EVIA European Venues & Intermediaries Association

Answers to Consultation Questions

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General and Summary Comments

i. EVIA underscores the UK need to apply two adjustments" to the onshoring of MiFIR restore meaning to the extant articles thereby reviving purpose and intent back into the implementation which been largely lost in the current version:
   a. An operative legal definition of a "multilateral system" such that perimeter issues are clearly understood by market participants and by the FCA in a way that the perimeter is clear, and any proportionality is properly applied within it, rather than the present unfair and unwieldy case-by-case consideration.
   b. An operative legal definition of when a financial instrument is a "derivative" such that the current unfortunate circularity of applying definitions from within the paragraphs within PERG is ended. The single most important facet of this is for the UK to expressly move to delineate that a forward contract on a non-investment instrument is not a derivative. This would give much needed access and utility to markets including forward FX and forward energy contracts.

ii. EVIA is hopeful that a focus on the outcomes of this WMR framework to embed workable "*High Standards*" and build on UK "openness". The UK's advantage and opportunity as a financial services centre arises from its ability to connect liquidity, so conformity to generally accepted principles and standards will be the main tool to overcome tactical hurdles such as rules that act as roadblocks created by nation states to prevent cross-border presentation and access to liquidity, to collateral, and to settlement facilities.

iii. Maintaining "*High Standards*" should however, be distinguished from gold plating by UK regulatory agencies. The UK should give renewed attention to specifying or co-authoring CPMI/IOSCO and ISO standards as the primary mutual recognition tool, basing them in turn upon the G20/FSB principles.

iv. The UK needs to develop a supervisory framework to determine when and whether an OMS/EMS may form a trading system or part of one. There is potential for abuse which needs to be addressed. Otherwise, the risk is that further deterioration of standards will result.

v. Maintaining the OPE regime, albeit in a streamlined and simplified form, should be a priority for the UK. On top of that, the expansion of the ROIE regime is a key tool to facilitate the concentration of wholesale liquidity in the UK.

vi. Nothing in our answers to these consultations questions is new. Our understanding on well-functioning wholesale markets have been set out across the MiFID II evolution and we would like to draw your attention to the EVIA contributions to a number of

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consultations and reviews, which are relevant to the functioning of wholesale financial and commodities markets:

a. EVIA Response to EU FISMA Consultation on MiFID Review, May 2020 (and subsequent notes on the nature of an "activity-based perimeter")
   i. EVIA response to the EU public consultation on the review of the MiFID II_MiFIR regulatory framework; 18May2020 (1).pdf
   ii. EVIA White Paper on the Multilateral Trading Venue Perimeter [Draft].docx
   iii. Monday Meeting Memo Note on Perimeter; 26 April 2021.pdf
   iv. The perimeter differentiation of "bilateral" and "multilateral" trading within MiFID II [23 Oct 2020 [Redlines]].docx
   v. EVIA; Response to the German Finance Ministry call for evidence on the first year of MiFID2_R; 15th March 2019.pdf
b. EVIA Response to ESMA Consultation paper on MiFIR Review Report on Transparency for Non-equity; June 2020 and comments on the ESMA RTS2 Review Report June 2021
   i. ESMA_CP_MIFID_NQT_EFET_REPLYFORM (1).pdf
   ii. ESMA-Transparency-CPRESPONSEFORM-Final-ICMA-submission-12-June-2020-150620.pdf
   iii. EVIA Response to ESMA Consultation paper on annual review of RTS 2.docx
   iv. 20210610_ESMA_RTS2_Review_Final_ISDA-Draft response.docx
c. EVIA Response to ESMA Consultation paper on Reporting [November 2020]
   i. EVIA Response to ESMA CP; MiFIR review report on the obligations to report transactions and reference data; 20 November 2020 (1).pdf
d. EVIA Response to ESMA Consultation paper on OTFs/ Multilateral Systems [November 2020]
   i. EVIA Response to ESMA Consultation Paper on MiFID II_MiFIR review on the functioning of Organised Trading Facilities (OTF); 25 November 2020 (1).pdf
   ii. EVIA Comments to ESMA on an Activity Perimeter; examples of entities that may be recast as TVs under an 'Activities Based' Multilateral Perimeter.pdf
e. EVIA Response to ESMA Consultation paper on Market Data [Jan 2021] and FCA Market Data CfE [Jan 2021]
   i. ESMA_GOMD_EVIA_RESPONSEFORM.docx
   ii. EVIA Response to FCA CfE on Accessing using wholesale data; Final; 07th January.docx

Chapter 2: Trading Venues

1 Where do you think the regulatory perimeter for trading venues needs to be clarified?

In summary, it is not the regulatory perimeter for trading venues which needs to be clarified, but rather the underlying MiFID II definition of a "*multilateral system*." Whilst the current UK perimeter designation is sufficient because Article 25 of the Regulated Activities Order ["RAO"] informs alongside the MiFID II definition of a "multilateral system", it is abundantly clear from

the experience of MiFID II/ MiFIR to date that a more applicable, but still principle based, legislative definition is now required to enable the FCA to carry out effective supervision.

