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

Date: 4 February 2020

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 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 must 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	Deutsche Börse Group (DBG)
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	☐
Country/Region	Germany

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_CP_MIFID_EQT_1>

Deutsche Börse Group (DBG) appreciates the opportunity to respond to ESMA's consultation on its MiFID II/MiFIR review report on the transparency regime for equity and equity-like instruments, the double volume cap and the trading obligation for shares. We agree with ESMA's conclusion that two years after the implementation of MiFID II/MiFIR the framework has not delivered on its intended objectives to effectively limit trading in the dark and foster trading on lit multilateral trading venues in an attempt to improve the price formation process. Contrary to expectations, there has not been a significant change in the share of trading volume executed on-venue. Rather, a significant share of trading volume is still executed off-venue or under waivers, and hence is not subject to a sufficient level of transparency. We therefore welcome ESMA's proposals to simplify the current structure of European equity markets, level the playing field between different types of execution venues and to improve the overall transparency available to market participants.

Hence, DBG considers the proposals by ESMA very timely and valuable for contributing to the consultation on the MiFID II/MiFIR review recently launched by the European Commission. It is crucial that the review exercise is done with a view to ensure that the legislative framework becomes "fit for purpose" aiming at creating an efficient and high-quality ecosystem that fosters sustainable economic growth – notably in light of a new political and economic reality at the global level. Against this background, DBG would like to highlight that well-functioning equity markets are a prerequisite to a successful development of the Capital Markets Union given their key function to provide access to capital markets for companies and investors based on a robust and transparent price formation process, thereby limiting costs for end-investors and increasing capital allocation efficiencies.

Acknowledging the given structural features of European capital markets, **DBG suggests a simplified structure against the background of the MiFID II/MiFIR key principles** of promoting fair, efficient and transparent markets, enhancing integrity of price determination, ensuring appropriate levels of investor protection and abolishing any conflicts of interest due to market design. In order to achieve this, we propose five major amendments to the current framework (for details please see in particular our answer to question 6):

1) **Effectively limit dark trading by reducing the number of available waivers to mainly large in scale (LIS) – this includes the repeal of the double volume cap mechanism**: The main purpose of the waiver regime is to protect market participants from adverse market movements following the execution of large orders, thus, there seems to be little market impact by trading small orders. Hence, all standard orders below LIS should be subject to full transparency requirements to contribute to price formation.
2) **Modify the SI regime to trading only above LIS**: Although DBG acknowledges the need for bilateral trading we suggest restricting trading in SIs to trading above LIS in order to protect the price formation process and simplify the fragmented execution landscape. Above LIS trading would thereby constitute a legitimate dark space in which trades across bilateral execution venues and multilateral trading venues are not be subject to pre-trade transparency and would benefit from delayed post-trade transparency. Although ESMA has not specifically raised the question of a level playing field in its consultation paper, it is seeking feedback on this in its consultation on SIs in non-equity instruments, as does the European Commission in its consultation on the MiFID II/MiFIR

review. In this context, a modification of the SI regime as outlined above appears as the most pragmatic and effective way to address the existing shortcomings of the SI regime when it comes to inconsistent flagging of trades or the question of riskless principal trading being based on a bilateral relationship.

3) **Introduce a minimum transaction size for RFQ executions in ETFs** due to the significant shift of trading volumes in this asset class from lit order book trading systems to request-for-quote (RFQ) trading systems following the introduction of MiFID II/MiFIR. As RFQ trading systems provide less transparency given their nature of facilitating non-public requests an effective mitigating measure should be considered to ensure that lit order book trading can continue to play its pivotal role in enabling efficient and cost-effective access to ETFs for all types of investors.
4) **Modify the share trading obligation (STO) regarding its third country dimension, scope, exemptions and application to asset classes**: i) To address the third country impact by the current scope, the STO should apply to those shares with an ISIN starting with a country code corresponding to an EU27 Member State plus those starting with a non-EU country code but where the issuer has its primary (fully-fledged) listing within the EU27 while allowing for best execution principle for dual listings; ii) Moreover, the potential of a risk-sensitive, case-by-case based recognition regime for third country trading venues should be considered as foreseen in the review clause of the recently amended ESMA Regulation taking into account their effect on liquidity as well as the development of the Capital Markets Union; in this context the option to remove third country equivalent trading venues from the equation of the STO should also be evaluated on the basis that with a clear set of EU/non-EU shares, the equivalence is of limited relevance; iii) Exemptions should be removed where trades are "non-systematic, ad-hoc, irregular and infrequent", instead exemptions should only apply for those trades that do not contribute to price formation based on a clear and consistent list of qualifying non-price forming trades; and iv) The scope of the STO should be extended to ETFs in order to incentivise lit trading and investor protection in this growing asset class.
5) We call for ESMA and Competent Authorities to intensify their regulatory scrutiny as regards the implication of payment for order flow (PFOF) on market quality and investor protection and to conclude on a **common supervisory and regulatory approach towards PFOF**. This examination should comprise also the **option to outrightly ban these practices in order to achieve a level playing field in the EU.**

DBG would like to highlight that our responses are to be understood in relation to equity markets only, while we reserve any reflections on the transparency regime for non-equity markets for the distinct ESMA consultation.

DBG remains at the disposal of ESMA for any questions or further information.

<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>
DBG supports ESMA's proposal to reduce the number of available waivers to the LIS and OMF waivers and to repeal the NT and RP waivers entirely. **This would also imply the removal of the DVC mechanism** (please also see our answers to questions 16 to 24). The LIS waiver should be used as the main tool to delineate dark trading. In light of the analysis and conclusions in ESMA's consultation paper that a significant share of trading volume is executed off-venue or under a waiver and is therefore not subject to pre-trade transparency, DBG considers the reduction of waivers as the most efficient option to incentivise lit trading and to address concerns about the impact of dark trading on financial markets and the price formation process while contributing to a much-needed simplification of the current framework.

Therefore, DBG does not support ESMA's alternative proposal, i.e. to set minimum thresholds above which transactions under the RP and NT waivers would be allowed. As with any cap mechanism such as for example the DVC mechanism it has proven to be very complex and cumbersome and would not fix the issue to effectively improve transparency.

While it makes sense to maintain the OMF waiver as an order in an OMF facility ultimately becomes pre-trade transparent and therefore contributes to the price formation process, the main purpose of the waiver regime is to protect market participants from adverse market movements following the execution of large orders; thus, there seems to be little justification for trading small orders via the RP or NT waivers. Against this background, simplifying market structure by reducing waivers would not interfere with neither investor choice nor investor protection since different types of execution venues would still be available to execute orders – albeit they would have to be executed subject to pre-trade transparency requirements. Further, there are best execution requirements that all parties involved would still need to adhere to. For individual market participants it might make sense to continue executing on the capped markets until (and over) the very last minute to not disclose their trading interest. However, most important means to protecting counterparties in individual transactions is to guarantee and protect the overall integrity and transparency of the price formation process. Concretely, only if a large order is able to meet another large order unnecessary intra-day volatility will be avoided. In the absence of such a match, a waiver is justified. Smaller orders should, in contrast, trade in full transparency and create that signal, just as all other incoming orders should. However, the average trade size in dark venues is approximately 17k including LIS venues where the average trade size is above 800k, meaning the average trade size for the other waiver-based venues is very small; hence exemptions from full transparency are not justified (see Rosenblatt Securities, Let there be light: Monthly Dark Liquidity Tracker – European Edition, 16 December 2019). Whereas the LIS waiver provides investors with the flexibility needed to execute their orders in the dark when they need to be, whilst ensuring that price formation is not harmed.
That being said, we would like to refer to our answer to question 6 outlining our vision of how the future market structure should look like in order to foster transparency through an overall simplification of the waiver regime for equity instruments and what that implies for dark trading.
<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>
Yes, DBG **agrees with ESMA's proposal to increase the pre-trade LIS threshold for ETFs to EUR 5,000,000.** While this change would go in the right direction, we would however urge ESMA to complement this measure with additional steps to further promote transparency for on-venue trading of ETFs.

Please see our answer to questions 6 and 27 where we outline our vision of how the future market structure should look like and what that implies for ETFs.
<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>
No, as described in our response to question 1, **DBG strongly supports the proposal to remove the NT and RP waivers entirely; this implies the complete removal of the DVC mechanism**.

As regards the treatment of illiquid equity and equity-like instruments from a market structure perspective, please also see our answer to questions 6 and 14.
<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>
DBG supports ESMA's proposal to only allow orders that are large in scale (LIS) and orders in an order management facility (OMF) to be waived from pre-trade transparency, while to **remove the NT and RP waivers** as described in our answer to question 1**. Considering this answer, we agree that the combination of waivers shall not be possible between the remaining waivers, i.e. LIS and OFM waivers**, in order to strengthen lit trading through an overall simplification of the waiver regime for equity instruments.

