



European Securities and
Markets Authority

Reply form for the Consultation Paper on MiFID II/ MiFIR review report on the transparency re- gime for equity and equity-like instruments, the DVC and the trading obligations for shares



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 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 under the headings 'Legal notice' and 'Data protection'.

General information about respondent

Name of the company / organisation	Associazione Intermediari Mercati Finanziari - ASSOSIM
Activity	Investment Services
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Italy

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CP_MIFID_EQT_1>

ASSOSIM – on behalf of its members – welcomes the opportunity to provide comments on the matters dealt with by this Consultation Paper. As an introductory and general comment, please consider that our members would like to point out that the application to date of the rules here considered has shown that – as specified below - they need to be simplified and, under certain aspects, better clarified. Furthermore, as more specifically detailed in answer to Q32, we do not support ESMA’s intention to remove SIs as an eligible execution place under STO regime because such intention (if confirmed) may jeopardise their activity and the important efforts made so far (especially for those entities who opted in). Finally, always with reference to the STO regime, ASSOSIM appreciates that ESMA considered the issues derived from the application of the share trading obligation regime (especially when dealing with third country shares). However, as better described below, in this respect ASSOSIM would request ESMA to assess the adoption of an approach entailing a more appropriate balance between the need to comply with the STO and the need to comply with the best execution discipline which is crucial in order to protect and serve the clients’ best interest.

<ESMA_COMMENT_CP_MIFID_EQT_1>

Q1. 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
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Q2. 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>
ASSOSIM does not agree with the proposal to increase the pre-trade LIS threshold for ETFs from EUR 1,000,000 to EUR 5,000,000 because such latter threshold would be too high considering the ordinary size of ETF market transactions. Increasing the pre-trade LIS threshold, as proposed, might affect the effective possibility to trade under the threshold.
<ESMA_QUESTION_CP_MIFID_EQT_2>

Q3. 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
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Q4. 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>
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<ESMA_QUESTION_CP_MIFID_EQT_4>

Q5. 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>
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Q6. 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>
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Q7. 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>
As stated in the introductory notes, ASSOSIM, in principle, is in favour of any proposal made under a simplification perspective and in this sense we agree with ESMA when it considers that the “daily trade” criterion is too stringent and that it does not take into account that even liquid instruments can stop trading due to technical reasons. Therefore, ASSOSIM believes that such criterion could be replaced with fixing a threshold which should in any case express a high/significant percentage of days traded (e.g. certainly not less than 90%).
<ESMA_QUESTION_CP_MIFID_EQT_7>

Q8. 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>

Q9. 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>

Q10. 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>

Q11. 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>

Q12. 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>
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<ESMA_QUESTION_CP_MIFID_EQT_12>

Q13. What is your view on increasing the minimum quoting size for SIs? Which option do you prefer?

<ESMA_QUESTION_CP_MIFID_EQT_13>
ASSOSIM is, in principle, in favour of increasing the minimum quoting size for SIs because this approach can strengthen the liquidity provision by SIs. However, it has also to be considered that increasing the minimum quoting size may cause small/medium-sized entities decide not to enter the market because the minimum quoting size is fixed at a level they deem they cannot comply with (because of the risks they would bear).
Therefore, we would appreciate ESMA considering the possibility to adopt a different option setting a minimum quoting size equal to a percentage ranging from 10% to 50% of the SMS.
<ESMA_QUESTION_CP_MIFID_EQT_13>

Q14. What is your view on extending the transparency obligations under the SI regime to illiquid instruments?

<ESMA_QUESTION_CP_MIFID_EQT_14>
We welcome the extension of transparency obligations under the SI regime to illiquid instruments.
<ESMA_QUESTION_CP_MIFID_EQT_14>

Q15. 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>
We support ESMA's view about the need of reviewing the SMS determination methodology.
To this regard, we welcome to move from the AVT parameter to the ADT because this will result in an increase of the SMS value. Also considering our answer to Q14 above, we would prefer Option A.
<ESMA_QUESTION_CP_MIFID_EQT_15>

Q16. 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>
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Q17. Would you envisage a different system than the DVC to limit dark trading? Please explain.

