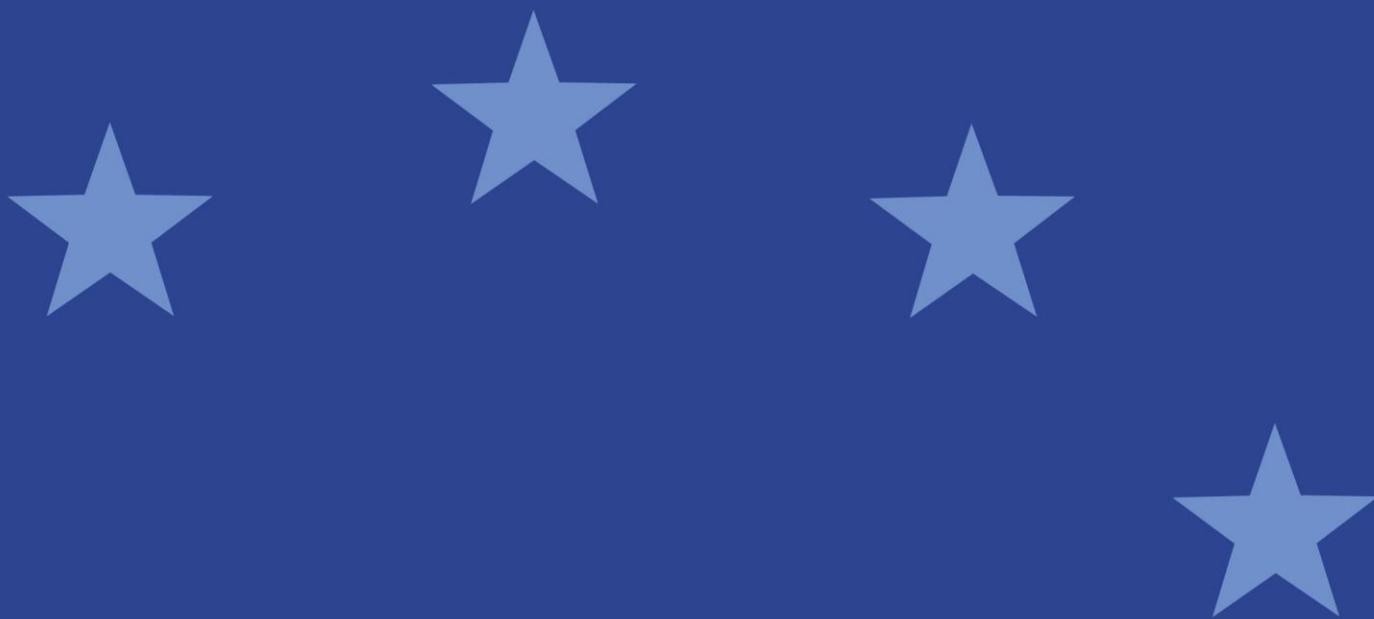


## Protocol

### Operation of the ESMA MiFID Database



## Foreword

The operation of the MiFID market transparency regime involves making certain information regarding shares admitted to trading available to market participants. The regime requires the relevant national competent authorities for market transparency calculations under Article 33 of the MiFID Implementing Regulation (from now on, “the competent authorities”) to make certain calculations regarding shares admitted to trading on a regulated market (and to some extent “liquid shares”). The results of the calculations will be published by ESMA. In order to fulfil the requirements, a specific MiFID database has been set up as a part of the ESMA website.

In order to ensure smooth and harmonised calculation and publication ESMA has considered it necessary to agree on this protocol. This protocol describes the tasks and responsibilities of the national competent authorities and ESMA staff respectively. Additionally, it contains practical guidance on how to conduct the calculations as well as the necessary technical instructions.



## **1. Scope**

This Protocol concerns the practical cooperation arrangements between the national competent authorities and the ESMA staff in order to manage the calculation and publication of MiFID market transparency calculations.

## **2. Obligations of the national competent authorities and the ESMA staff**

Article 33 of the MiFID Implementing Regulation states that national competent authorities are responsible for ensuring the calculations are done. They may choose to conduct the calculations by themselves or delegate the practical calculations (or part of them) to a third party. In practice, calculations may be delegated for example to a regulated market. In any case, the national competent authorities are responsible for the outcome vis-à-vis the ESMA staff and they should ensure that the necessary data is available on a timely manner in a format as described in the instructions from the ESMA staff. The responsibility of the accuracy of the data provided to the ESMA staff lies with the respective national competent authority.