DBG shares ESMA's conclusion in the consultation paper that waiver combinations are complex matters and might reduce the possibility of orders to be subject to pre-trade transparency requirements hence not in line with the spirit of MiFID II. Given that the number of waiver combinations applied for at ESMA was high it appears that these combinations are not an exception but rather the norm as ESMA pointed out; with the aim to circumvent pre-trade transparency requirements. DBG would not oppose a ban of waiver combinations as it would also be in line with ESMA's wish to simplify the current market structure design.
<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>
Yes, DBG agrees with the proposal to report the volumes under the different waivers separately to FITRS. This measure would bring more transparency allowing for better monitoring and understanding of the market structure in the EU.
<ESMA_QUESTION_CP_MIFID_EQT_5>

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>
As highlighted in our introductory remarks, **DBG believes there is another way to incentivise lit trading and to ensure the quality and robustness of the price determination mechanism for shares and other equity-like instruments, e.g. ETFs**. By answering this question DBG will **provide a view on the future market structure** as MiFID II / MiFIR – pointed out several times by ESMA in its consultation paper – has not delivered on its objectives to incentivise lit trading and to address concerns about the impact of dark trading on financial markets and the price formation process. Based on the following principles we like to propose changes to the current regulatory framework by re-balancing rights and obligations deriving from the given structural features and to simplify the overall structure.

Principle 1	Promote fair, efficient and transparent markets via harmonized regulation across EU financial markets in one single rulebook
Principle 2	Protect and enhance integrity of price determination to which the whole market contributes
Principle 3	Ensure appropriate levels of investor protection
Principle 4	Abolish any conflicts of interests caused/aggravated by market design

In a nutshell DBG proposes five major changes: The first one is to reduce the number of waivers to OMF and LIS in order to effectively limit dark trading which consequently leads to the removal of the DVC mechanism. The second one suggests fundamental modifications to the SI regime. The third one implies an introduction of minimum transaction size for RFQ executions. The fourth one affects the STO for which we propose a clarification on its scope, its exemptions and its application to asset classes. The last one suggests a ban on payment for order flow practices. The following table summarizes our proposed changes:

#	Topic	Proposal	Description
1	Dark trading	Waiver regime	▪ Removal of DVC mechanism ▪ Reduction of waivers to LIS and OMF only ▪ Ban of waiver combinations
2	SIs	Restrictions	▪ Restrictions to trading only above LIS
3	RFQ	Restrictions	▪ Introduction of minimum transaction size for RFQ executions
4	STO	Scope	▪ STO applies to all those shares with an ISIN starting with a country code corresponding to an EU27 Member State plus those starting with a non-EU country code but where the issuer has its primary (fully-fledged) listing within the EU27 ▪ Application of best execution principle for dual listings ▪ Consider the potential of a recognition regime for third country trading venues based on a risk-sensitive and case-by-case assessment and evaluate the option to remove the third country equivalent venues from the equation of the STO
		Exemptions	▪ Remove exemptions where trades are “non-systematic, ad-hoc, irregular and infrequent” and accept exemptions only for those trades that do not contribute to price formation ▪ Potential review of list provided on Level 2 specifying the characteristic of those transactions in shares that do not contribute to the price discovery should only result in an exhaustive list of covered trades

		Asset classes	▪ Extension to ETFs
5	PFOF	Ban	▪ Evaluate options to outrightly ban payment for order flow (PFOF) practices in the EU

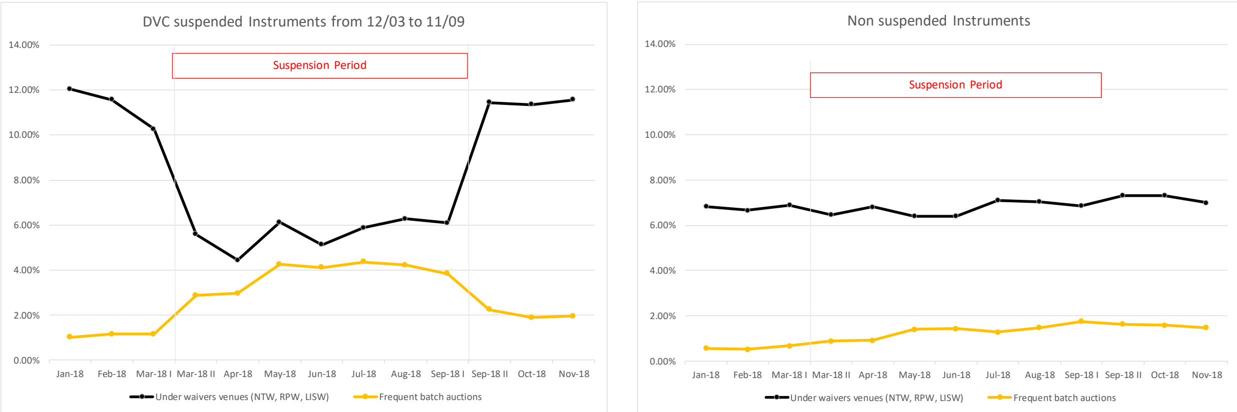
1. Limiting dark trading

Dark trading refers to trading without pre trade-transparency and is found on different execution venues under MiFID II/MiFIR. DBG's understanding is that pre-trade transparency waivers, let aside technical trades, protect the investors by avoiding signalling to the market information (information leakage) or moving prices (market impact). Concretely, only if a large order is able to meet another large order unnecessary intra-day volatility will be avoided. In the absence of such a match, a waiver is justified. Smaller orders should, in contrast, trade in full transparency and create signals, just as all other incoming orders should. However, the average trade size in dark venues is approximately 17k including LIS venues where the average trade size is above 800k, meaning the average trade size for the other waiver-based venues is very small, hence exemptions from full transparency are not justified (Rosenblatt Securities, Let there be light: Monthly Dark Liquidity Tracker – European Edition, 16 December 2019). The LIS waiver is available for orders to be executed in the dark: It provides investors with the flexibility needed to execute their orders in the dark when they need to be, whilst ensuring that price formation is not harmed.

In consequence, DBG believes that only large orders may be exempt from pre-trade transparency requirements. Pre-trade transparency leads to a more efficient price formation process by distributing price signals more rapidly to the market. Hence, all standard orders that are below LIS compared to the normal market size, and for which the necessary liquidity is available on a trading venue, should be subject to full transparency requirements. Therefore, DBG supports ESMA's view on **repealing the NT and RP waivers and consequently the DVC mechanism** (see also our answers to questions 1 and 16).

Regulators did attempt to limit the amount of dark trading with the DVC mechanism targeting the RP and the NT waivers and avoiding this way to deteriorate the price discovery process. It did however result into a cumbersome process without any improved transparency, market liquidity nor price efficiency. Rather, volumes turned to quasi-dark trading mechanisms, being re-routed to SIs or other alternative execution venues like frequent batch auctions (FBAs) and thereby further fragmenting equity markets. When ESMA published the first DVC data in March 2018, 44 instruments of the DAX, MDAX and SDAX were banned from trading for six months as they breached the caps. As observed on Xetra, trading on FBAs increased from 1.15% to 4.3% between February and May 2018 for instruments banned for those instruments (see Figure 1). At the same time, for all other instruments still traded on dark venues, the market share of FBAs increased more modestly from 0.52% to 1.41% on the same period. Those results were confirmed by the analysis conducted by Rosenblatt Securities who observed a "seesaw effect" with an immediate shift back to dark pools in September once the ban was lifted. In banned stocks, dark pools traded 2.16% of the volume in August 2018, reverting to 5.13% in the month after the caps were lifted. In the same time, periodic auctions on banned stocks dropped from 2.16% to 1.17% (Rosenblatt Securities Inc., MiFID II dark caps: no light at the end of the tunnel, Trading Talk Market Structure Analysis, 19 November 2018).

Figure 1: Development of trading on frequent batch auctions and on dark venues under MiFID II waivers for constituents of DAX, MDAX and SDAX indices between January 2018 and November 2018 – suspended instruments versus non suspended instruments



Finally, we would like to point out that DBG supports ESMA's conclusion in the consultation paper that waiver combinations are complex matters and might reduce the possibility of orders to be subject to pre-trade transparency requirements; hence they are not in line with the spirit of MIFID II/MiFIR. Given that the number of waiver combinations applied for at ESMA was high, it appears that these combinations are not an exception but rather the norm as ESMA pointed out; hence they are being used to circumvent pre-trade transparency requirements. Therefore, **DBG supports a ban of waiver combinations** in order to reduce complexity and to establish a less complex framework.

Summary: DBG recommends repealing articles 4(1)(a) and (b) and 5 of MiFIR to incentivise lit trading by effectively limiting dark trading.