The requirements of UK MiFID II—in particular, Arts 25D and 25DA of the RAO[1]—when combined with the language of Arts 14, 21, 25 and 45, do not permit an intermediary to bring together multiple third-party trading interests without being specifically authorised to do so. MiFIR Recital 8 comprises both "genuine" arranging and execution activities ,and because the activity of arranging transactions encompasses the receipt and transmission of orders, there is no formal gap to be addressed. The type of trading venue involved depends on whether the intermediary wishes to operate a system with or without discretion in the handling of trading interests or the execution of orders[2].

Dangerously, evasive practices have flourished, principally fuelled by the cost economics allied with a lack of enforcement action to maintain the clearly defined perimeter. Unlicensed firms and platform operators, and authorised firms carrying out activities away from their licences, have gained market share rapidly precisely because they are allowed to operate outside the perimeter. As they are able to operate without rulebooks, transparency, or reporting obligations, they are able to compete on the basis of transaction costs and the opacity of their marketplaces. So long as enforcement action is not taken, these firms are able, and indeed encouraged to siphon liquidity from the regulated and transparent markets, increasing risk and decreasing transparency. Our opinion is that proportionality is a sound principle that has been poorly and inappropriately applied and must be paired going forward with the principle that similar functions are regulated in a uniform manner. It is the departure from the functional approach that has led to the burgeoning and harmful two-tier system in the UK, despite the deliberate inclusive design of a residual catch-all venue categorisation and a similar approach to a residual "methodological" category.

The avoidance of some firms to comply with the clear language of the RAO does suggest that supervisory gaps exist and that a clearer underpinning of the regulatory perimeter for trading venues, combined with the flexibility for more proportionality within the licenced domain may better align the economic incentives. Venue activity should not be disadvantageous compared to that either carried on either outside them or indeed overseas. The need for a bright line arises, in particular, from the efforts of some firms to parse the language of MiFID II/MiFIR and the ESMA Market Structure Q&A and impose self-serving interpretations upon them. Those firms have unambiguously attempted, and succeeded, to position themselves as if they are outside of the perimeter in the absence of enforcement action. The situation has also led to the emergence of electronic trading platforms which are functionally similar to trading venues but hold themselves out as aggregation tools or services.

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[1] Article 25 RAO: "Arranging deals in investments" and is commonly applied as these two legs:

i. **"Bringing About":** Making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite a particular investment... (article 25(1)); or
ii. **"Making Arrangements"**: Making arrangements with a view to transactions in investments... (article 25(2)).

[2] Perimeter Guidance Manual, FCA,

i. www.handbook.fca.org.uk (Release 50, May 2020 p. 9 – 11)
i. PERG 5.9 The Regulated Activities: agreeing to carry on a regulated activity - FCA Handbook
ii. https://www.handbook.fca.org.uk/handbook/PERG/13/3.pdf

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The essential principle is that functionally similar business arrangements should be subject to the same regulatory requirements, irrespective of the technical means employed. Following Art 4(19) of MiFID II, it is clear that a relevant multilateral trading system includes "any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system". This definition should be applied whether the system operator is maintaining a central limit order book or matching trading interests found in the OMS/EMS of client firms. It should be applied whether there is a central server linking trading interests or distributed systems that create trading networks. The size of a firm is not relevant to whether it should seek authorisation. Rather proportionality should be applied once within the authorised perimeter, rather than determining licencing inclusion prima facie based on scale.

While we believe that the distinction between a multilateral trading system and an aggregation tool is clear, the attempts of firms to characterise and moreover to deliberately obfuscate their tools and services as the latter are more than problematic. It would be beneficial, therefore, to clarify that the provision of a system or system components which allow third-party trading interests to interact falls within the meaning of a "system or facility" for the purposes of Art 4(19) of MiFID II[3].

The need for clarity arises from the meaningful flow of trading activity from regulated trading venues to unregulated trading systems. These systems are able to attract trading interests because they have lower overhead costs, no transparency requirements, and do not report trades or instruments as trading venues do and operate cross border without respecting the applicable rules. Specious arguments that these firms should be relieved of the normal regulatory obligations because they are '*Fintech*' are clearly at odds with the need to ensure that market structure is consistently and fairly regulated. While we welcome technical innovation, and indeed innovate ourselves, firms should be prevented from building businesses that are predicated on evading rules carefully constructed to ensure the stability, safety, and visibility of organised markets.

Of course, subject to the DTO, bilateral trading between two firms should not be treated as requiring a trading venue. Firms should be free to contract between themselves on a one-to-one basis. What is impermissible is that firms should be linking through IT network or communication mechanisms to match and execute client trading interests without organising as trading venues. These firms should be required to seek authorisation on exactly the same basis as other similar firms.

[3] (19) 'multilateral system' means any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system;

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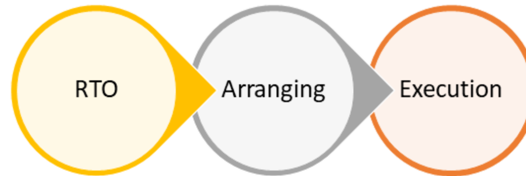

- *The question for the UK legal architecture is whether there a need to better segregate each step: {RTO <> Arranging <> Execution}*
- *It may be helpful should the FCA Handbook conjugate the RAO and MiFIR venue facets more closely.*

2 Do you think it would be more appropriate for changes to be made to the definition of a multilateral system in legislation, or for the application of the existing definition to be clarified through FCA guidance?

