discovery, nor any order execution. It does not offer an execution methodology or decide where orders go.

Our response will only look at Q3, Q10 & Q11 while we remain available for more specific consultations on the topic.

**Godfried De Vidts and Steve Toland**

<ESMA\_COMMENT\_FOTF\_1>

**Questions**

**Q1: What are your views about the current OTFs landscape in the EU? What is your initial assessment of the efficiency and usefulness of the OTF regime so far?**

<ESMA\_QUESTION\_FOTF\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FOTF\_1>

**Q2: Trading in OTFs has been fairly stable and concentrated in certain type of instruments throughout the application of MiFID II. How would you explain those findings? What in your view incentivizes market participants to trade on OTFs? How do you see the OTF landscape evolving in the near future?**

<ESMA\_QUESTION\_FOTF\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FOTF\_2>

**Q3: Do you concur with ESMA’s clarifications above regarding the application of Article 1(7) and Article 4(19) of MiFID II? If yes, do you agree with the ESMA proposed amendment of Level 1? Which other amendment of the Level 1 text would you consider to be necessary?**

<ESMA\_QUESTION\_FOTF\_3>

In reference to Article 4(19) of MiFID II and our introductory response, it is clear TransFICC is not a multilateral system but a technology to enable bilateral connectivity. Hence the proposed amendment of Level 1 is not applicable (41.2). Certain multilateral solutions used by software providers as part of the current development of digitalisation techniques as highlighted in ESMA’s Report on post trade risk reduction services for derivatives with regards to the clearing obligation (EMIR Article 85(3a)) could very well emerge as part of continuous improvements in reducing systemic risks in other financial products/services.

<ESMA\_QUESTION\_FOTF\_3>

**Q4: Do you agree with ESMA’s two-step approach? If not, which alternative should ESMA consider?**

<ESMA\_QUESTION\_FOTF\_4>

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<ESMA\_QUESTION\_FOTF\_4>

**Q5: Do you agree with ESMA’s proposal not to amend the OTF authorisation regime and not to exempt smaller entities? If not, based on which criteria should those smaller entities potentially subject to an OTF exemption be identified?**

<ESMA\_QUESTION\_FOTF\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FOTF\_5>

**Q6: Which provisions applicable to OTFs are particularly burdensome to apply for less sophisticated firms? Which Level 1 or Level 2 amendments would alleviate this regulatory burden without jeopardising the level playing field between OTFs and the convergent application of MiFID II/MiFIR rules in the EU?**

<ESMA\_QUESTION\_FOTF\_6>

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<ESMA\_QUESTION\_FOTF\_6>

**Q7: Do you consider that ESMA should publish further guidance on the difference between the operation of an OTF, or other multilateral systems, and other investment services (primarily Reception and Transmission of Orders and Execution of orders on behalf of clients)? If yes, what elements should be considered to differentiate between the operation of multilateral systems and these other investment services?**

<ESMA\_QUESTION\_FOTF\_7>

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<ESMA\_QUESTION\_FOTF\_7>

**Q8: Do you consider that there are networks of SIs currently operating in such a way that it would in your view qualify as a multilateral system? Please give concrete examples.**

<ESMA\_QUESTION\_FOTF\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FOTF\_8>

**Q9: Do you agree that the line differentiating bilateral and multilateral trading in the context of SIs is sufficiently clear? Do you think there should be a Level 1 amendment?**

<ESMA\_QUESTION\_FOTF\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FOTF\_9>

**Q10: What are the main characteristics of software providers and how to categorise them? Amongst these business models of software providers, which are those that in your view constitute a multilateral system and should be authorised as such?**

<ESMA\_QUESTION\_FOTF\_10>

Many software provider solutions are not exclusively applicable to financial instruments. Hence it is important to have a holistic view about the business case of such providers. It is important that the regulatory community takes a horizontal view on digitalisation/electronification enhanced straight through processes. Lack of a specific framework because of (to date) inadequate regulatory/supervisory responses/convergence to such innovative solution risks reducing Europe's place versus other jurisdictions.

Software providers have so far no specific licence, although generally they have captured as investment services. A clear distinction as suggested in the ESMA paper (70) between RTO (reception and transmission of orders) and the operation of an OTF or MTF, as well as OTC transaction seems necessary. An RTO could be described as software providers that do not accommodate price discovery nor execution methodologies but do facilitate the enhanced straight through processing of transactions. The officiallisation of RTO as a category in financial services through a revised MiFID II avoids the issue of multilateral approach in RM, MTFs and OTFs.