<u>2. Modifications to SI regime</u>

The second – fundamental – change DBG would like to propose relates to the SI regime. As described in the ESMA consultation paper the market share of SIs has grown from 15% to 25% in the first nine months of application of the SI regime under the new MiFID II/MiFIR rules resulting in a drop in lit book market share with detrimental effects on price formation as the majority of trades in the SI regime are not subject to pre-trade transparency requirements. Although DBG acknowledges the need for bilateral trading we suggest **restricting trading in SIs to LIS only in order to protect the price formation process. The restriction should apply to all equity and equity-like instruments such as ETFs.**

From a DBG perspective trading sub-LIS should only be allowed under the full pre-trade transparency scope. This is in line with our proposal to repeal the NT and RP waivers for trading venues, and hence abolishing the DVC mechanism (see also our answers to questions 1 and 16 and above). And while no waivers exist for SIs, and pre-trade transparency requirements are not comparable to those of trading venues we question why sub-LIS trades should take place on SIs at all if they can be traded on a trading venue under the full transparency scope. Such a measure will foster the robustness of lit order book systems which is essential for groups of investors that have no access to SIs. So, from an investor protection point of view we believe such a restriction is highly beneficial. We do not share the view that the simplification of the market structure would interfere with investors' choice where to execute transactions as different types of execution venues are still available albeit subject to transparency requirements fundamentally different to the existing set-up. Of course, it makes sense for an individual to continue executing on less transparent markets until there is no possibility. However, this leads to a classic economic problem: the private gain of a market participant not sticking to the agreement will always be greater than the common loss. Unfortunately, the common loss is at the expense of liquidity on public markets and thereby threatening the price formation process.

Our proposal implies that the pre-trade transparency requirements will no longer apply for SIs as SIs will only be allowed to trade above LIS with no restrictions apart from fulfilling post-trade transparency requirements. The concept of SMS would be obsolete. Our proposal also fits into the overall aim to reduce complexity by providing a much simpler market structure. Last but not least, such an approach appears as the most pragmatic and effective way to address the existing failures of the SI regime.

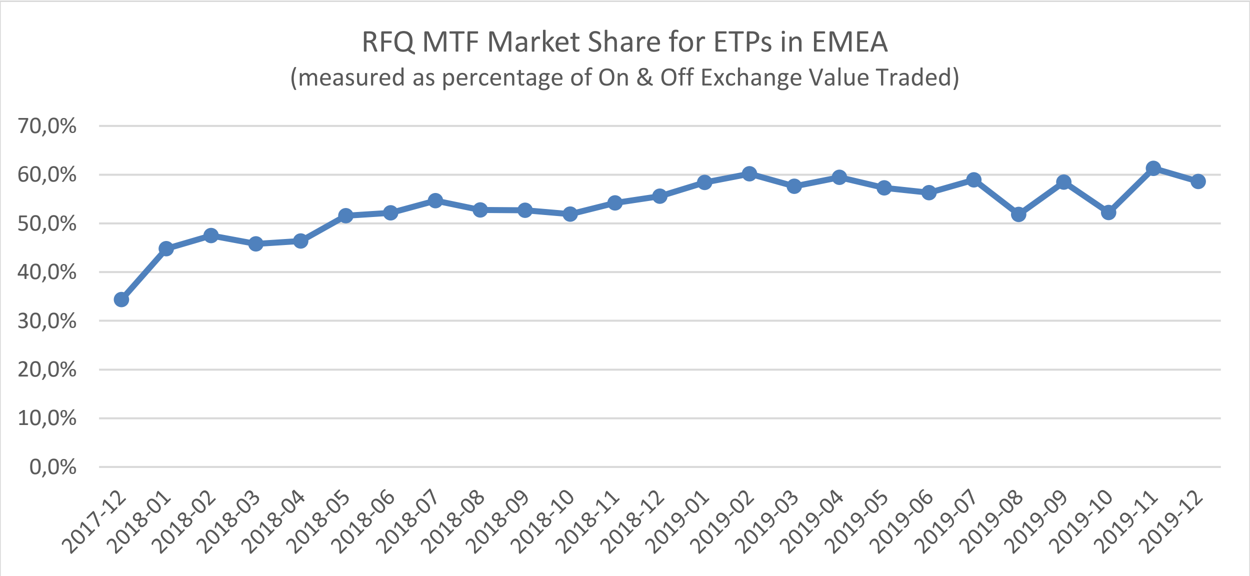
Summary: DBG recommends modifications to articles 14 to 21 of MiFIR by restricting trading in SIs to LIS only in order to incentivise lit trading.

3. Modifications to RFQ systems

With regard to the overall evolution of ETF trading, DBG agrees with ESMA's finding that there has been a strong increase in SI trading of ETFs.

However, we would also like to draw ESMA's attention to another development within the category of European on-venue trading, which has not been further explored in the consultation paper. According to data published by Flow Traders (Sources: https://www.flowtraders.com/system/files/press/2020/01/c8c4b757-b0d1-4cda-9132-c5169f320bcc.pdf; https://www.flowtraders.com/system/files/press/2019/01/877225.pdf) there has been a significant shift of trading volumes in ETFs from lit order book trading systems to request-for-quote (RFQ) trading systems following the introduction of MiFID II/MiFIR. Specifically, market value traded on EMEA RFQ MTFs in ETPs increased from 34 billion EUR in December 2017 to 60 billion EUR in December 2018 and to 75 billion EUR in December 2019. Correspondingly, the market share of value traded on EMEA RFQ MTFs in ETPs increased from 34.3% in December 2017 to 55.6% in December 2018 and to 58.6% in December 2019 (see Figure 2).

Figure 2: RFQ MTF Market Share for ETPs in EMEA



This development is worrisome as RFQ trading systems provide less transparency than lit order book trading systems due to their very nature of facilitating non-public requests. Since RFQ trading systems provide investors with actionable ETF price information only on request rather than on a continuous basis, their transparency level is significantly lower than that of lit order book trading systems which continuously provide investors with actionable price information. Specifically, the publication of quotes does not take place continuously whenever quote updates are received by the RFQ trading system, but only for a brief instant in the form of a snapshot of the most recent quote update from each quote respondent before a transaction is concluded. Furthermore, this quote snapshot may not be published if the requester does not accept a quote response. As a consequence, we believe that transparency in European ETF trading has actually suffered from this shift in volumes following the introduction of MiFID II. To improve transparency in European ETF trading and to level the playing field between RFQ trading systems and lit order book trading systems, **ESMA may consider implementing a pre-trade transparency regime for RFQ trading systems similar to that for lit order book trading systems.** This would require the publication and dissemination of each quote submitted in response to a sub-LIS RFQ immediately after the reception of the quote by the RFQ trading system.

While the decline in transparency presents an issue in itself, we also believe that this development may have a detrimental impact on the accessibility and liquidity of the overall ETF market in the long term. From our perspective, RFQ systems primarily add value when it comes to facilitating the execution of large block orders in ETFs. However, as RFQ systems become more widely adopted even for very small ETF transaction sizes, the liquidity and price quality provided on lit order book systems may decrease as a consequence of the declining demand for this type of trading system. While this would have a negative impact on all types of investors, we believe that retail investors would likely suffer the most from this development as alternative trading systems such as RFQ systems are typically not readily accessible to this investor group. Hence, robust lit order book systems are essential for retail investors to access and trade ETFs in an effective way.

We would therefore suggest that ESMA further investigates the liquidity shift from lit order book trading to RFQ trading and to assess its potential long-term impact on ETF market structure. We would also ask ESMA to identify potential mitigating measures if this trend is perceived to be not compliant with ESMA's objective to ensure the quality and robustness of the ETF price determination mechanism for all types of investors. From our perspective, introducing a **minimum transaction size for RFQ executions could serve as an effective mitigating measure to ensure that lit order book trading can continue to play its pivotal role in enabling efficient and cost-effective access to ETFs for all types of investors. Such a minimum transaction size could be based on the LIS threshold for ETFs**.

Summary: DBG recommends making modifications to RTS 1 by introducing minimum transaction sizes for RFQ systems in order to foster lit order book trading in ETFs.

4. Modifications to STO

DBG believes it is important to review the STO not only as a result of the scope determination and third country impact but also regarding its exemptions and application to other asset classes.

a) Scope of the STO

The STO has occurred to become a complex matter. As a matter of fact, the political fallout between Switzerland and the EU led to the halt in trading in Swiss shares on EU trading venues: the Swiss equivalence regime does not allow investment firms in both the EU and Switzerland to access key trading venues on a cross-border basis if not recognised as equivalent. The case of Switzerland proves that there is a real risk in the absence of equivalence decisions or if the EU does not grant nor extend equivalence. Similarly, Brexit exposes a situation where firms that depend on the maintenance of equivalence decisions to facilitate access to their respective jurisdictions' trading venues are forced to rely on a framework that is potentially unstable and liable to sudden disruption. Although ESMA revised its statement from March 2019 in May 2019 as regards the determination criteria for the scope of the STO to further mitigate potential adverse effects of the application of the STO, the construct of the STO is still flawed.