The best approach would be to amend the primary legislation in order to provide for a firm pillar based on principle, for the FCA to licence activities and supervise with proportionality. The amendments to the definition of a multilateral system should be arm's length from the FCA and make it clear that the provision of a system (or system components which connect as a system) which allow third-party trading interests to interact falls within the meaning of a "system or facility" for the purposes of the current Art 4(19) of MiFID II.

We agree with ESMA's quite thorough feedback comments on this topic and their recommendations for action in the ESMA MiFID II review report on the functioning of the OTF, which was published on 08th April 2021. We would therefore urge the UK to take steps to converge with these aspirations which we would also consider to be common with the other major global financial centres [our emphasis]:

- *40. ESMA would like to clarify that a multilateral system is characterised by allowing multiple third-party trading interests to interact within a system and it is not its intention to capture any bilateral systems and bring them into scope of the trading venue authorisation requirements. ESMA reiterates however that any system that allows multiple third-party interest in financial instruments to interact, including information exchange between parties on essential terms of a transaction (this being price and quantity) with a view to dealing in those financial instruments is sufficient to require authorisation as a trading venue. ESMA also keeps its view that the information exchange does not need to lead to a contractual agreement between parties within the system for the interaction to occur.*
- *56. ESMA notes the feedback received and keeps its intention not to make any changes to the authorisation regime and does not intend to provide for any exemption for smaller entities. ESMA remains of the view that authorisation of OTFs should be independent of the scale and complexity of the concerned entities.*

- *99. Regarding first the scope of the multilateral system definition, ESMA considers too restrictive the approach advocated for by certain respondents to consider as "multilateral" only those systems that allow "many to many" interactions. This would limit the authorisation regime under MiFID II to systems which are designed on an "order book model while leaving outside the scope of authorisation many other trading systems which are commonly used in the EU. For instance, RFQ systems, i.e., systems where quotes are provided in response to a request submitted by one firm, are generally regarded as multilateral systems and as requiring authorisation as a trading venue under MiFID II. ESMA will continue monitoring the use and adaptation of existing trading models in the future.*
- *100. Similarly, "distributed trading systems", i.e., software which is not operated centrally but licensed to individual clients allowing them to interact for trading purposes on a "point-to-[1]point" basis, can constitute multilateral systems. While cases need to be analysed carefully taking into account the exact operation of the software, it cannot be concluded that those systems are allowing by design only "multiple bilateral interactions" (as opposed to the simultaneous interactions of multiple trading interests) and should be exempted from authorisation.*
- *101. Finally, ESMA acknowledges the concerns raised with respect to Order Management Systems (OMS) and Execution Management Systems (EMS). OMS and EMS allow trading firms to manage their orders more efficiently with evident benefit in terms of costs, access to markets and latency of execution. However, ESMA notes that those systems can, under certain circumstances, be operated in a way which is similar to trading systems operated by trading venues. If it is crucial to ensure a supervisory approach which does not hinder financial innovation, it is also important to look more closely at those order and execution management systems to define more precisely their regulatory boundary and what should differentiate them from trading venues.*
- *102. As already evocated in the CP, one crucial element to take into consideration when assessing whether a system should be authorised as a trading venue is the ultimate place of execution of the transactions. ESMA appreciates in this respect the limited support received for the approach suggested in the CP, i.e., in case a system allows multilateral interactions of trading interests but ultimately sends the transactions for formal execution to an authorised trading venue, this system (where negotiation occurs) should still be authorised as a trading venue outsourcing the execution of transactions to another entity.*
- *103. ESMA agrees that a clear distinction should be made between systems depending on where transactions are eventually formalised. On-venue executions generally contribute to more transparent markets and better protection for investors, and it is sensible to also reflect this in the authorisation process. ESMA would therefore agree that where a system only arranges transactions which are ultimately executed on a trading venue, the pre-arranging system should not itself be authorised as a trading venue.*
- *104. It is however important to ensure that this approach does not result in making de facto redundant some MiFID II provisions applicable to trading venues. As clarified in a Q&A [Q&A 11 of section 5 of the ESMA Q&As on transparency topics (ref. ESMA70-872942901-35).] "when trading venues execute pre-arranged transactions under the rules of their system, they must ensure that these transactions comply with the regulations, including those concerning market abuse and disorderly trading. Venues have an obligation to monitor these trades on possible violations of the rules".*

This reflects our members' collective experiences that MiFID II/MiFIR has failed to deliver a level playing field with respect to the perimeter of a multilateral system, despite the clear texts. Consequential evasions range from the small firms who choose not to pay the price of financial supervision to the providers of technological systems and protocols who present themselves as mentioned above, as *fintech* or *tool-suppliers* while deploying platforms that are functionally similar to the authorised activities of an investment firm or venue operator. Guidance should also be used to provide examples of the activities which are deemed to fall within the regulatory perimeter. For example:

- Where the licensing of software which connects a user to multiple trading venues, of which they are a member, and presents to them the best available price for a financial instrument across those venues, facilitating both the selection of the execution venue for an order and the electronic transmission of the order, is not an activity that requires authorisation.
- Where the licensing of software which identifies client trading interests which have been communicated to the user by a client, and which allows that trading interest to be matched with the corresponding trading interests of another user or client of a user, is an activity that requires authorisation.
- Where the licensing of software which allows users to communicate with each other about potential bilateral transactions, in an unstructured and informal way (e.g., by text message), is not an activity that required authorisation.
- Where the licensing of software which allows users to request quotes from other users, all of which are making use of the same system to interact with each other, in a structured way (e.g., by using RFQ initiation or response functionality provided by the software), is an activity that requires authorisation.

