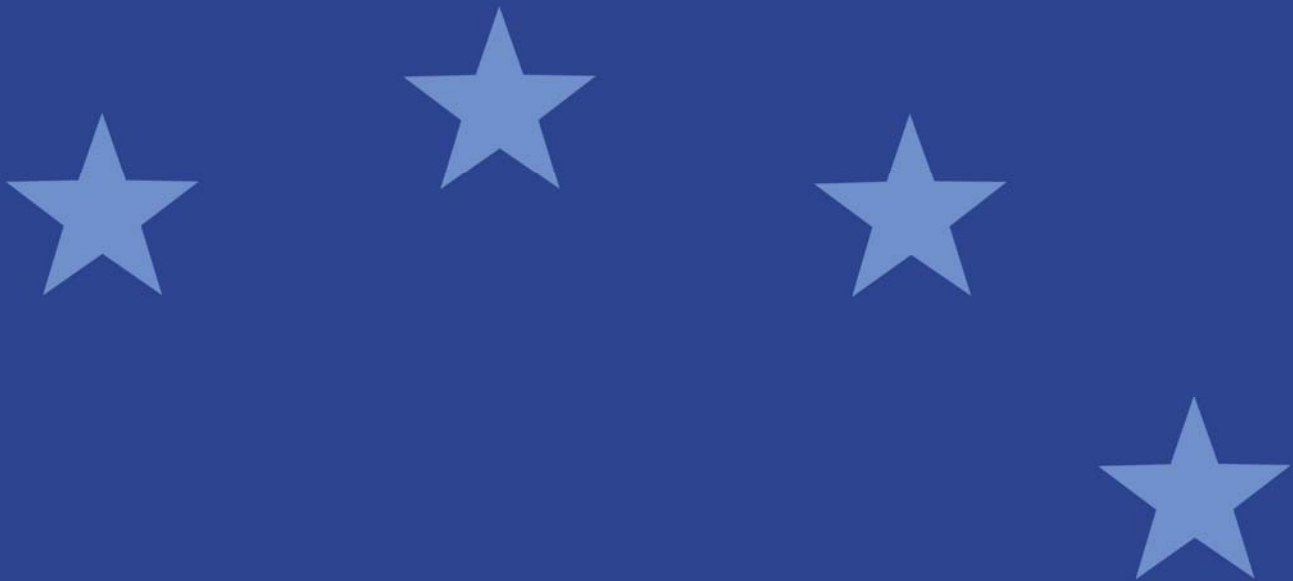




European Securities and
Markets Authority

Reply form for the Consultation Paper on MiFID II / MiFIR





<ESMA_QUESTION_CP_MIFID_84>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_84>

Q85. Do you agree with ESMA's proposal with regard to the exemptions from transparency requirements in respect of transactions executed by a member of the ESCB? Please provide reasons for your answer.

<ESMA_QUESTION_CP_MIFID_85>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_85>

Q86. Do you agree with the articles on the double volume cap mechanism in the proposed draft RTS 10? Please provide reasons to support your answer.

<ESMA_QUESTION_CP_MIFID_86>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_86>

Q87. Do you agree with the proposed draft RTS in respect of implementing Article 22 MiFIR? Please provide reasons to support your answer.

<ESMA_QUESTION_CP_MIFID_87>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_87>

Q88. Are there any other criteria that ESMA should take into account when assessing whether there are sufficient third-party buying and selling interest in the class of derivatives or subset so that such a class of derivatives is considered sufficiently liquid to trade only on venues?

<ESMA_QUESTION_CP_MIFID_88>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_88>

Q89. Do you have any other comments on ESMA's proposed overall approach?

<ESMA_QUESTION_CP_MIFID_89>

ESMA notes in paragraph 20 of Section 3.11 of the December 2014 Consultation Paper that, in the context of subjecting an OTC derivative contract to the trading obligation, "if the only trading venue(s) on which the instrument trades are OTFs, ESMA should consider that the operators are able to determine and restrict access".

We do not believe that MiFID II permits, or should be read to permit, an OTF operator to "determine and restrict access" to the extent suggested above, especially in the case of OTC derivative contracts that are subject to the trading obligation. MiFID II Article 18(3) states that "Member States shall require that investment firms and market operators operating an MTF or an OTF establish, publish and maintain and implement transparent and non-discriminatory rules, based on objective criteria, governing access to their facilities". Any rules or criteria that explicitly or implicitly exclude an entire class or category of otherwise eligible market participants (e.g., criteria that effectively exclude all non-dealers) are by definition discriminatory and not objective.

The overarching concern that ESMA expresses in paragraph 20 is valid since the MiFID II trading obligation will require many more entities to trade through regulated trading venues than is currently the case. However, the solution should be to make more explicit and



rigorously enforce MiFID II's requirement to provide non-discriminatory access to trading venues.

MiFID II requires all EU trading venues to have in place transparent and non-discriminatory rules, based on objective criteria, governing access to their facilities. This requirement is essential to realizing the G-20 objective of promoting transparency, efficiency and competition in the OTC derivatives markets. By contrast, the OTC derivatives markets have historically operated as a “two-tier” market, where:

- a select group of dealers transact with each other on exclusive “dealer-only” trading platforms, commonly referred to as the “inter-dealer” or “D2D” market;
- such inter-dealer trading platforms deny access to all non-dealer market participants, including customers (e.g., corporations, investment funds, insurance companies); and
- customers can only trade with that select group of dealers, either bilaterally or on a limited number of “dealer-to-customer” or “D2C” trading platforms.