DBG agrees with ESMA's view that the **ISIN is an easy identifier** to determine which shares will be in the scope of the STO but proposes to **include in addition all those shares with a country code not corresponding to an EU27 Member State if the issuer has its primary (fully-fledged) listing in an EU member state**. This would prevent that the STO cannot be circumvented by simply applying for an ISIN starting with a non-EU country code. A list of all those shares should be published and updated by ESMA periodically. Furthermore, we propose that in case a fully-fledged listing takes place simultaneously in an EU and non-EU country (**dual listing**, secondary listings are out of scope – included in STO where the ISIN is an EU ISIN) **best execution principles apply**. We believe that a Level 3 clarification would help defining the coverage of the STO. We would however insist that in the case of transactions executed on third country venues by EU investment firms in instruments subject to the STO, trade reporting would still take place on an APA.

Furthermore, for further developing European capital markets and their attractiveness for investment flows in a global setting, **any equivalence decision should be based on a risk-sensitive and case-by-case assessment**. As foreseen in article 81 (2b) of the recently amended ESMA-R following the ESA Review, the European Commission might want to consider the potential of a recognition regime for third country trading venues based on their systemic importance taking into account the effect on liquidity in EU shares, best execution for EU clients, access barriers and economic benefits for EU counterparties to trade globally as well as the development of the Capital Markets Union. ESMA should also evaluate the option to entirely remove third country equivalent trading venues from the equation of the STO on the basis that with a clear set of EU/non-EU shares, the equivalence is of limited relevance.

> Summary: DBG recommends modifications via questions and answer (Level 3) for the scope determination of the STO to address the third country impact. Furthermore, not only should any equivalence decision be based on a risk-sensitive and case-by case assessment but also should the option to remove the third country equivalent venues from the equation of the STO be evaluated.

b) Exemptions to the STO

As per article 23 of MiFIR an investment firm is not obliged to trade shares on a trading venue, SI or third-country equivalent trading venue if the trade (a) is non-systematic, ad-hoc, irregular and infrequent, or (b) […] does not contribute to the price discovery process. However, while the latter exemption has been further specified in article 2 of RTS1, it remains unclear what exactly is meant by the terms "non-systematic, ad-hoc, irregular and infrequent" questioning to allow for a proper application of the STO. Currently it seems that there is no obligation for investment firms to justify the flow ex-ante. It seems that the non-applicability of the STO is only justified ex-post and that ESMA has no means of verifying if such trades are indeed non-systematic, ad-hoc, irregular and infrequent.

Although a definition of thresholds would be a solution to specify the trades subject to exemption (a), we question the need of such an exemption entirely. It is important to remember why the STO got introduced: the goal was to bring back trading to transparent markets and thereby effectively reducing the amount of OTC trading. We think an exemption is only justified when the trade takes place between eligible and/or professional counterparties and does not contribute to the price discovery process, but not if it is done on an irregular basis.

Therefore, we suggest modifying the Level 1 text by deleting "(a) are non-systematic, ad hoc, irregular and infrequent" and to focus only on "(b) […] where there is no contribution to the price discovery process" as this should be the only true exemption.

Note that although article 2 of RTS 1 specifies the characteristics of those transactions in shares that do not contribute to the price discovery process it seems that the list provided on Level 2 may need to be reviewed. Overall, we believe that any modifications should only be done via Level 2 by amending the current list of covered trades. The list should be clear and exhaustive in order to ensure that the STO will be applied in the same way by all market participants.

> Summary: DBG recommends modifications via article 23(1) of MiFIR and potentially via article 2 of RTS 1 to reduce exemptions for the STO to incentivise lit trading.

c) Application of asset classes

DBG would like to point out that article 23 of MiFIR is restricted to shares only. We believe that the scope should be extended to other equity-like instruments, in particular ETFs. Indeed, ETFs have reached an important standing in the last few years and according to their structure they allow investors a cost-effective access to capital markets. They cover a wide scope of industries, countries and asset classes. ETFs create liquid secondary markets and provide for investors to participate in the economic development. They are used for diversification of risks, liquidity management as well as for securities lending by market participants and issuers. All these aspects could be better monitored in a transparent market with clear rules and oversight. Therefore, we believe that an extension of the trading obligation to ETFs is the right step forward as it allows investors to take informed investment decisions and prevents negative effects from market fragmentation. As a result, this strengthens investor protection and efficiency in ETF trading.

Summary: DBG recommends including equity-like instruments into article 23 of MiFIR to the application for the STO in order to incentivise lit trading in the space of ETFs.

5. Payment for order flow (PFOF)

We have observed that PFOF schedules which were historically mainly applied in OTC markets have become an established feature of certain Regulated Markets. Please note that while a binding definition does not exist as of today, the UK FCA has described the commercial relationships between order flow providers, liquidity providers/market makers and exchanges in detail which may serve as a common point of reference for the consideration of the potential implications of PFOF schedules (https://www.fca.org.uk/publication/multi-firm-reviews/payment-for-order-flow-pfof.pdf).

These market developments have been ignited by the increase in market fragmentation as well as the proliferation of trade execution modes as stipulated by MiFID II/MiFIR. The trend was further spurred and enhanced by online brokers (order flow providers, OFP) which actively route free of charge their clients' order flows for execution exclusively to venues that facilitate PFOF schedules and receive a fee or commission from liquidity providers/market makers closely connected to these venues in return.

We are of the view that PFOF schedules warrant further supervisory scrutiny and potentially regulatory action. We consider it important to assess PFOF not only from the perspective of their compliance with best execution provisions and inducement rules but also from a market structural perspective. Only combining both dimensions allows to get a comprehensive view on the economic prerequisites enshrined in the respective exchange rules that facilitate PFOF.

Online brokers/order flow providers are exposed to a serious conflict of interest. Where they receive payments in exchange for the submission of order flow, this undermines their incentives and ability to act on behalf and in the best interest of their clients.

Further, from a retail investor's perspective it is worrisome that there is an inherent trend towards higher PFOF from larger market makers/liquidity providers to order flow providers which may impair competition and/or serve as entry barriers for new market participants. This may diminish choice for retail investors which we understand to be contradicting the MiFID II policy objectives in general and the best execution regime in particular.

PFOF schedules are geared towards maximizing returns of liquidity providers/market makers; importantly, client orders do not contribute to price formation in an exchange environment but are executed against quotes set by LP/MM (since client orders are declared by the exchange as all-or-none orders by default). With links between brokers and liquidity providers which are closely associated with an exchange and formalized in the exchange rules, investors are systematically stripped off the possibility to contribute to the price formation process by interacting in a multilateral fashion with other orders in the order book of the respective exchange to which the orders are submitted by the broker. Investors may only be able to accept the price offered by the market maker. Since such trading models are designed to maximize the profit of the respective market maker orders from investors are in general not displayed to the market. This design of a trading model is not compatible with the legal definition of an RM/MTF but to be qualified as purely bilateral execution. Furthermore, retail client orders getting steered to these trading venues are not able to provide visible liquidity to an exchange's order book which negatively impairs the spread (particularly for less liquid instruments). From an overall market perspective these models combined with payment for order flow lead to an extensive steering of order flow by the order flow providers and an exclusion of regular multilateral trading venues in their offerings.

Against this background, we call for ESMA and Competent Authorities to intensify their regulatory scrutiny as regards the implication of PFOF on market quality and investor protection and to conclude on a common

supervisory and regulatory approach towards PFOF. This examination should comprise also the option to outrightly ban these practices in order to achieve a level-playing field within the EU.
<ESMA_QUESTION_CP_MIFID_EQT_6>

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>
DBG supports ESMA's Option 1, i.e. to use the average daily number of transactions and the average daily turnover in order to determine if an instrument is liquid or not.

While we would caution against looking at market capitalisation as a parameter since this would introduce undue complexity, DBG agrees that free float is indeed a difficult criterion as the information is in practice not easily available for EU firms, and it is difficult to obtain such information for non-EU firms. DBG also agrees with ESMA's view to skip the requirement that a financial instrument must be traded on a daily basis as indeed there might be incidents (e.g. suspension of trading) where that particular stock is not traded on a daily basis but is actually liquid. Therefore, DBG supports a Level 1 change by amending article 2(1) (17) (b) of MiFIR. This would also be in line with our recommendations for ETFs and DRs (please see our answer to question 8) to have a consistent approach.
<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>
DBG agrees with the approach for ETFs and DRs to assess liquidity using only the average daily number of transactions and the average daily turnover. This is in line with our approach for shares (please see our answer to question 7).
<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>
DBG disagrees with ESMA's proposal to remove certificates from the equity-like transparency scope. This would be a step back as the intention of MiFID II was to extend the transparency regime to a wide set of asset classes. Indeed, DBG cannot deny that the identification of instruments is not simple, but the removal of those instruments would be the wrong signal to the market. Therefore, **a more precise definition and clarification on what certificates constitute would be most helpful**. We also believe that the criteria of average daily number of transactions and the average daily turnover are the most suitable criteria and in line with criteria for other equity instruments and should therefore be maintained (see our answers to questions 7 and 8).
<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>
Unfortunately, there is no definition of what is meant by “other equity financial instruments”. **DBG would find it useful to have a clarification** on this before making any judgement if these instruments should be deemed illiquid by default.
<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. Please explain.