A lesser approach is to re-establish the policy intention behind the perimeter definition. EVIA submitted our preferred legal definition of a multilateral system to the European Commission in May 2020, and again to ESMA in December 2020, in their respective wholesale markets reviews. Here our proposal to define any multilateral system remains the same as follows:

> *"Providing or making available a service, or operating or making available a system, to arrange, negotiate or match, trading interests in financial instruments constitutes an authorised activity in the United Kingdom."*

We consider that there are two main areas of concern, which a number of respondents put forward to the ESMA consultation on the operation of the OTF in Q4 2020:

(1) There are trading platforms which, on a purposive interpretation, should be operated by regulated investment firms or trading venue operators, in the same manner as MTFs or OTFs; but which, because of either liberal interpretations or supervisory restraint, have been able to act as though they remain just outside of the perimeter of MiFID II/MiFIR. The result has been the creation of a two-tier system:
   a. regulated trading venues, which contribute trade data and transaction reporting to the overall system, and which are subject to defined governance and operating requirements in accordance with the MiFID II regime; and
   b. unregulated trading systems or platforms, which are not subject to any formal governance or operating requirements under the MiFID II regime.

Wholesale market participants make use of both tiers.

(2) The use of the "multilateral" versus "bilateral" concepts has not been applied consistently, so that firms bringing together trading interests using the same methods and models have been subject to different requirements, depending on the Member State they are based in and the scale of their business operations. This has also resulted in a two-tier system:

   a. larger firms based in certain jurisdictions implementing MiFID II have been required to reorganise their activity as a trading venue; while
   b. smaller firms in the same jurisdiction have not.

The solution to the first problem is to clarify that bringing together trading interests related to financial instruments as an intermediary, whether using personnel or electronic trading systems, or a combination of them, is a MiFID II/MiFIR investment activity or service. The supply of electronic systems attracts the need for authorisation when the technology provider is, in effect, bringing together multiple third-party trading interests through the systems. This could be through setting up users as nodes in a network, or it might be through the provision of a communications tool that runs RFQs using a centralised platform. The form of the arrangement is secondary to the function when assessing whether the activity ought to be treated as requiring authorisation.

The solution to the second problem is to clarify that trading activity is "multilateral" when, taken as a whole and not with respect to a specific trading interest in isolation, there is the possibility for more than one participant to engage with a trading interest. Multiple one-to-one interactions and single one-to-many interactions should lead to the same result.

Resolving the first problem will bring more firms clearly within the perimeter. It will provide certainty for those firms which are developing new business models that need a bright line test to determine whether they require authorisation and for which activities.

Resolving the second issue will require more firms to organise their activity on the basis of being a trading venue. These are both desirable outcomes from the standpoint of harmonisation of the rules, ensuring consistency of regulation for cross-border investors, and the appropriate capture and reporting of information about market activity.

3 Should the current restrictions on matched principal trading by a multilateral trading facility (MTF) be retained?

The current restriction on matched principal trading by an MTF does not need to be retained. We note that all MTFs that admit bond markets to their systems have continued to operate MPT under MiFID II.

MPT does not offend the principle of neutrality provided that neither the MTF operator nor any MPT facilitator interposed between participants has influence over price formation within the trading venue. So long as the operator and any MPT facilitator are entirely passive in relation to

price formation, then there does not need to be a restriction on the MTF operator or MPT facilitator deploying its own capital in order to execute those trades.

As is currently the case, SYSC controls are required to ensure that conflicts of interest do not arise. We note that the MTF operator or MPT facilitator will need to hold capital against the risks of counterparty default under the CRR or IFPR; however, in our view, those rules do not yet adequately take account of the offsetting nature of the components of MTP.

Any MTF operator or MPT facilitator should have the appropriate permissions to perform these functions and should apply the organisational and other requirements of the MiFID II rules application to an investment firm in relation to such activity.

4 Should the current restrictions on the operation of an SI within the same legal entity of an organised trading facility (OTF) be retained?

No, the current restrictions on the operation of an SI within the same legal entity of an OTF should not be retained. They confer no benefits.

5 If you answered no to question 4:
Should new rules and disclosures be introduced to address the specific conflicts that MTFs and OTFs would be exposed to when providing matched principal trading (MPT) or operating a systematic internalisers (SI)?

The existing rules on conflicts of interest are sufficient to address the risks of conflicts arising in the context of an SI and an OTF coexisting in the same entity. We would note that the current operators of OTFs in the UK would not be likely to also operate as Systematic Internalisers.

Additional disclosures may be valuable wherein a firm with multiple permissions sets out it conflicts of interest policies together with any statistics concerning the extent to which the firm participates as a principal or agency market counterparty in its own multilateral liquidity pools.

With respect to matched principal trading, it ought to be specified that, in using its own capital to execute client orders, neither the operator of an MTF nor any MPT facilitator ought to have a role in price formation in the trading venue. This is to ensure the neutrality of the MTF operator or MPT facilitator.

6 Do you think that OTFs should be allowed to execute transactions in packages involving derivatives and equities under their rules and systems?