The “two-tier” market is opaque, inefficient and harms customers by fragmenting liquidity, creating barriers to entry, limiting competition, hindering access to best execution, and concentrating risk among a handful of incumbent dealers. The non-discriminatory access provisions of MiFID II are intended to correct these conditions and foster the development of a more open, transparent and competitive market structure to replace the “two-tier” market. Furthermore, the introduction of central clearing with straight-through-processing eliminates any historical pretext for restricting who can trade with whom by removing bilateral counterparty credit risk.

However, to realize this goal, further explicit regulatory action on non-discriminatory access is needed. In the U.S., despite parallel statutory requirements for “impartial access” to trading venues for OTC derivatives, explicit and implicit barriers continue to deny customers access to historically inter-dealer trading venues and perpetuate a “two-tier” market. ESMA should take action to ensure that this does not occur in EU markets.

<ESMA_QUESTION_CP_MIFID_89>

Q90. Do you agree with the proposed draft RTS in relation to the criteria for determining whether derivatives have a direct, substantial and foreseeable effect within the EU?

<ESMA_QUESTION_CP_MIFID_90>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_90>

Q91. Should the scope of the draft RTS be expanded to contracts involving European branches of non-EU non-financial counterparties?

<ESMA_QUESTION_CP_MIFID_91>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_91>

Q92. Please indicate what are the main costs and benefits that you envisage in implementing of the proposal.

6. Requirements applying on and to trading venues

Q160. Do you agree with the attached draft technical standard on admission to trading?

<ESMA_QUESTION_CP_MIFID_160>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_160>

Q161. In particular, do you agree with the arrangements proposed by ESMA for verifying compliance by issuers with obligations under Union law?

<ESMA_QUESTION_CP_MIFID_161>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_161>

Q162. Do you agree with the arrangements proposed by ESMA for facilitating access to information published under Union law for members and participants of a regulated market?

<ESMA_QUESTION_CP_MIFID_162>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_162>

Q163. Do you agree with the proposed RTS? What and how should it be changed?

<ESMA_QUESTION_CP_MIFID_163>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_163>

Q164. Do you agree with the approach of providing an exhaustive list of details that the MTF/OTF should fulfil?

<ESMA_QUESTION_CP_MIFID_164>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_164>

Q165. Do you agree with the proposed list? Are there any other factors that should be considered?

<ESMA_QUESTION_CP_MIFID_165>

We strongly support the proposed requirement set out in draft RTS 27 Article 2 for MTFs and OTFs to submit information on their “rules and procedures to ensure the objective and non-discriminatory access to the facility” to national competent authorities. It is vital that national competent authorities scrutinize this information to ensure that the rules, policies and procedures of MTFs and OTFs adhere to the principle of non-discrimination set out in MiFID II Article 18(3), which requires that operators of MTFs and OTFs must establish, publish, maintain and implement transparent and non-discriminatory rules, based on objective criteria, governing access to their facilities. Any rules or criteria that explicitly or implicitly exclude an entire class or category of otherwise eligible market participants (e.g., criteria that effectively exclude all non-dealers) are by definition discriminatory and not objective.

Consistent enforcement of the non-discriminatory access standards by national competent authorities is essential to realizing the G-20 objective of promoting transparency, efficiency



and competition in the OTC derivatives markets. By contrast, the OTC derivatives markets have historically operated as a “two-tier” market, where:

- a select group of dealers transact with each other on exclusive “dealer-only” trading platforms, commonly referred to as the “inter-dealer” or “D2D” market;
- such inter-dealer trading platforms deny access to all non-dealer market participants, including customers (e.g., investment funds, insurance companies, corporations); and
- customers can only trade with that select group of dealers, either bilaterally or on a limited number of “dealer-to-customer” or “D2C” trading platforms.

The “two-tier” market is opaque, inefficient and harms customers by fragmenting liquidity, creating barriers to entry, limiting competition, hindering access to best execution, and concentrating risk among a handful of incumbent dealers. The non-discriminatory access provisions of MiFID II are intended to correct these conditions and foster the development of a more open, transparent and competitive market structure to replace the “two-tier” market. Furthermore, the introduction of central clearing with straight-through-processing eliminates any historical pretext for restricting who can trade with who by removing bilateral counterparty credit risk.

However, to realize this goal, further explicit regulatory action on non-discriminatory access is needed. In the U.S., despite parallel statutory requirements for “impartial access” to trading venues for OTC derivatives, explicit and implicit barriers continue to deny customers access to historically inter-dealer trading venues and perpetuate a “two-tier” market. ESMA should take action to ensure that this does not occur in EU markets.

<ESMA_QUESTION_CP_MIFID_165>

Q166. Do you think that there should be one standard format to provide the information to the competent authority? Do you agree with the proposed format?

<ESMA_QUESTION_CP_MIFID_166>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_166>

Q167. Do you think that there should be one standard format to notify to ESMA the authorisation of an investment firm or market operator as an MTF or an OTF? Do you agree with the proposed format?

<ESMA_QUESTION_CP_MIFID_167>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CP_MIFID_167>