<ESMA_QUESTION_CP_MIFID_EQT_11>
Yes, in its response to the ESMA Call for Evidence on periodic auctions in 2019, **DBG agrees with ESMA in correctly distinguishing between conventional periodic auctions and frequent batch auctions**. DBG had received positively some aspects of the Final Report published by ESMA following the Call for Evidence as well as its Opinion on frequent batch auctions (FBAs).

Trading venues operating auctions for a variety of purposes is nothing new, on the contrary, auctions are widely used to orderly open and close trading sessions and many venues also organise intra-day auctions. FBAs however differ from such traditional auctions in several ways: Firstly, by their purpose of offering a trading alternative for instruments suspended under the DVC, a correlation presented by ESMA in its final report on FBAs (ESMA70-156-1035). Secondly, facilitating the purpose as described before, by their main characteristics of a very short call phase (milliseconds), the price referencing (price referencing to the most relevant market in terms of liquidity, price collars) and the low level of pre-trade transparency (various levels of transparency with potentially extremely short book visibility - milliseconds). The fundamental differences between FBAs and traditional auctions in both purpose and design make it necessary to distinguish FBAs from conventional periodic auctions. We therefore agree in separating the definition of conventional periodic auctions and FBAs.

Regarding the information to be made public, “ESMA suggests that all orders (volume and price) submitted to FBAs should be disclosed to meet the MiFIR pre-trade transparency requirements.” DBG would need more information on the exact requirements suggested by ESMA as it is unclear whether ESMA would want to align the pre-trade transparency requirements for FBAs with those applying to “continuous auction order book trading system” or define new specific requirements. We do believe that FBAs shall be considered as distinct trading models and would welcome the introduction of a new category in RTS 1 with specific description and adequate requirements for pre-trade and post-trade transparency related to FBAs.

Regarding the information to be disclosed, we are in favour of more transparency and the disclosure of the relevant information related to the orders submitted to FBAs. In that sense we are of the opinion that the executable volume for the indicative auction price together with the side of the surplus and the volume of the surplus would be meeting current MiFIR requirements. Please note that the information available remains of limited relevance provided that for most venues the price will either be midpoint or within the best bid and offer on the primary market or own definition of EBBO, resulting in limited or no contribution to price formation.
<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>

Consistently with supporting repealing the negotiated trade waiver and the reference price waiver (see our answer to question 1), **DBG understands that trading models allowing for non-price forming transactions and insufficient level of pre-trade transparency would not be allowed anymore or shall operate under one of the remaining pre-trade transparency waivers under MiFID II, namely LIS and OMF waivers**.

As per article 4 of MiFIR, systems that formalise selected negotiated transactions and systems matching orders based on a reference price can be waived from pre trade transparency requirements. Avoiding pre-trade transparency requirements can be seen as a benefit or a consequence of concluding transactions which are not price forming (like price referencing to the midpoint of the primary market). With trading models like FBAs operating under different and rather limited degrees of transparency, combined with the lack of price formation from most, DBG agrees with ESMA that **trading models allowing for non-price forming transactions and limited pre-trade transparency should operate under a pre-trade transparency waiver**.

DBG understands that some venues running FBAs have a majority of clients using orders pegged at the midpoint of the reference market and, consequently see a lot of midpoint executions – considering that midpoint is compliant with MiFID II tick size regime. This set-up resembles a venue operating under price referencing. Moreover, given the current set-ups, FBAs are allowing for limited price formation when limit orders are used and an equilibrium price is determined for the maximised volume, within a price corridor generally based on best bid and best offers on other trading venues (primary markets). However, the price band limitations of FBAs still result in similar execution as referenced price transactions that are subject to the double volume cap (one to two ticks only for liquid instruments). Because under the current MiFID II/MiFIR rules, transactions executed at midpoint on trading venues are normally hosted under the reference price waiver and because price corridors are themselves pegged on prices on primary market, we consider that relevant FBAs shall operate under a pre-trade transparency waiver.

ESMA refers to price forming systems and suggests specifying a definition and characteristics of such systems. DBG observes that there is currently a reference to non-price forming transactions in article 4 of MiFIR and table 4 of annex 1 of RTS 1, however no definition of a price forming system per se. In the interest of consistency and simplicity, we would strongly advise to potentially review the list provided in article 13 of RTS 1 but to stick to the set-up of the most comprehensive list. **Defining a list of non-price forming transactions would also prove more effective than a definition of non-price forming/price forming models** as it would avoid potential loopholes. For instance, when ESMA mentions in its Opinion on FBAs and the DVC mechanism (ESMA 70-156-1355) that “systems that allow only for the submission of pegged orders and/or ‘adjusted limit orders’ […] may be eligible for a waiver from pre trade transparency”, de facto any system where the pegging is optional would be excluded from this category, even if 99% of submitted orders are pegged.

Accordingly, we would urge ESMA to clarify the difference between “transactions not contributing to the price discovery” and “non price forming transactions” and would also ask for a review of article 2 of RTS 1 in particular in the case of a repeal of the negotiated trade waiver (as article 6 of RTS 1 would become irrelevant).
<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>
DBG supports ESMA’s option 2, i.e. to increase the minimum quoting size to 100% of SMS via a Level 1 change in article 14(3) of MiFIR. We agree with ESMA’s conclusion in the consultation paper that enhancements to the SI regime are necessary in order to increase transparency as well as price formation and promote a level playing field between trading venues and SIs. The current minimum quoting size of 10% of the SMS is too low to fulfil these objectives outlined by ESMA. Compared to MiFID I the current threshold only increased by 250 EUR to 1,000 EUR, which effectively is meaningless to increase

transparency and even provides SIs with a competitive advantage. While Option 1 would bring some improvement, it would still be too low for effective mitigation. The Option 2 which would require SIs to quote 10,000 EUR on each side appears more appropriate.

That being said, we would like to refer to our answer to question 6 where we outline our vision of how the future market structure should look like in order to design a simplified market structure and foster transparency, and what that implies for SIs. If SI activity is restricted to trading above LIS only, an extension of the minimum quoting size for SIs becomes obsolete as pre-trade transparency requirements will no longer apply for SIs.
<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>
DBG does not see any reason why these transparency requirements should not be extended to illiquid instruments. DBG agrees with ESMA's conclusion in the consultation paper that an extension of the transparency obligation for SIs to illiquid instruments would be an effective way to improve market transparency and level the playing field between on-venue and SI trading given that SIs currently benefit from a competitive advantage as most of trading is still not subject to any pre-trade transparency requirements. Illiquid instruments are in scope for pre-trade transparency for all trading venues unless a waiver from pre-trade transparency is used. However as explained in question 1, DBG supports ESMA's view to remove the pre-trade transparency waivers except for LIS and OMF. DBG is not of the view that such new requirements would be overly burdensome for SIs rather they would effectively foster lit trading and overall transparency. Consequently, DBG therefore supports a Level 1 change in article 14 (1) of MiFIR to include all instruments in a proportionate manner for which there is a liquid and no liquid market.

Although ESMA has not pointed it out specifically in its consultation paper on the transparency regime for equity instruments, it is seeking feedback on the level playing field between SIs and trading venues in its consultation on SIs in non-equity instruments. Given that also the European Commission raises the question of a level playing field between multilateral systems, we like to briefly touch on three additional aspects in this respect:

The first one concerns the importance of flagging SI trades at an EU level. Even more than two years after MiFID II got introduced the flagging is very unclear and inconsistent. One way to address this would also be a broader implementation of the Market Model Typology (MMT) which currently ensures consistency of exchange data. **We think that the extension of the MMT would promote enhancing data consistency and contribute to the increase of regulatory oversight of SI activity**.

The second one is about the operation of SIs. We believe that ESMA should **review how SIs operate** by looking more deeply into the transactions they conclude and report. The first issue results around **riskless trading**. Hubs that have the potential to link up **SIs and counterparties should be monitored to guarantee that they always work on a bilateral basis, and in case they do not but operate an internal matching system they must operate an MTF**. Such activities must be monitored as there is the risk that trading takes place on a multilateral rather than bilateral basis and hence would be in violation with the legislation.

The third one addresses the **registration process of an SI**. There does not seem to be any specific details of the operation of the business model required. This is in contrast with what MTFs and Regulated Markets or even DRSPs need to fulfil. Hence, we suggest establishing a level-playing field as regards the description of the business model and how regulatory compliance is maintained.