Yes, EVIA does firmly concur. OTFs should be allowed to execute transactions in packages involving derivatives and equities under their rules and systems. Common use cases are spread trades where one leg is a cash equity, equity derivative options with the underlying delta hedge, convertible bonds, portfolio trades and risk-reduction or compression related hedges.

7 What would be the risks and benefits of allowing this approach?

The issue is primarily a perimeter one which adds unnecessarily complications, costs, and a lack of transparency. Under the current restrictions, equity derivatives packages are traded on an OTF, but they result contingent legs being segregated, and instructions being given to the OTF operator to execute corresponding trades on futures and equities exchanges for separate counterparty facing execution.

Allowing OTFs to execute transactions in cash equities, to the extent required to execute that component of a package transaction, could help to constrain transaction costs, and reduce operational risks because a tertiary agency order passing onto an exchange would not need to be involved. It should not give rise to further problems with market fragmentation in the cash equities markets, because the trade in the cash equity would only take place as part of the package, together with an ETD. We cannot identify any risks to this approach.

8 Do you agree that the existing regulatory requirements for disclosure at admission to trading (for MTFs and SME Growth Markets) are disproportionate for small-sized issuers?

We recall the prior existence in the UK of OFEX[4], which became "Plus Markets". This appears to have been a useful structure.

9 What principles and/or types of information should be considered when developing requirements for disclosure at issuance to ensure requirements are proportionate?

No comment.

10 How far should these be determined by the venue operator versus regulation, and what other features may provide proportionate assurances around the quality of issuers admitted to a venue (e.g., role of advisors in process)?

For wholesale MTFs and OTFs only admitting wholesale counterparties, detailed assurances should not be required.

11 Would the creation of a new category of trading venue be an appropriate means to facilitate access to public markets for very small firms? What size of firms would be appropriate for a new trading venue?

EVIA does not see any case for a new type of trading venue.

In so far as the question considers the listing of the debt and equity of very small firms, we note careful proportionality within the perimeter rules is available at a supervisory level. In respect of the activities of member firms, it is likely that such SMEs would mainly be issuing and listing short term commercial paper and accessing repo markets.

[4] https://www.idealing.com/en/help/about_ofx & Off Exchange (OFEX) | MoneyWeek

In this regard the UK could purposefully act to simplify and harmonize the treatment of money market instruments under MiFID II, especially their issuance, admittance to trading and harmonisation at reference data and reporting level, together with a proper deferential treatment with other regulations such as SFTR and EMIR.

12 If you answered no to question 11
Would the facilitation of the creation of new market segments be a more suitable intervention?

Yes, EVIA does agree with the better use of the market segment architecture.

13 If you answered yes to question 11 or 12:
What should the market cap of companies that can trade on the new trading venue and/or segment be?

It follows from our answer to Question 6 regarding packages, hybrid, and convertible instruments that EVIA cannot see any use case for limits around the quantum of the issuer or corporate listing.

14 Do you believe intermittent rather than continuous trading would increase liquidity?

EVIA understands that this is clearly the case across almost all non-equity markets that liquidity may be concentrated into certain windows or auctions. However, it is absolutely the case that any such market design issues are a micro-level and conduct matter rather than the scope of this consultation.

In the case of liquid equities, we understand the view that continuous trading provides maximum opportunity for marginal buyers and sellers to meet and for effective price formation, but that is less appropriate for block or wholesale arrangements. In addition, the current closing auction provides a time focused book build opportunity to augment the continuous market.

15 Do you think that additional measures, such as new fund's structure are needed to stimulate institutional investors to invest in SMEs?

No comment.

16 What, if any, further forms of investor protection do you deem appropriate for this proposed new category of trading venue?

No comment.

17 Do you believe that regulatory or industry guidance about how venues should operate and what they should communicate during an outage would be useful?

For non-equities markets, EVIA does not believe that regulatory or industry guidance about how venues should operate and what they should communicate during an outage would be useful, although we do consider that legislation could meaningfully set out the broad principles for financial stability and we would also support a more accessible and meaningful disclosure regime at a firm and/or individual trading venue level.

This question would appear to be more narrowly targeted at equity RIEs and ROIEs operating CLOBs, than to the wider scope of MiFIR trading venues. Rather, it is absolutely the case that across the diverse market segments served by OTFs, MTFs and RMs that any such market design issues are a micro-level and conduct matter rather than the scope of this consultation.

Matters such as resilience and outages form an integral part of the relationship between the venues and their members, participants, or users, in a manner transparent to the supervisors, consistent with healthy competition and the proportionate to the business model and role of the trading venue.

For cash equities, we would however endorse the AFME/EPTA concept of a playbook which will ensure the resilience of equities markets during major outages, together with the components and principles which their response sets out.

18 Do you have views on a fail-safe mechanism to ensure that the market has access to the key closing benchmarks during an outage in a primary exchange? What role do you see UK authorities playing to deliver this?

EVIA considers that any such trading venue rules, resilience, systems and controls should be a matter between the venues and their participants subject to threshold SYSC and COND standards. We would in general caution against any regulatory use of terms such as “Fail-safe”, “Primary Exchange” and an interventionist “Role for UK Authorities” away from the legal perimeter. These terms do not have common meanings, could impinge on the diversity of trading methods, and could lead to anti-competitive outcomes.

