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| Reply form  |
| For the Consultation Paper (CP) on ESMA’s Opinion on the trading venue perimeter |



28 January 2022 | ESMA70-156-5287

Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions. Comments are most helpful if they:

1. respond to the question stated;
2. indicate the specific question to which the comment relates;
3. contain a clear rationale; and
4. describe any alternatives ESMA should consider.

ESMA will consider all comments received by **29 April 2022**.

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 close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly 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.

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**Who should read this paper**

This document will be of interest to all stakeholders involved in the securities markets. It is primarily of interest to competent authorities, investment firms and market operators that are subject to MiFID II and MiFIR. This paper is also important for trade associations and industry bodies, institutional and retail investors, their advisers, consumer groups, as well as any market participants because the MiFID II and MiFIR requirements concern the market structure of the EU and the perimeter of trading that should be considered as multilateral and regulated as such.

1. Do you agree with the interpretation of the definition of multilateral systems?

<ESMA\_QUESTION\_TVPM\_1>

**Symphony Communication Services, LLC (“Symphony”)**

**ESMA’s Opinion on the trading venue perimeter**

**Responses to Consultation Paper ESMA70-156-4978 (the “Consultation”)**

Symphony respectfully offers the following comments to the Consultation with respect to ESMA’s interpretation of the definition of “multilateral systems”.

With respect to the first two of the four criteria ESMA outlines for consideration when identifying whether a system or facility can be classified as a multilateral system, paragraph 20 explains that “[t]he main criterion is whether there are specific rules concerning the interaction of multiple market participants to which participants shall adhere to.” Later, in paragraph 24, ESMA expands the scope of a multilateral system to include platforms where only two trading interests interact, “provided such trading interests are brought together under the rules of a third-party operator.” ESMA highlights that the “rules” are set by the third-party operator or platform. ESMA asserts that considering such an interaction over the platform as “bilateral” is negated because the system provider operates the platform, and is therefore involved with respect to the transactions.

Symphony submits that many technology providers support the financial services industry by adopting a modular and open approach to platform architecture. Communications that take place within an environment that employs modular and open architecture can connect with third-party applications, creating a bridge between technology and regulated platforms. In such cases, the third-party operator does not set specific rules, minimum requirements, or the parameters for interaction, it merely provides an environment that supports financial services infrastructures through an open modular and flexible design. We would ask ESMA to clarify that where the rules are set or determined by the market participants and not the technology provider, whether this would still not be a “multilateral” exchange in the regulated sense. Further, we would submit that where the technology provider does not have access to the content of communications between market participants (due to end-to-end encryption or similar protections), then the technology provider cannot be part of a multilateral trading facility. Symphony, for example, utilises end-to-end encryption, thereby offering those in the financial services industry a platform with a high level of data security. This encryption standard prevents Symphony, as the technology provider, from viewing its customers’ data and allows the customer to leverage the platform’s retention and archiving capabilities to meet their compliance requirements by pushing relevant data downstream to the regulated venues or record-keeping solutions.

Notably, in paragraph 44, ESMA states that where a communication tool “simply provides pricing data or other tools used to make trading decisions, this is not sufficient to conclude that such platform should require authorisation as a trading venue.” Accordingly, we believe technology providers that provide a modular and open communication platform, and which do not set or see the content of communications due to its encryption which can be used by financial industry participants without themselves setting the rules or providing functionality to support trading should not be considered a multilateral system, and therefore be required to seek authorization as a trading venue. Platforms that embrace innovation and connect to applications that support efficiency in the markets should be viewed solely as technology providers for those in the financial services industry. Regulated venues and third-party applications outside of the technology provider’s environment should be considered the “trading venue” where the transaction may be concluded, therefore the proper forum for regulatory oversight.

<ESMA\_QUESTION\_TVPM\_1>

1. Are there any other relevant characteristics to a multilateral system that should be taken into consideration when assessing the trading venue authorisation perimeter?

<ESMA\_QUESTION\_TVPM\_2>

Yes, specifically the platform’s level of encryption employed to ensure data security. Symphony, for example, utilizes end-to-end encryption, thereby offering those in the financial services industry a platform with a high level of data security. This encryption standard prevents Symphony, as the technology provider, from viewing its customers’ data.

If ESMA’s interpretation of multilateral systems requires technology providers to seek authorization as a trading venue, data security will need to be degraded to satisfy compliance and reporting requirements. If required to register as trading venue, Symphony would need to view customer data in order to meet transaction processing requirements. This would have far-reaching implications for communication platforms, cloud hosting providers, and the financial services industry generally, as financial services firms trust that their technology providers do not access their communications.

<ESMA\_QUESTION\_TVPM\_2>

1. In your experience, is there any communication tool service that goes beyond providing information and allows trading to take place? If so, please describe the systems’ characteristics.

<ESMA\_QUESTION\_TVPM\_3>

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<ESMA\_QUESTION\_TVPM\_3>

1. Are you aware of any EMS or OMS that, considering their functioning, should be subject to trading venue authorisation? If yes, please provide a description.

<ESMA\_QUESTION\_TVPM\_4>

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<ESMA\_QUESTION\_TVPM\_4>

1. Do you agree that Figure 4 as described illustrates the operation of a bilateral system operated by an investment firm that should not require authorisation as a trading venue?

<ESMA\_QUESTION\_TVPM\_5>

Yes, Figure 4 represents a systematic internaliser model. It could be elaborated on to make clear that systematic internalisers can utilise third-party communications applications whilst not altering the fact that the interaction remains bilateral (in the way envisaged at Question #1), and that the communication application does not require authorisation as a trading venue.

<ESMA\_QUESTION\_TVPM\_5>

1. Do you agree that a “single-dealer” system operator by a third party, as described in Figure 5, should be considered as a multilateral system? If not, please explain.

<ESMA\_QUESTION\_TVPM\_6>

Symphony would respectfully submit that such a “single-dealer” system should not be considered a multilateral system where the involvement of a technology provider does not involve setting rules for trading, and does not have access to any of the trading data. As noted in our response to Question #1, technology providers that adopt a modular and open approach to platform architecture can connect with third-party applications, creating a bridge between technology and regulated platforms, including RFQ systems. In such cases, the third-party operator does not set specific rules, minimum requirements, or the parameters for interaction for the transaction. Providing a platform that supports financial services infrastructures through an open modular and flexible design should not constitute a multilateral platform.

<ESMA\_QUESTION\_TVPM\_6>

1. Do you agree that systems pre-arranging transactions that are formalised on a trading venue, even when arranged in a multilateral way, should not be required to be authorised as trading venues? Do you agree with the justification for such approach?

<ESMA\_QUESTION\_TVPM\_7>

Yes, and for the avoidance of doubt we assert that the criteria for pre-arranging transactions and pre-trade transparency and disclosures should not apply to technology providers that do not set rules or parameters and do not see any of the pre-trade communication data.

<ESMA\_QUESTION\_TVPM\_7>

1. Are there any other conditions that should apply to these pre-arranged systems?

<ESMA\_QUESTION\_TVPM\_8>

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<ESMA\_QUESTION\_TVPM\_8>

1. Are there in your views any circumstances where it would not be possible for an executing trading venue to sign contractual arrangements with the pre-arranging platforms? If yes, please elaborate

<ESMA\_QUESTION\_TVPM\_9>

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<ESMA\_QUESTION\_TVPM\_9>