That being said, we would like to refer to our answer to question 6 where we outline our vision of how the future market structure should look like and how we view the SI regime. If SI activity is restricted to above LIS trading, an extension of pre-trade transparency obligations under the SI regime for illiquid instruments

becomes obsolete, while the mentioned shortcomings of the SI regime will be effectively and pragmatically addressed.
<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>
DBG supports ESMA's proposal to have different tables for liquid and illiquid instruments for shares, DRs, certificates and other financial instruments in order to have calibrated SMS for different ADT classes for each asset class (option 1). However, it is not clear to us how the numbers provided in tables 1 and 2 have been determined. Overall, we agree with increases in SMS thresholds as this fosters transparency. We also understand from page 38 of the ESMA consultation paper that where the ADT is above or equal to 1m EUR and the ADNTE is above or equal to 20 a share is considered liquid (liquidity option 1). Hence this explains that there are no values below this threshold in table 2 of page 53 and hence have n/a. However, for depository receipts we believe one value for SMS is missing in the category of ADT above 500k EUR and below 1,000k EUR as the figures on page 44 determine that a DR is liquid if the ADT is above or equal to 500k EUR and has an ADNTE above or equal to 10.

For ETFs, DBG would suggest applying the SMS for liquid instruments (table 2) also to illiquid instruments. The rationale for this proposal is that the liquidity of an ETF is primarily determined by the liquidity of the underlying market rather than the ADT of an ETF. Correspondingly, ETFs tracking similar underlying markets typically demonstrate similar liquidity profiles in terms of average spreads. Hence, both liquid and illiquid ETFs should be subject to the same SMS. Therefore, the table needs to be populated accordingly with appropriate SMS figures for the ADT classes below 500k EUR.

That being said, we would like to refer to our answer to question 6 where we outline our vision of how the future market structure should look like in order to design a simplified market structure and foster transparency, and what that implies for SIs and effectively happens to the SMS concept. If SI activity is restricted to trading above LIS only, an extension of the minimum quoting size for SIs for illiquid instruments becomes obsolete as pre-trade transparency requirements will no longer apply for SIs.
<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>
DBG does not support any of the options A to C as we support ESMA's proposal to limit the available waivers under the transparency regime to the LIS and OMF thus rendering the DVC mechanism obsolete (please also see our answer to question 1)**.**

We urge the need for consistency in repealing the DVC mechanism and repealing the NT and RP waivers. To repeal the DVC mechanism but keeping the NT and RP would be a step backwards. Hence DBG does not support Options A, B or C as these would neither improve the current situation (Option A – no change) nor effectively help to reduce dark trading (Option B and C - re-calibrating the current DVC thresholds). Therefore, we consider the deletion of article 5 MiFIR the most appropriate option to reduce the complexity introduced by the DVC mechanism and enhance transparency as well as amendment of article 4 of MiFIR on the different existing waivers.

That being said, we would like to refer to our answer to question 6 where we outline our vision of how the future market structure should look like and what that means for increasing transparency and effectively limiting dark trading against the background of a simplified market structure.
<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>
As explained in question 1 and 16, **DBG believes that the most effective way to limit dark trading is by removing NT and RP waivers which would make the DVC obsolete**.

That being said, we would like to refer to our answer to question 6 outlining our vision how lit trading shall be fostered and how dark trading shall be reduced.
<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>
Please see our answers to questions 1, 6 and 16 where DBG supports the view to remove the NT and RP waivers and ultimately the DVC mechanism. Hence the answer to this question is obsolete.
<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>
Please see our answers to questions 1, 6 and 16 where DBG supports ESMA's proposal to remove the NT and RP waivers and ultimately the DVC mechanism. Hence the answer to this question is obsolete.
<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>
<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>
Please see our answers to questions 1, 6 and 16 where DBG supports ESMA's proposal to remove the NT and RP waivers and ultimately the DVC mechanism. This proposal would not help fixing the main issue of currently limited transparency on equity markets.
<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>
Please see our answers to questions 1, 6 and 16 where DBG supports ESMA's proposal to remove the NT and RP waivers and ultimately the DVC mechanism. Hence the answer to this question is obsolete.
<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>
Please see our answers to questions 1, 6 and 16 where DBG supports ESMA's proposal to remove the NT and RP waivers and ultimately the DVC mechanism. Hence the answer to this question is obsolete.
<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>
Please see our answers to questions 1, 6 and 16 where DBG supports ESMA's proposal to remove the NT and RP waivers and ultimately the DVC mechanism. Hence the answer to this question is obsolete.
<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>
Yes, DBG would generally agree with the principle of deferral of publication for large transactions and would also not see any reason to amend the current conditions for deferred publications for shares and depository receipts. The analysis conducted by ESMA shows that only a very small portion of trades benefits from deferred publication, justified by their large size, meaning that the deferral regime as currently defined has delivered on its objectives to protect large trades while maintaining a high level of transparency. However, once taking into account the current debate on a real-time EU Consolidated Tape (CT), we still need to point out that delayed data will be stale data within a real-time tape, representing some risk to CT users, depending on the respective use cases of a real-time tape.

Furthermore, we of course agree with ESMA that there is still plenty of work to be done on the availability and quality of off-venue data.
<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>
Yes, DBG would generally agree with ESMA's proposal to increase the applicable deferred publication threshold for ETFs to align the proportion of deferred transactions more closely with the other types of equity instruments like shares and depository receipts **and request for real-time publication for transactions that are below 20,000,000 EUR.**

However, once taking into account the current debate on a real-time EU CT, we still need to point out that delayed data will be stale data within a real-time tape, representing some risk to CT users, depending on the respective use cases of a real-time tape.
<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>
Yes, DBG agrees with ESMA's conclusion of the level of post-trade transparency for OTC transactions and that there is no reason for different thresholds for OTC and on-venue transactions. Rather, we are of the view **that trading OTC does not mean that post-trade transparency shall be minimal.** In general, we believe that OTC transactions, hence in the case of shares, exemptions to the share trading obligation, shall reach the same level of quality in post-trade data; this appears as well necessary to monitor the correct application of article 23 of MiFIR and its exemptions.

In general we would like to refer our response to ESMA's consultation on its report on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments in 2019, in which we highlight the issues of data quality, consistency and availability of OTC and SI data due to diverging transparency and reporting requirements. For the corresponding debate around the establishment of a CT, it should be taken into account that data quality issues at the source need to be addressed before a functional tape could ever be created. It should be as well taken into account, that the deferred trades – even in case deferred in line with regulation – always results in spikes (outliers) in any real-time CT. Due to the fact that there is no real regulatory use case for a real-time CT we would therefore suggest starting with a Tape of Record.
<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>
Yes, DBG agrees with ESMA's proposal. As mentioned in our answer to question 27, **it is essential that exemptions to the share trading obligation are clearly identified and flagged.** Our response is consistent with our answer to questions 6 and 12 whereby we are requesting that all transactions identified as not contributing to the price discovery or non-price forming benefit from an individual flag in FITRS. Again, this would ensure proper application of the exemption possibilities to the share trading obligation. We do very much welcome the inclusion of OTC trades in the FITRS calculations for liquidity assessment, determination of the LIS and SMS thresholds but would exclude them from the determination of the tick size regime. Indeed, the latter is based on the selection of the most relevant market in terms of liquidity (MRMTL), stemming from the highest turnover in the EU. However only trading venues as per article 4 of RTS 1 can be selected as MRMTL; SIs, OTC and dark pools are excluded from the potential list of venues qualifying as MRMTL.
<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>

DBG is publishing information well under 1 minute after the relevant transaction, following article 6 of MiFIR requirement to publish “as close to real-time as is technically possible”. Therefore, we believe that a 1-minute is not sensible for electronic order book systems and fully support the ESMA Q&As from October 2017 that transactions should be published “as close to real time as technically possible” in such a case. Please note that in such cases the time stamps for trading venues and other execution venues should be aligned in RTS 1 / RTS 2. Currently, there is a difference to the detriment of trading venues (e.g. milliseconds vs. seconds). These differences have as well a detrimental effect on any data aggregation. However, we also understand that manual/high touch systems found it challenging to adjust to this 1-minute delay. Hence, **for electronic order book systems, DBG considers that the maximum timeframe to disclose post-trade data should be aligned with the ones of trading venues. We also believe that the maximum delay should be equal for all execution venues including SIs.**
<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>
Yes, **DBG agrees with ESMA on the importance of allowing for single publication of transactions concluded on a third country trading venue if the latter meets certain criteria**. We however do not have an opinion whether there is a need or not to amend Level 1 provisions for this specific purpose.
<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>
Yes, **DBG agrees with ESMA’s proposal that the scope of the share trading obligation (STO) needs to be adapted for the STO to be fully functional and deliver on its objectives. Thus, we welcome further work to clearly determine which shares are subject to the regime with a view to avoid undue complexity and address the STO’s extraterritorial impact.**

Indeed, the STO has occurred to become a complex matter regarding third-country shares. In general, as the current STO is currently defined, in the absence of an equivalence, shares traded on third country non-equivalent venues also admitted to trading in the EU would have to be traded in the EU by EU investment firms. These provisions would apply regardless of the liquidity of non-EU shares on EU markets, meaning that shares that are highly liquid on third country venues but for which liquidity on EU markets is low would also have to be traded in the EU.