19 What other steps do you think UK authorities could take to ensure market resiliency in the event of an outage?

EVIA considers that the straightforward answer is to foster effective choice and competition, both within the UK and by way of international access. One useful route to this would be a much greater and more demonstratively articulated role should be played by disclosures of both contingent measures and of operational status and resilience.

Chapter 3: Systematic Internalisers

20 Do you agree that the definition for SIs should be based on qualitative criteria?

No comment.

21 If you answered no to question 20:
Do you think the definition should be amended in another way?

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No comment.

22 If you answered yes to question 20:
Do you think that regulatory guidance should be used to support the definition in legislation?

No comment.

23 Do you currently opt-in to the SI regime?

No comment.

24 Should SIs be determined at entity level instead of on an instrument-by-instrument basis, for reporting purposes?

No comment.

25 What would be the risks and benefits of adopting such an approach?

No comment.

26 Do you agree with the government's proposal to allow SIs to execute at the midpoint for all trades, provided the executed price is within the SI's quoted price?

No comment.

27 Do you think any other changes are needed to increase the effectiveness of the SI regime?

No comment.

28 Do you think that the double volume cap (DVC) should be deleted?

Yes, EVIA does believe that the DVC is complicated and was built to address an issue that does not exist. The DVC should be deleted because it has been operationally cumbersome with limited evidence that it has resulted in more volume being channelled to multilateral lit transparent markets.

The removal of the existing DVC mechanism does not however, mean that the concept of protecting transparent price formation should be abandoned. Rather a diversity of trading methods, including Large in Scale block trading inside the perimeter is the preferred outcome and we note caution about any unintended incentives towards more OTC trading outside the trading venue perimeter. We welcome the fact that the FCA will retain its ability to suspend and will continue to monitor market quality metrics.

29 Do you think alternative incentives are needed to encourage lit trading?

No, EVIA *does not* believe that the concept of "lit trading" is meaningful or helpful. The government's focus should be on supporting a level playing field between the array execution

methods set out in MiFIR. We would therefore endorse the approach taken in the US, whose rules refer to "any means of interstate commerce" with egality. We therefore encourage the UK to recognise the benefits to both institutions and to end investors brought about through the existence of a variety of execution methodologies and different types of trading venue. Diversity in trading choices supports positive outcomes for end-users and is a feature of a mature market structure.

More concisely, we believe that the lit market in equities is seen by institutional investors as the least favoured venue type to execute on. This is because lit venue trading tends to be dominated by participants using aggressive short term market making strategies that cause undue volatility and over-reaction of asset prices to trading activity.

The UK currently benefits from deep pools of public liquid markets, where multiple regulated markets and multilateral trading facilities compete to offer investors access to trading on a fair, reasonable, and non-discriminatory basis. We would therefore caution about any further amendments to the SI regime which would not come with the same expectations and resilience requirements which are expected on regulated markets and MTFs. It follows therefore from our comments above that a straightforward delineation of multilateral systems would prove enduring, and clarify that SIs are bilateral in function by offering balance sheet related terms and invitations to treat.

Moreover, it would be appropriate from the UK, in consideration of the ongoing misappropriation of the term OTC within EMIR to include MTF and OTF executed contracts, that the MPOR be equalised across all MiFIR, and overseas recognised trading venues.[5]

30 Should reference price systems be able to match orders at the mid-point within the current bid and offer of any UK or non-UK trading venue that offers the best bid or offer, to aid best execution?

Yes, EVIA does not see the need to maintain these rules and therefore that SIs acting as reference price systems may be able to match orders at the mid-point. We therefore welcome the additional flexibility HM Treasury is looking to provide by allowing reference price systems to match orders at the midpoint of the BBO of a UK or non-UK trading venue.

This approach will also lay the groundwork for a solution to primary market outages and we support the AFME view that in allowing reference price systems to reference any trading venue will prevent the existing scenario where trading venues operating under a reference price waiver must reference the primary market. Although this change alone will not provide an adequate solution to market outage scenarios, it is a necessary step towards ensuring that trading in UK equity markets can continue in the event of a market outage.

It is however important to note that the usage of a midpoint derived from multiple venues might lead to additional complexity for investors, to understand which midpoint they traded at depending on each venue's usage of a reference price.

[5] Regulatory Technical Standards for the specification of margin periods of risk for the treatment of clearing members' exposures to clients | European Banking Authority (europa.eu)

Trading venues are geographically dispersed, which means that the latency of the data feed from each venue will not be the same, which can cause choice prices. If the reference price is derived from a single venue, for example the primary market, whether it is in the UK or outside the UK, this situation is unlikely to occur.

31 Do you consider SIs quotes useful?

Yes, EVIA members will frequently aggregate streams of quotes and indications from those client dealer pricing systems that also generate their SI pricing, onto their trading systems. There is a symbiosis here that indicates a requirement to consider the wider system context.

For example, an in-depth analysis of SI activity published in May 2020 by the French regulator, Autorité des Marchés Financiers [6], highlighted that "*the liquidity based on the public quotes of SIs appears to be relatively marginal*". Under the existing provisions in MIFID II, SIs are required for instruments deemed as liquid to publish bid and offer prices for a size at least equal to 10% of the Standard Market Size (SMS). This does not prevent an SI from providing a bilateral quote to their clients. The AMF calculated that only 22% of SIs' value traded was subject to pre-trade transparency requirements. Based on the publicly available aforementioned analysis, SI quotes do not significantly contribute to transparency and price formation.