The ESMA staff is responsible for building and maintaining the MiFID database and the publication of the information. The ESMA staff is responsible for submitting the necessary technical instructions to national competent authorities which are needed in order to present the results of the calculations in a harmonised format and upload the data.

## **3. Questions of interpretation**

A national competent authority shall submit to ESMA any questions relating to the operation of the database. Issues of a technical nature will be solved by the ESMA staff. Issues which require further consideration will be submitted to the relevant working group/standing committee for its consideration. If such questions include interpretation of MiFID, the European Commission will be included in the discussions.

All queries should be addressed to the designated contact persons.

## **4. Determination of the relevant competent authority**

For each share one national competent authority is responsible for the necessary calculations in respect of that share. The responsible national competent authority for a given share is the national competent authority of the most relevant market in terms of liquidity for that share. This national competent authority will be determined according to Article 9 of the MiFID Implementing Regulation. For shares, the most relevant market in terms of liquidity is the Member State where the share was first admitted to trading on a regulated market. If the share was admitted for the first time simultaneously on more than one regulated market, then the most relevant market in terms of liquidity is the market where the turnover of that share is highest.

The MiFID Implementing Regulation facilitates the change of the national competent authority in specified circumstances.

Changes in the status of the share (new admissions and delistings) may also change the respective national competent authority and have an effect on the calculations. It is therefore

necessary that the relevant national competent authorities ensure co-operation in such cases.

#### **4.1 Co-operation in case of new shares admitted to trading or delistings**

When a share is to be admitted to trading on a regulated market, the relevant national competent authority shall check whether the share is already or will simultaneously be admitted to trading on another regulated market. When a share is to be delisted from the regulated market which is the most relevant market in terms of liquidity, the relevant national competent authority shall check whether the share remains admitted to trading on another regulated market. If shares are (or will be) admitted to trading on other regulated market(s), the relevant authorities shall inform each other about prospective measures and undertake the necessary co-operation, particularly in order to determine the correct calculating authority and the correct outcome of the calculations.

#### **4.2 Alternative determination of the relevant competent authority**

According to Article 10 of the MiFID Implementing Regulation a national competent authority may notify the relevant national competent authority that it intends to contest the earlier determination. Such notifications shall be submitted in January, but the national competent authorities endeavour submitting them as early as possible after the end of the previous calendar year. The notification shall be submitted to the designated contact persons.

The respective national competent authorities shall make the necessary calculations as described in Article 10 during the four weeks following the submission of the notification.

If the relevant national competent authorities disagree about the outcome of the calculations (and hence the responsible national competent authority for the calculations), they shall inform the ESMA staff which shall then utilise the necessary measures in order to assist the authorities to achieve a mutually acceptable outcome.

#### **5. Changes to this protocol**

This Protocol may be changed or amended as decided by ESMA. The Annex may be changed following the decision of the relevant working group/standing committee responsible for the application of the MiFID pre- and post-trade transparency provisions.

## **Annex I – ESMA MiFID Market Transparency Calculations**

### **1. Introduction**

This internal guidebook is intended to facilitate the MiFID market transparency calculations of the national competent authorities. Articles 33 and 34 of the MiFID Implementing Regulation require the national competent authorities to calculate and publish a set of information regarding all shares which are admitted to trading on a regulated market. The exact content of information is different for all shares and liquid shares as described below.

The information is targeted for market participants that need the information for recognising liquid shares (which trigger the obligations for systematic internalisers according to Article 27 of MiFID) and for determining the block sizes for waivers from pre-trade transparency requirements and for delayed post-trade publication.

The national competent authorities are responsible for ensuring that the calculations are made, but may delegate the practical calculations to a third party (for example, to a regulated market).

According to Article 33 of the MiFID Implementing Regulation the calculation of the average daily turnover, average value of the orders executed and average daily number of transactions shall take into account all the orders executed in the Community in respect of the share in question between 1 January and 31 December of the preceding year, or, where applicable, that part of the year during which the share was admitted to trading on a regulated market and was not suspended from trading on a regulated market. The MiFID Implementing Regulation refers to the use of the Community wide data in the calculations to be made after the first trading day of March 2009, before which the data relating to the regulated market or markets of the most relevant market in terms of liquidity were used in the calculations.

