

# **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](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	Quoted Companies Alliance
Activity	
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	UK

## Introduction

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

<ESMA\_COMMENT\_CP\_MIFID\_EQT\_1>

We welcome the opportunity to respond to your consultation paper on MiFID II/MiFIR review report on the transparency regime for equity and equity-like instruments.

The Quoted Companies Alliance *Secondary Markets Expert Group* has examined the proposals and advised on this response from the viewpoint of small to mid-size quoted companies.

Overall, we welcome ESMA's work to review the provisions of the MiFID II/MiFIR transparency regime. As small and mid-size quoted companies play a vital role in delivering economic growth, as well as creating employment and wealth, it remains vitally important that any proposals or recommendations bare these companies in mind whilst maintaining the integrity of the market. If this can be achieved, smaller companies will have the platform they need to develop and grow and thus deliver economic growth.

Overall, our members have a few overarching concerns on the proposals within the consultation regarding:

- The proposal to remove the reference price and negotiate trade waivers due to the adverse impact that this will have on market structure.
- The proposal to extend the scope of application of the Double Volume Cap to illiquid instruments, as this would significantly hinder the trading of shares in smaller issuers.
- The proposal to extend the transparency obligations under the Systematic Internaliser Regime to illiquid instruments as this will impose increased and unnecessary burdens on systematic internalisers, which will in turn produce negative consequences for SME growth market liquidity.

Please note that the QCA has restricted itself to commenting only on the matters of most importance to smaller quoted companies and SME Growth Markets.

<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>

We do not consider that the proposal to remove the reference price and negotiated trade waivers will have a positive impact on the market. As the consultation correctly states, the removal of the reference price and negotiated trade waivers will have an adverse impact on market structure. For instance, it is unclear how worked orders would be booked out to clients in the absence of a negotiated trade waiver. NT waivers are useful when reporting on managed orders for larger orders that still do not qualify as LIS. Additionally, if there is movement towards greater use of systematic internaliser trading, as a result of this proposal, it could result in increased liquidity fragmentation. For these reasons, we do not support the removal of the reference price and the negotiated trade waivers due to the negative impact this would have on market structure..

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_1>

**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>

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**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>

We do not agree with extending the scope of application of the DVC to systems that formalise NT for illiquid instruments. An extension of the DVC to illiquid instruments will be especially detrimental to trading shares in smaller issuers. If extended, it will work counter-intuitively to SME growth markets by hindering the ability of smaller issuers to gain access to capital.

Furthermore, an extension of the scope of application of the DVC will further impede liquidity in SME growth markets. The MiFID II unbundling rules have already acted as a significant impediment to liquidity in these markets. Less research and lower commission fees coupled with impulsive regulatory reactions to the Woodford UCITS fund debacle and the threat of punitive costs for liquidity providers to be imposed by CSDR will undoubtedly impact smaller issuers further.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_3>

**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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**Q5. Do you agree with the proposal to report the volumes under the different waivers separately to FITRS? Please explain.**

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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>

We welcome the consideration of simplifying the methods for testing liquidity so that they are based on data which is more easily available/retrievable. This helps to ensure that the application of the MiFID II regime is more proportionate and less burdensome for market participants. We therefore welcome any such proposal for simplifying the liquidity assessments.

That said, any proposals considered must ensure that previously determined illiquid instruments are not inadvertently drawn into the definition of a liquid instruments, thus making them subject to pre-trade transparency requirements. As such, we are of the opinion that Option 2 – with the inclusion of the market capitalisation criterion – is the better option. The market capitalisation criterion must, however, be set at an appropriate level so that it excludes small and mid-caps. This would help to ensure that the thresholds appropriately discriminate between liquid and illiquid instruments.

Furthermore, the number of liquid shares under the proposal could exceed 2,300 shares, well above the current figure of 1,500. This includes a 50% increase in liquid instruments from 437 to 676 in the UK. As such, this will present difficulties as it would increase obligations to maintain more CPs where stocks are trading under the DVC.

<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>  
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**Q9. Do you agree in removing the category of certificates from the equity-like transparency scope? Please explain.**

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**Q10. 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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**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>  
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**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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**Q13. What is your view on increasing the minimum quoting size for SIs? Which option do you prefer?**

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

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_14>

We are opposed to the extension of the transparency obligations under the SI regime to illiquid instruments. As the consultation correctly notes that “imposing transparency obligations on SIs for trading in illiquid instruments may be overly burdensome for SIs”, we do not believe that the obligations should be extended. As alluded to in our answer to Q3 above, liquidity is being further driven out of SME growth markets and this will only serve to decrease liquidity more. Given that there are fewer providers of smaller company liquidity, imposing additional burdens on those remaining will be further detrimental to SME growth market liquidity. We therefore are against an extension of the 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>

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**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>

We would prefer Option A and the maintenance of the status quo. Any changes could lead to the loss of a useful source of liquidity – which is provided by dark trading – when offsetting or working client orders. As a result, any changes may hinder trading opportunities and performance.

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_16>

**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>

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**Q19. Do you agree in removing the requirement under Article 5(7)(b)? Please explain.**

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_19>

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**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>

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**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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**Q23. Do you agree that the mid-month reports should not be published? Please explain.**

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_23>

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<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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**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>

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**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>  
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**Q27. Do you agree with ESMA assessment of the level of post trade transparency for OTC transactions?**

<ESMA\_QUESTION\_CP\_MIFID\_EQT\_27>  
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**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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**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>  
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**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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**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>  
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**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>  
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**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>  
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**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>  
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**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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