32 Do you think that the ability of SIs to execute clients' orders at mid-point would incentivise SIs to provide meaningful quotes?

No.

33 If you answered yes to question 32:
What incentives could UK authorities introduce to encourage you to report more trades, while maintaining fair competition with market operators?

No comment.

Chapter 4: Equity Markets

34 Do you think that the share trading obligation (STO) should be removed?

Yes, EVIA agrees with HMT's proposal to remove the STO and members support the AFME response to this consultation in that regard. The STO as it is currently constructed has not been effective in increasing the levels of trading on the "*lit-orderbooks*", as it was initially anticipated by policymakers, in fact we understand that the share of trading on orderbooks has actually decreased since the implementation of MiFID II. The equivalence determination process and extraterritoriality of the STO as currently designed has also created obstacles to cross-border trading.

[6] https://www.amf-france.org/sites/default/files/2020-05/202005_etude_internalisateurs_en.pdf

We again raise concerns around the concept of a multilateral system perimeter and the potential negative impacts that increases in bilateral OTC trading might have on price formation and transparency in view of the already a wide range of execution mechanisms and SIs with whom to trade. Removing further incentives to trade through multilateral trading venues and increasing the amount of bilateral trading will undoubtedly increase complexity, lead to greater fragmentation and less transparency within the market systems for end investors.

There is however merit in considering how one of the other objectives of the STO, strengthening market discipline and supporting a transparent price formation process, could be achieved through other means. We understand the rationale behind removing the STO but there would be merit in exploring alternatives that could be used to ensure that robust price formation continues to happen on trading venues, on the basis of a process which is accessible to all and publicly available.

35 Do you think that the requirements for algorithmic liquidity providers and trading venues to enter into binding market making agreements should be removed?

Yes, EVIA agrees with HMT's proposal to remove the requirements for binding market making agreements, primarily again on the basis that the rules serve no purpose and bring no benefits. MiFID II market making requirements have been ephemeral under MiFID and have had limited impacts on enhancing market quality and impose unnecessary cost and burdens on both algorithmic trading firms and trading venues and should be removed. Rather, there appears to be no reason to us quite why non-obligatory incentive schemes could be a more suitable way of filling gaps in liquidity.

36 What would be the impact of such a removal for you and/ or the market you operate in?

EVIA notes that the removal of binding market making agreements would make no impact to the venues, nor exchange block trading arrangements that members operate.

We remain concerned that the market structure view of ESMA set out in paragraph 40[7] around the role of market makers in non-equity markets is misleading. Whilst dealers stream indicative prices and spreads to trading venues, trades remain episodic, related to spread relationships and large relative to any firm electronic top-of-book in any instrument. Until such cash equity related templating is removed from the analysis, we do not contemplate an appropriate transparency regime could be calibrated.

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[7] ESMA states: "*More generally, over the last years a reduction in market making activity in fixed income markets could be observed. This development appears to be largely driven by an increased reluctance of market makers to be exposed to market risks as well as stricter prudential requirements aiming at ensuring that market exposures are subject to sufficient capital requirements. At the same time, a trend towards increased electronic trading as well as the development of new trading protocols, such as all-to-all trading platforms, can be observed, thereby compensating for the reduced contribution of market makers. Indeed, electronic trading platforms with a higher degree of transparency offer traders the possibility to communicate with hundreds of peers simultaneously and see and compare bids and offers real-time. In this increasingly open market, the ability to profit from information has become accessible to more and more market participants.*"

37 Do you think the scope of the tick size regime needs to be recalibrated for overseas shares to ensure that firms can trade at the best prices in the UK?

Yes, EVIA agrees with HMT's proposal to recalibrate the tick size regime for overseas shares.

38 Do you think trading venues are better placed to establish tick sizes for new shares until sufficiently robust data is available?

Yes, we consider that the concept of tick sizes is better left to the trading venues themselves, so long as adequate choice and competition exists.

Greater autonomy, at least until the first 4-week ["FFWK"] data is available, would allow greater alignment between trading volumes for individual shares and the minimum price increment, increasing the efficiency of the system and allowing for more precise price determination. The FCA Statement on the Operation of the MiFID Markets Regime, where an initial estimate is applied and then updated after 6 weeks with a calculation for the first 4 weeks of trading is an appropriate approach.

39 What are the potential benefits and risks of delegating the setting of tick sizes, in general, to trading venues? What safeguards would be needed to avoid arbitrage issues?

It is clear that the benefits of the delegation for the setting of tick sizes is a cleaner rule book and a more responsive and competitive marketplace. The risks occur when there is no competition between trading venues.

We believe trading venues should not be in a position to compete in relation to tick size. We believe tick size has a clear relationship to asset volatility and market depth and should be set centrally. Consequently, there is a role for clear guidance from the FCA concerning standardisation protocols or which venue should set the initial tick size and that the initial tick should conform to the MiFID II tick size matrix will help ensure that arbitrage issues are avoided.

40 Are there any other parts of the equity regime that you think could be operated more effectively by the market, while upholding high standards?

EVIA is clear that the UK equity regime would benefit from removing the prohibition on OTFs to arrange and execute trades, especially packages and contingent hedges, in cash equities. As set out below, the initial concept of an OTF as a venue formalised Broker Crossing Network was then the focus of a political debate and led to the exact obverse outcome.