The national competent authorities originally intended to use the transaction reporting data available on the basis of Article 25 of MiFID in the calculations. However, due to technical problems, the reconciliation and correct use of the buy and sell side of a transaction reported and exchanged under Article 25 of MiFID has proved to be very complex. The intended use of transaction reporting data therefore has turned out to be less straightforward than anticipated when the Protocol was put in place.

These problems caused successive amendments to the Protocol, in order to improve as much as possible the calculations to be made available to the market, given the current technical limitations.

As stated above, originally only the data from the regulated market or markets in the Member State which was the most relevant market in terms of liquidity as required by MiFID was used in the calculations. For the calculations to be published on the first trading day in March 2010 it was decided to use, in addition to that, the data from the three most relevant MTFs in terms of overall market share in relation to all shares in the MiFID Database.

In parallel to those decisions, CESR found almost unanimous support when asking market participants in its Consultation Paper on the CESR Technical Advice to the European Commission in the Context of the MiFID Review: Equity Markets (Ref. CESR/10-394), whether each RM, MTF and OTC reporting arrangement should be required to provide data to the relevant competent authority for the purposes of market transparency calculations. Therefore, in its Technical Advice in the Context of the MiFID Review: Equity Markets (Ref. CESR/10-802),



CESR recommended to the European Commission to amend MiFID to require each RM, MTF and OTC reporting arrangement to provide data free of charge to the relevant competent authority and, where appropriate, ESMA for the purpose of MiFID transparency calculations. Such a requirement would ensure that the objective set out in Article 33 of the MiFID Implementing Regulation be accomplished.

Since the system used for the March 2010 calculations demonstrated to be effective, CESR considered appropriate to keep it as the interim procedure until (and in case) the aforementioned CESR proposals about market transparency calculations would become enforceable legislation. However, CESR then and now ESMA reiterate their commitment towards ongoing improvement of the calculations, even under the current technical boundaries. In that regard, the relevant working group/standing committee responsible for the application of the MiFID pre- and post-trade transparency provisions will review and amend, as necessary, the number of MTFs included in the calculations (in section 3 below). Finally, once it is technically feasible to use the data from OTC transactions in a manner that ensures quality, this Annex will be reviewed and amended as appropriate.

## **2. Calculating authority**

The relevant national competent authority responsible for the calculations for a share is the authority of the most relevant market in terms of liquidity. That authority will be determined according to Article 9 of the MiFID Implementing Regulation. For shares the most relevant market in terms of liquidity is the Member State where the share was first admitted to trading on a regulated market. If the share was admitted for the first time simultaneously on more than one regulated market the most relevant market in terms of liquidity is the market where the turnover of that share is highest.

Each national competent authority shall check for all shares which are admitted to trading in its jurisdiction whether they have been admitted to trading on other markets and on which market the share was admitted first.

On the basis of Article 10 of the MiFID Implementing Regulation, a national competent authority may, in January every year, notify the competent authority previously responsible for the calculations that it intends to contest the earlier determination of the most relevant market for a share. In that case, the procedure described in Article 10(2) of the MiFID Implementing Regulation will be followed to determine the responsible national competent authority.

## **3. All shares admitted to trading on a regulated market**

In respect of each share that is admitted to trading on a regulated market, the responsible national competent authority for that share shall ensure that the following calculations are made in respect of that share promptly after the end of each calendar year. To that end, it shall proceed as follows.

For the purposes of the calculations to be published on the first trading day of March, in respect of each share in the MiFID database ([https://registers.esma.europa.eu/publication/searchRegister?core=esma\\_registers\\_mifid\\_sha](https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_mifid_sha)), the relevant national competent authority for that share shall firstly collect the following information relating to trading on the regulated market or markets of the Member State which is the most relevant market in terms of liquidity:

- Turnover for the previous year;
- Number of trading days in the previous year in the Member State of the relevant national competent authority; and
- Number of transactions for the previous year

For these purposes, negotiated transactions within the meaning of Article 19 of the MiFID Implementing Regulation shall be excluded from the calculations. As defined in Article 5 of the MiFID Implementing Regulation, a transaction should include a purchase and a sale of a share (i.e. the figures should be "single counted"). If only information about either the purchase or the sale is available (e.g. due to trading with a non-EU firm or a non-MiFID firm), the data about one side of the transaction should be regarded as the "single counted transaction".