As a matter of fact, the political fallout between Switzerland and the EU led to the halt in trading in Swiss shares on EU trading venues: the Swiss equivalence regime does not allow investment firms in both the EU and Switzerland to access key trading venues on a cross-border basis if not recognised as equivalent. The case of Switzerland proves that there is a real risk in the absence of equivalence decisions or if the EU does not grant nor extend equivalence. Similarly, Brexit exposes a situation where firms that depend on the maintenance of equivalence decisions to facilitate access to their respective jurisdictions’ trading venues are forced to rely on a framework that is potentially unstable and liable to sudden disruption.

Although ESMA revised its statement from March 2019 as regards the determination criteria for the scope of the STO to further mitigate potential adverse effects of the application of the STO, the construct of the STO is still flawed. Under the revised approach, ESMA suggests that all EU27 shares, i.e. ISINs starting with a country code corresponding to an EU27 Member State and, in addition, shares with an ISIN from

Iceland, Liechtenstein and Norway (all together EEA ISINs) are within the scope of the EU27 STO. (GB ISINs are outside the scope of the EU27 STO.)

We agree that the ISIN is an easy identifier to determine which shares will be in the scope of the STO but propose to include in addition all those shares with a country code not corresponding to an EU27 Member State if the issuer has its primary (fully-fledged) listing in an EU member state. This would prevent that the STO cannot be circumvented by simply applying for an ISIN starting with a non-EU country code. A list of all those shares should be published and updated by ESMA periodically. Furthermore, we propose that in case a fully-fledged listing takes place simultaneously in an EU and non-EU country (dual listing, secondary listings are out of scope – included in STO where the ISIN is an EU ISIN) the best execution principle applies. Effectively this would mean that the STO may not apply. We believe that a Level 3 clarification would help defining the coverage of the STO. We would also insist that in the case of transactions executed on third country venues by EU investment firms in instruments subject to the STO and dual listed, trade reporting would still take place on an APA.

Furthermore, for further developing European capital markets and their attractiveness for investment flows in a global setting, any equivalence decision should be based on a risk-sensitive and case-by-case assessment. As foreseen in article 81 (2b) of the recently amended ESMA-R following the ESA Review, the European Commission might want to consider the potential of a recognition regime for third country trading venues based on their systemic importance taking into account the effect on liquidity in EU shares, best execution for EU clients, access barriers and economic benefits for EU counterparties to trade globally as well as the development of the Capital Markets Union. ESMA should also evaluate the option to entirely remove third country equivalent trading venues from the equation of the STO, on the basis that with a clear set of EU/non-EU shares, the equivalence is of limited relevance.
<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>
DBG believes there is another solution to address the issue with SIs. As described in the ESMA consultation paper the market share of SIs has grown from 15% to 25% in the first nine months of application of the SI regime under the new MiFIR / MiFID II rules resulting in a drop in lit book market share with detrimental effects on price formation as the majority of trades in the SI regime are not subject to pre-traded transparency requirements. Although DBG acknowledges the need for bilateral trading we **suggest restricting trading in SIs to LIS only in order to protect the price formation process. The restriction should apply to all equity and equity-like instruments such as ETFs.**

From a DBG perspective trading sub-LIS should only be allowed under the full pre-trade transparency scope We believe that there is no need to protect the market from adverse price movements for sub LIS transactions. This is in line with our proposal to repeal the NT and RP waivers for trading venues, and hence abolishing the DVC mechanism (see also our answers to questions 1 and 16 and above). And while no waivers exist for SIs, but pre-trade transparency requirements are not comparable to those of trading venues we question why sub-LIS trades on SIs should take place at all if they can be traded on a trading venue under the full transparency scope. Such a measure will foster the robustness of lit order book systems which is essential for groups of investors that have no access to SIs. In particular retail investors are suffering most from the shift of trading to less transparent venues: ultimately this has reduced liquidity on transparent markets and hence increased their indirect trading costs. So, from an investor protection point of view we believe such a restriction is highly beneficial. We do not share the view that investor choice should be considered as an argument. Of course, it makes sense for an individual to continue executing on less transparent markets until there is no possibility. However, this leads to a classic economic problem: the private gain of a market participant not sticking to the agreement will always be greater than the common loss.

Unfortunately, the common loss is at the expense of liquidity on public markets and thereby threatening the price formation process.

Our proposal implies that pre-trade transparency requirements will no longer apply for SIs as SIs will only be allowed to trade above LIS with no restrictions apart from fulfilling post-trade transparency requirements. The concept of SMS would be obsolete. Our proposal also fits into the overall aim to reduce complexity by providing a much simpler market structure. Last but not least, such an approach appears as the most pragmatic and effective way to address the existing failures of the SI regime. One major issue for example is around the question of riskless principal trading. It has proven to be difficult that hubs that have the potential to link up SIs and counterparties can be effectively monitored to guarantee that they always work on a bilateral basis. Another issue is around correct and comprehensive flagging of SI trades at EU level. Even more than two years after MiFID II got introduced the flagging is very unclear and inconsistent and a solution is far from being reached.

Please also view our answer to question 6 where DBG has outlined its vision on the SI regime and STO.
<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>
DBG supports the deletion of the first exemption of article 23 of MiFIR and agrees with ESMA's analysis that with the first exemption there is an immanent risk of circumvention and non-convergent application as the concept of what should be "non-systematic, ad-hoc, irregular and infrequent" has not been specified to allow for a proper application of the share trading obligation (STO). For now, it has been subject to discretionary interpretation and therefore not worked in practice as it seems that there is no obligation for investment firms to justify the flow ex-ante and ESMA has no means of verifying if such trades are indeed non-systematic, ad-hoc, irregular and infrequent. It would appear that the non-applicability of the STO is only justified ex-post or if at all.

Although a definition of thresholds would be a solution to further define what can be traded OTC and what not, we question the need of such an exemption entirely. It is important to remember why the STO got introduced: the goal was to bring back trading to transparent markets and thereby effectively reducing the amount of OTC trading. We think an exemption is only justified when the trade takes place between eligible and/or professional counterparties and does not contribute to the price discovery process, but not if it is done on an irregular basis. Therefore, **we support modifying the Level 1 text by deleting "(a) are non-systematic, ad hoc, irregular and infrequent" and to focus only on (b) when the trade takes place between eligible and/or professional counterparties and does not contribute to the price discovery process,** as this should be the only true exemption. Please also see our answer to question 6 where we outline our vision of future market structure in this respect.
<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>
DBG would agree with ESMA that the second exemption in article 23 of MiFIR remains justified (please also see our answer to questions 6 and 33). **However, we would not agree to delete the part on**

“carried out between eligible and/or professional counterparties”. It may look like that the provision could be simplified thereby but we think it is essential to keep this from an investor protection point of view.

Note that although article 2 of RTS 1 specifies the characteristics of those transactions in shares that do not contribute to the price discovery process it seems that the list provided on Level 2 may need to be reviewed. Overall, as outlined in our answer to question 6 and 33, we believe that any modifications should only be done via Level 2 by amending the current list of covered trades. Thereby, OTC as trades that are exempted from the STO would be reserved to non-price forming transactions defined on Level 2. The list should be clear and exhaustive in order to ensure that the STO will be applied in the same way by all market participants. For proper reporting of these trades, we would suggest extending the MMT to all execution venues as well as to OTC transactions.

Please also see our answer to question 6 where we outline our vision of future market structure in this respect.
<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>
No, DBG does not believe at this stage that ESMA shall take any regulatory action on the end of day trading mechanisms. Closing auctions are a crucial aspect of modern market structure and the value they provide should not be overlooked. They benefit the market by concentrating liquidity, reducing cost and safeguarding the price formation process. The popularity of closing auctions shows that there is a significant demand from investors for this highly transparent and non-discriminatory mechanism which is in the best interest of investors, public companies and the market as a whole.

We agree that the volume executed through closing auctions increased in the past years. A major reason for the increase can be associated with MiFID II itself. Relevant factors in this context relate to the increased fragmentation since the introduction of the framework harming liquidity sourcing and transparent price formation with the emergence of systematic internalisers and alternative trading systems like periodic auctions and the increase in the number of venues under pre trade transparency waivers. As noted by ESMA in the consultation paper on page 28, ESMA received 330 equity waiver notifications from 29 EEA countries. In that sense we hope that the current consultation paper from ESMA will – if adequate measures follow in relation to the waiver regime – allow for a level playing field in the equity landscape and limit if not reduce the market’s need for participation into closing auctions.