<ESMA\_QUESTION\_FOTF\_10>

**Q11: Do you agree with the approach suggested by ESMA regarding software providers that pre-arranged transactions formalised on other authorised trading venues? Do you consider that this approach is sufficient to ensure a level playing field or do you think that ESMA should provide further clarifications or propose specific Level 1 amendments, and if so, which ones?**

<ESMA\_QUESTION\_FOTF\_11>

The success of an RTO software provider depends on multiple connectivities to buy- & sell-side financial firms. Hence ESMA's suggestion (72) should not be applicable to the RTO category. As such the suggestion in the ESMA consultation (74) that the software provider operating as provider of multiple connections to various executing trading platforms should not be required to be authorised as a trading venue.

ESMA wants to promote competition between MTF venues, to lower brokerage and access fees and enable increased access to Capital Markets. It is very hard for new MTF's to become established due to the high complexity and cost of coding to API's. TransFICC makes it easier to access these new MTF's at lower cost and hence promote competition for banks and Asset Managers. If TransFICC were to be regulated as an MTF, we are defacto in competition with established MTF's and they are likely to deny access. This in turn will reduce competition.

Too tight descriptions of the function of RTO has to be avoided as Europe’s gap with other jurisdictions in the digitalisation/electronification race of financial markets could be damaging to the sector.

<ESMA\_QUESTION\_FOTF\_11>

**Q12: Do you agree with the principles suggested by ESMA to identify a bulletin board? If not, please elaborate. Do you agree to amend Level 1 to include a definition of bulletin board?**

<ESMA\_QUESTION\_FOTF\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FOTF\_12>

**Q13: Are you aware of any facility operating as a bulletin board that would not comply with the principles identified above?**

<ESMA\_QUESTION\_FOTF\_13>

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<ESMA\_QUESTION\_FOTF\_13>

**Q14: Market participants that currently operate such systems are invited to share more detailed information on their crossing systems (scale of the activity, geographical coverage, instruments concerned, etc…), providing examples of such platforms and describing how much costs & fees are saved this way as opposed to executing the relevant transactions via brokers or trading venues.**

<ESMA\_QUESTION\_FOTF\_14>

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<ESMA\_QUESTION\_FOTF\_14>

**Q15: Do you consider that internal crossing systems allowing different fund managers within the same group to transact between themselves should be in scope of MiFID II or regarded as an investment management function covered under the AIFMD and UCITS? Please explain. In your view, should the regulatory treatment of these internal crossing system be clarified via a Level 1 change?**

<ESMA\_QUESTION\_FOTF\_15>

TYPE YOUR TEXT HERE

**Q16: Do you agree with the interpretation provided by ESMA regarding how discretion should be applied and do you think the concept of discretion should be further clarified?**

<ESMA\_QUESTION\_FOTF\_16>

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<ESMA\_QUESTION\_FOTF\_16>

**Q17: For OTF operators: Do you apply discretion predominantly in placement of orders or in execution of orders? Does this depend on the type of trading system you operate? Please explain.**

<ESMA\_QUESTION\_FOTF\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FOTF\_17>

**Q18: For OTF clients: Do you face any issue in the way OTF operators exercise discretion for order placement and order execution? If so, please explain. Does it appear to be used regularly in practice by OTF operators?**

<ESMA\_QUESTION\_FOTF\_18>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FOTF\_18>

**Q19: Do you think ESMA should clarify any aspect in relation to MPT or that any specific measure in relation to MPT shall be recommended?**

<ESMA\_QUESTION\_FOTF\_19>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FOTF\_19>

**Q20: In your view what is the difference between MPT and riskless principal trading and should this difference be clarified in Level 1?. In addition, what, in your view, incentivizes a firm to engage in MPT rather than in agency cross trades (i.e. trades where a broker arranges transactions between two of its clients but without interposing itself)?**

<ESMA\_QUESTION\_FOTF\_20>

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<ESMA\_QUESTION\_FOTF\_20>

**Q21: Do you agree with ESMA’s proposal to clarify that the prohibition of investment firms or market operators operating an MTF to execute client orders against proprietary capital or to engage in matched principal trading only applies to the MTF they operate, in line with the same wording as applicable to regulated markets?**

<ESMA\_QUESTION\_FOTF\_21>

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<ESMA\_QUESTION\_FOTF\_21>