<ESMA_QUESTION_CP_MIFID_EQT_17>
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<ESMA_QUESTION_CP_MIFID_EQT_17>

Q18. 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>

Q19. 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>

Q20. Please provide your answer to the following [survey](#) (<= 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>

Q21. 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>

Q22. 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>
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<ESMA_QUESTION_CP_MIFID_EQT_22>



Q23. 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>

Q24. 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>
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<ESMA_QUESTION_CP_MIFID_EQT_24>

Q25. 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>
We acknowledge ESMA's proposal about maintaining the current regime with the exception of applicable thresholds for ETFs. However, our members would like to point out that to date they have made a very limited use of deferrals because, in their opinion, under the Italian implementing regime the timeframe to be granted with a deferral and the relevant procedure in front of the Italian CA are quite burdensome and substantially inapplicable. Therefore, they would welcome a more simplified and harmonised regime for deferrals also in order to avoid the occurrence of potential unlevel playing field situations in this respect.
<ESMA_QUESTION_CP_MIFID_EQT_25>

Q26. 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>

Q27. 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>

Q28. 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>
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<ESMA_QUESTION_CP_MIFID_EQT_28>

Q29. 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>
We believe that the “1 minute” requirement has proved to be too stringent.
<ESMA_QUESTION_CP_MIFID_EQT_29>

Q30. 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>
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<ESMA_QUESTION_CP_MIFID_EQT_30>

Q31. 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>
ASSOSIM agrees to narrow the scope of STO under article 23 MiFIR by excluding third country shares. With respect to the best criterion to identify such shares, in principle our members would support the view to consider the “main pool of liquidity” criterion although they acknowledge ESMA’s considerations in this sense (e.g. lack of relevant data as ESMA is not in the position to collect data from third country trading venues). A second-best option could be using the ISIN criterion (as already done by ESMA when considering the impact of a no-deal Brexit in the STO framework).
Moreover, we would like to take the occasion to underline that our members have faced important and critical issues in applying the STO discipline and, at the meantime, in respecting their best execution obligations. We believe that the clients’ best interest should always prevail and, therefore, when such interest could be better served, under a best execution perspective, by acceding to a third country trading venue (in the absence of an equivalent decision by the Commission), then this should be explicitly allowed under the STO legal framework. This is particularly important also to preserve and foster the competitiveness of the EU intermediaries with respect to extra-UE competitors which are not subject to STO.
<ESMA_QUESTION_CP_MIFID_EQT_31>

Q32. 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>

ASSOSIM totally disagrees with ESMA's intention to remove SIs as eligible execution place under the STO because this could jeopardise the efforts and investments made so far by SIs (especially when they have opted in) and it could also have negative consequences in terms of best execution for clients and competitiveness of the EU financial industry. To this regard, please consider that in the last years we have seen a dramatic increase of market data fees applied by the Exchanges. Generally, these costs have not been rebated on end-users thanks to -inter alia- the internalization activity. We believe that moving the execution of all share trades back to Exchanges and other TVs would strengthen their market power with increasing costs for investors.

<ESMA_QUESTION_CP_MIFID_EQT_32>

Q33. 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>

ASSOSIM does not support the proposal to delete the aforementioned first exemption under Article 23 MiFIR because – as stated by ESMA – it allows flexibility in pursuing the best execution conditions since there is no evident need to reintroduce the “concentration rule”. Anyway, should ESMA get a mandate to further specify the scope of the exemption, a consultation process would be appreciated.

<ESMA_QUESTION_CP_MIFID_EQT_33>

Q34. 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>

With reference to the exemptions under article 23(1)(b) of MiFIR we would like to take the occasion to ask ESMA to provide examples (whether with an ad-hoc Q&A or an opinion/guidelines) regarding the application of the requirements set out under article 2 of EU Delegated Regulation 2017/587 with respect to “transactions not contributing to the price discovery process”. In particular, our members consider that – despite the criteria/indications provided by such latter legislative provision – the indication by ESMA of exemplificative cases would be very useful in helping the intermediaries to assess correctly the circumstances under which the aforesaid waiver can be applied.

<ESMA_QUESTION_CP_MIFID_EQT_34>

Q35. 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>

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<ESMA_QUESTION_CP_MIFID_EQT_35>