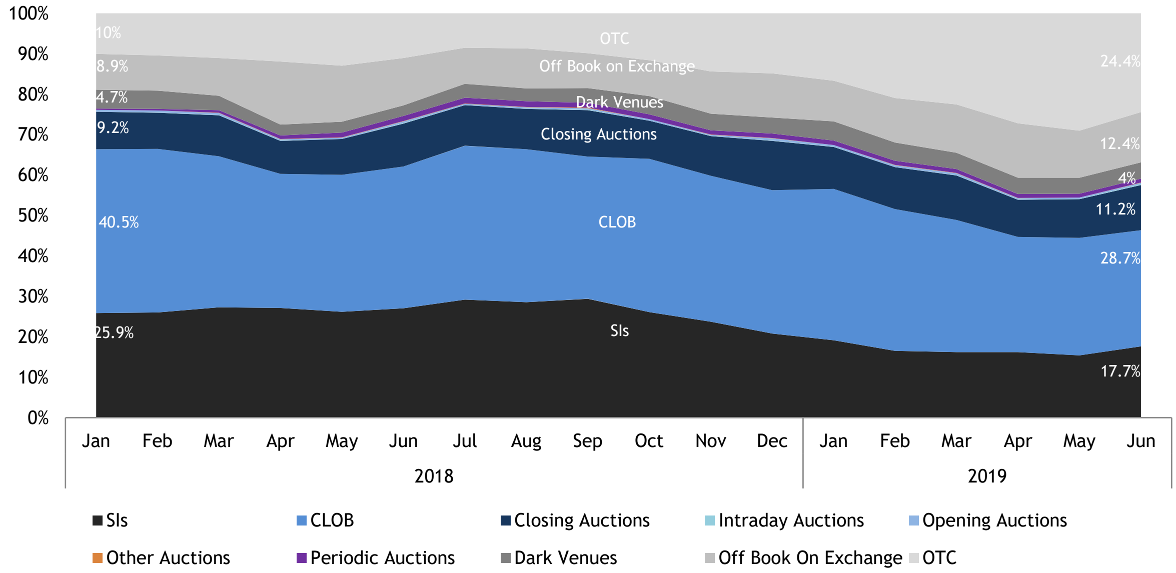
Closing auctions, as their name indicates, determine the closing price that is in line with the stock’s intraday performance, in the best interest of public companies and investors. They are relevant to set the reference price for a high number of financial instruments (ETFs, traditional funds etc.) and allow market participants to replicate exactly the price at which index rebalances are done. In addition, it is the official closing price that is used for calculations for corporate actions and other transactions, and indeed is the generally accepted reference price for many other purposes, such as tax matters or for the determination of settlement prices by CCPs.

Closing auctions aim at determining a representative closing price specifically because they concentrate liquidity over a limited period of time (few minutes only). The more participants in closing auctions, the higher the liquidity, and the more efficient the price. Closing auctions have become focal coordination venues for liquidity seekers (Admati and Pfleiderer (1988), Spiegel and Subrahmaniam (1995)), they also lower execution cost and sharpen price determination (see Pagano and Schwartz (2003) on the then-Paris Bourse and Comerton-Forde et al. (2007) on the Singapore Stock Exchange). Studies also find that the introduction of call auctions significantly reduced day-end returns’ skewness, suggesting less manipulation.

Closing auctions contribute to make companies listed in the EU visible and tradeable at large quantities with a certain degree of execution probability and reliable price (as EU closing auctions take place when US markets are open). The global reference for each relevant stock is guaranteed by the robust price formation process carried out by primary exchanges, based on high quality matching algorithms that determine the closing price that maximizes the turnover. These auctions have a fixed schedule defined by trading venues and processes are transparent as the theoretical auction price is continuously published. They do not substitute continuous trading which facilitates all orders as rapidly as possible during regular trading hours so that the trades are executed on a continuous basis at the prevailing market price but instead serve different purposes.

DBG observes that historically, closing auctions have always concentrated a significant share of the turnover on trading venues in Europe. Since January 2018, the market share of closing auctions when compared to all other execution venue types grew from 9.7% to 11.7% in June 2019.

Figure 1: Market share per venue type for STOXX 600 instruments on European markets



Source: Big xyt data, FESE calculations

As mentioned above the growing importance of closing auctions can be seen as a result of the increase in SIs and OTC and venues under pre trade transparency waivers trading since the introduction of MiFID II. Indeed, the increase in off-exchange trading has the potential to negatively affect market quality and the price formation process. In such an environment, investors actively seek out the closing auction which is the only time in the day when they truly receive the benefit of centralised liquidity in today's highly fragmented markets. In short, the closing auction is critical to EU price discovery and the stability and transparency of Europe's capital markets. Closing auctions, given the efficient price formation process they offer contribute to a competitive environment largely driven by process and execution costs rather than an anti-competitive domain of incumbent exchanges. Furthermore, as recently noted by the AMF, the growing importance of this end-of-trading phase can also be explained by the expansion of passive management, whose mechanism for creating and cancelling units usually uses the net asset value at the end of day and which requires trading at the closing price for exact replication (Autorité des Marchés Financiers, Growing importance of the closing auction in share trading volumes, October 2019, Risk & Trend Mapping).

The increased market share of closing auctions has sparked allegations that their centralised nature gives primary exchanges too much power. However, it is important to recall that there are currently approximately 300 execution venues in Europe, which shows evidence of a highly competitive market. Currently the European market structure includes dark and quasi-dark trading in SIs, OTC and dark pools alongside lit venues, and the popularity of closing auctions shows that there is a significant demand from investors for this highly transparent and non-discriminatory mechanism which is in the best interest of investors, public companies and the market as a whole. The benefits provided by closing auctions reflect the economic value participants gain from contributing to and participating in closing auctions.

DBG would like to underline that competitive alternatives to closing auctions on primary markets already exist, both from a business perspective and from a price formation perspective. On the former, closing mechanisms and internalisation practices by SIs and brokers using the closing price set on primary markets as a reference price risk undermining the price formation process within closing auctions. While price formation occurs across a range of venues, such alternative venues do not make investments in the full range of activities necessary to contribute to the core price formation process, but rather use the data provided by exchanges to run their own commercial business models competing with the data sources for the same order flow at lower cost. As evidence, when system outages occur on primary exchanges in Europe – be it for central limit order books, opening or closing auctions – MTFs (both lit and dark), SIs and OTC markets usually halt their trading. The same outcome is observed during volatility interruptions on primary venues. On the latter, alternative venues would actually increase fragmentation of the current trading landscape and trading venues replicating exchange closing auctions still present a risk that could ultimately result in the existence of several closing prices.

Further, some market participants have voiced concerns that as a centralised system, any breakdown could destabilise the markets. This concern appears however unfounded since exchange systems are reliable, monitored in real-time, dimensioned and scalable to the order flow's needs. In addition, Regulated Markets are also required as per article 48 of MiFID II to have in place effective systems, procedures and arrangements to ensure their systems are resilient and are able to ensure orderly trading under conditions of severe market stress. Regulated Markets must also have arrangements in place for in the case of any failure of their trading systems. Centralisation itself does not create uncovered stability risks and with appropriate safeguards in place, primary exchanges have proven their value by creating trust in their rules and procedures. This trust from market participants is reflected by closing auctions' success and growth. Stability of the system would not be guaranteed with a less centralised distribution of liquidity; stability is guaranteed by the underpinning confidence that liquidity aggregation is framed by sound and safe practices. The centralisation of liquidity in the closing auctions guarantees that the price formed is dependable since it is protected by the rules established by exchanges.

DBG would like to recall that competition cannot be an objective per se but rather a tool to achieve higher-ranking policy objectives. In a fragmented market structure, some of the buy side have previously warned that it is becoming increasingly burdensome to source liquidity and identify who they trade with; this is at odds with the overall MiFID II goals to 'democratise' the investment process. Investors themselves have indicated that alternatives might fragment the current system and agree that having a single closing price is preferable. Dispersing trading across a large variety of venues and execution modes will come at the cost of deterioration of price formation. The proliferation of order flow across execution venues raises concerns around liquidity aggregation and the quality, reliability and efficiency of price determination. In this context DBG believes it is important that regulators and policymakers consider the range of price formation delivered by trading venues and acknowledge the core value of price formation on exchanges. The development of alternatives to closing auctions on primary markets would not constitute a form of mitigation to a central mechanism for closing auctions unless they were to invest in the full range of activities necessary to contribute to the core price formation process or alternative to a central mechanism for closing auctions, since the very purpose of auctions is to successfully concentrate high levels of liquidity. Hence DBG believes that ESMA shall not take any action be it by limiting the participation into closing auction or by intervening in the existing competitive landscape.
<ESMA_QUESTION_CP_MIFID_EQT_35>