Secondly, the above mentioned data will also be collected from the seven most relevant MTFs in terms of overall market share in relation to all shares in the MiFID database traded on these platforms<sup>1</sup>. From this information, negotiated transactions within the meaning of Article 19 of the MiFID Implementing Regulation shall be excluded from the calculations. All transactions should be "single counted". The data from these MTFs will be made available to ESMA that will forward it to the relevant national competent authority for each share. As defined in Article 5 of the MiFID Implementing Regulation, a transaction should include a purchase and a sale of a share (i.e. the figures should be "single counted"). If only information about either the purchase or the sale is available (e.g. due to trading with a non-EU firm or a non-MiFID firm), the data about one side of the transaction should be regarded as the "single counted transaction".

Each relevant national competent authority must make the following calculations for each share based on the sum of the data it collected and, where applicable, the data that was forwarded to it by ESMA as described above:

- Average daily turnover (ADT) will be calculated by dividing the total turnover for the previous year by the number of trading days in the previous year in the Member State of the relevant national competent authority.
- Average daily number of transactions will be calculated by dividing the total number of transactions for the previous year by the number of trading days during the previous year in the Member State of the relevant national competent authority

The above calculations are based on trading between 1 January and 31 December of the preceding year. In case the share has not been subject to trading the whole year, the calculations shall only take into account the period the share has been subject to trading. If the trading in a share has been suspended, the entire day shall also not be taken into account. Additionally, all non-trading days in the Member State of the responsible national competent authority shall be excluded.

The results of the calculations shall be published on the first trading day in March. The calculations shall be valid for a 12-month period starting 1 April and ending 31 March.

#### **4. Additional calculations regarding liquid shares**

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<sup>1</sup> According to the existing data, the most relevant MTFs in terms of overall market share (not ranked) are BATS-Chi-X, Turquoise, UBS MTF, POSIT, Instinet Blockmatch, Tradegate and Aquis.

For liquid shares, in addition to the average daily turnover and average daily number of transactions, free float and average value of orders executed shall be calculated.

#### *Free float*

The relevant national competent authority shall collect the free float as at 31 December of the previous year. Free float, which is one factor for defining a share as liquid, will be calculated only in cases where a share meets the other liquidity criteria (i.e. 500 transactions or 2-million-euro turnover and being traded daily). According to Article 22 of the MiFID Implementing Regulation, Member States have flexibility in deciding how these criteria will interact. The basic assumption in the MiFID Implementing Regulation is that a share which meets either of these criteria is liquid. However, Member States may decide that both criteria need to be met simultaneously, see CESR communication on the use of the criteria defined in Article 22 of the MiFID Implementing Regulation; Ref. CESR/08-316). The need to calculate free float shall be decided accordingly.

The free float is calculated by multiplying the number of shares by the price of the share. However, when calculating the free float, all holdings exceeding 5 % of total voting rights shall be excluded unless they are held by a collective investment scheme or a pension fund.

If the free float exceeds 500 million euros, the share will be liquid for the purposes of Article 27 of MiFID.

#### *Average value of orders executed and standard market size*

Based on the above calculations, for those shares which satisfy the conditions laid down in Article 22(1)(a) and/or (b) (as applicable) or Article 22(3) of the MiFID Implementing Regulation, each relevant national competent authority shall:

- Calculate the average value of orders executed (AVT) for the previous year by dividing the total value of transactions (i.e. total turnover) for each share by the total number of transactions. From all transactions in a share those which are large in scale compared to normal market size shall be excluded from the calculations. Whether a transaction is large in scale will be determined according to Table 2 of Annex II of the MiFID Implementing Regulation. Based on the average daily turnover shares will be divided into five classes which all have a threshold for being large in scale.
- Determine the standard market size (SMS) on the basis of the AVT (as calculated above).

The results of the calculations shall be published on the first trading day in March. The calculations shall be valid for a 12 month period starting 1 April and ending 31 March.

#### **5. "Ad hoc" calculations between the first trading days of March of each year (12 month period)**

During the calendar year the calculations shall be reviewed and when necessary recalculated if there is a change in relation to the share or the issuer which significantly affects the previous calculations on an ongoing basis. Significant events are likely to be exceptional, but national competent authorities may need to consider, for example, whether recalculations would alter the following:

- Whether or not the share would be reclassified as liquid or cease to be liquid;
- The classification to the different turnover (ADT) bands;
- The SMS band

The relevant national competent authority responsible for the calculations shall update the calculations according to the available historical data wherever it is possible.

The recalculations shall be published as soon as practicable after the recalculation has been completed. The published figures will be valid until the following 31 March.

## **6. Calculations/estimates before a share is admitted to trading**

For shares which are admitted to trading on a regulated market for the first time there is no data for the calculations. In order to facilitate the operation of the MiFID transparency regime a national competent authority shall ensure that the following estimates are provided which determine whether the share is considered as liquid and the block size for waivers from pre-trade transparency requirements and for delayed post-trade publication.

A national competent authority shall ensure that the following estimates are made:

- Average daily turnover
- Market capitalisation (at the start of the first trading day)

If market capitalisation is estimated at 500 million euro or more, additionally:

- Average daily number of transactions
- If other liquidity criteria are met, free float
- If "liquid", the average value of orders executed

The estimates shall relate to the six-week period following the admission (after the admission a set of calculations will be made which determine the parameters from that period on). The estimates shall take into account the previous trading history of the share (for example on an MTF). They shall also take into account shares that are considered to have similar characteristics.

The relevant national competent authority shall replace the estimates by calculations based on the data available of four weeks' trading (i.e. regulated market data and, where possible, data from the relevant MTFs). The calculations shall be done as soon as the data is available and in any case no later than in six weeks.

The first estimates shall be valid from the first day of admission until six weeks after that day. Without prejudice to the possibility of "ad hoc" recalculations, the calculations based on four weeks' trading shall be valid from the six-week period until the following 31 March or in the case that the end of this period would be between 15 January and 31 March they will be valid until 31 March of the following year.

## **7. Provision of data from execution venues other than regulated markets for "ad hoc" calculations and calculations after a share has been admitted to trading**

Where for the purposes of the calculations under sections 5 and 6 above it is necessary to request data from one or several MTFs, the relevant national competent authority will firstly direct the discussion to the home competent authority of the MTF(s) for a joint assessment of the case.

If there is agreement between both national competent authorities on the need for requesting the data, the home competent authority of the MTF(s) will liaise with the MTF(s) and request the data from them.

## **8. Publication of the results**

The results of the calculations shall be published on ESMA website. National competent authorities can refrain from publication when the information is published by ESMA. However, the national competent authorities may consider whether simultaneous publication also nationally would be useful for their markets (for example in national language(s)).

### *Sending the information to ESMA and publication by ESMA*

In order to be able to publish the results of the calculations ESMA needs to receive the information in a harmonised format before the publication deadlines. Concerning the regular yearly calculations the information shall be uploaded by the national competent authorities by 5 p.m. CET on the day before the publication deadline. New calculations will be published on the first trading day of March every year and they will be valid from 1 April for the next 12 months.

The information in the database will be updated regularly by the national competent authorities. The changes include the estimates and calculations for new shares admitted to trading, delistings and other updates needed. New admissions will be included as soon as possible, normally no later than by 5 p.m. CET the day before admission to trading. In addition, further changes may be made on an ongoing basis, if a national competent authority on the basis of Article 33(5) of the MiFID Implementing Regulation identifies a change in the share or issuer which significantly affects the previous calculations on an ongoing basis. These “ad hoc” updates will, however, take place only in exceptional cases.

## **9. List of systematic internalisers**

According to Article 21(4) of the MiFID Implementing Regulation, national competent authorities shall ensure that there is a list of all systematic internalisers, in respect of shares admitted to trading on a regulated market, which it has authorised as investment firms. The list needs to be published and reviewed at least annually. The list includes the identity of the systematic internaliser and the name of the authorising competent authority.

Similarly to transparency calculations, the list shall be sent to ESMA who shall publish a consolidated list.

When the list is updated, the changes shall be sent to ESMA as soon as possible.