Chapter 5: Fixed Income and Derivatives Markets

41 Do you agree that the scope of the derivative trading obligation (DTO) should be revised to bring it in line with the scope of the clearing obligation following the changes introduced by the European Market Infrastructure Regulation (EMIR) REFIT? What risks/ benefits do you see with this approach?

EVIA concurs with the very broad wholesale market support for HMT's proposal to revise the scope of transactions subject to the DTO under MiFIR to be a subset of transactions subject to the clearing obligation under EMIR. The ISDA comment paper on this matter sets the argument out in detail[8], including a shift to a basis of *transaction terms*.

The revised approach would deliver greater legal clarity with respect to whether contracts could be subject to the DTO while also providing alignment on a more dynamic basis, i.e., amendments to the scope of the clearing obligation or relevant Level 2 legislation would be reflected in the scope of the DTO.

42 Do you think that all post-trade risk reduction services should be exempt from the DTO?

Again, in common with a very broadly held opinion, EVIA understands that all trades stemming from post-trade risk reduction (PTRR) services are not price forming should be exempt from the DTO. Transactions resulting from portfolio compression are already exempt from the DTO, and we would advocate convergence to the position advocated by ESMA in November 2020[9].

Many of our members operate these services and they utilise reference price curves for which the pre-existing static pricing point relationships are fundamental. Further, once commenced PTRR runs are contingent on an "all or nothing" basis across the defined participant set.

43 If you answered yes to question 42:
a) Do you think that there should also be an aligned exemption from the EMIR clearing obligation for trades resulting from post-trade risk reduction services?
b) What conditions do you think should be met for the exemption to be applicable?

(a) It is important to underscore that many PTRR trades and entire portfolios are not CCP cleared. The use cases of Swaptions and FX options which are generally not CCP cleared are simple examples. Even where portfolios do contain many CCP cleared trades, it is quite usual for other non-cleared trades to be included. On this basis, together with the above-mentioned harmonisation with the ESMA report, it is evident that an aligned exemption from the EMIR clearing obligation is required.
(b) PTRR does not necessarily require novation to the CCP pools to occur and may be done through central agency services or in distributed ledgers. EVIA considers that there is no understandable rationale for further rules, restrictions, or disclosures. Indeed, it may be that any such would add friction to actions beneficial to liquidity, collateral constraints and to financial stability.

[8] ISDA-recommends-aligning-clearing-and-trading-obligations.
[9] https://www.esma.europa.eu/sites/default/files/library/esma70-156-3351_report_on_ptrr_services_with_regards_to_the_clearing_obligation_0.pdf

44 Do you think the FCA should be given the power to modify or suspend the DTO quickly under certain circumstances, on a permanent rather than temporary basis?

The FCA should be given the permanent power to modify or suspend the DTO and the CO should contingencies arise. Likely this would be consequent to comment letters, so it may be helpful for the FCA to set out the route to action and the principles and likely extent of scope behind the process.

45 Do you think that the current transparency requirements support price formation and open, competitive, and fair markets? Please separate your answers by fixed income (please treat sovereign bonds, high-yield bonds, and investment-grade bonds separately) and derivatives (please distinguish between OTC and exchange-traded derivatives (ETDs) where relevant).

For the Wholesale markets, including those for cash equities, the current MiFIR transparency requirements are not useful for the processes of either price formation, or for the consequent risk transfer. That this applies equally across the three fixed income asset classes, for derivatives and also for commodities and foreign-exchange forwards, will not surprise any market participants or supervisors. That being the case, there seems to be little value in splitting out the categories listed.

To highlight in particular the evidential set of papers since 2018 by ClarusFT bemoaning the absence of any transparency stemming from the MiFID II rules.[10] From the point of view of EVIA trading venues, we have written widely about the absence of any market participants looking at the pre-trade transparency disclosures across any of the member venues across the entire period since MiFID II began in January 2018.

Clearly there are few instruments deemed to be liquid in the non-equity markets and even fewer transactions that are not above the LIS and SSTI waiver thresholds. There are also no CLOBs across these products other than certain of the listed futures contracts.

It may again be worth noting that during the drafting of MiFID II extensive consultations by UK, EU and international standard setting bodies all returned results that there were no gaps in knowing where prices were, but great concern at getting trades done. Since then, we have seen that whilst wholesale markets operated by member firms are indeed transparent across a variety of media, such as indicative screen liquidity; the form of transparency disclosures required by MiFIR is either meaningless in the pre-trade or subject to such long deferrals that little point derives from undertaking the entire process.

For good measure, we would reiterate our belief that pre-trade transparency requirements be removed entirely from onshored MiFIR, and post-trade transparency given purpose by firstly masking size whilst introducing promptness, and secondly addressing the instrument identity regime so that transparency should reflect the underlying liquidity of instrument according to the risk transfer occurring.

[10] MiFID II | (clarusft.com)

46 Do you think that using traded on a trading venue (ToTV) is a useful criterion for determining the scope of transparency requirements for non-equity instruments, and in particular OTC derivatives? Please separate your answers by fixed income (please treat sovereign bonds, high-yield bonds, and investment grade bonds separately) and derivatives (please distinguish between exchange treaded and OTC derivatives).

Our view concurs with the general consensus that the TOTV concept is burdened by the ISIN led approach to reference data and the market practice of post-trade registration onto a MiFIR trading venue. TOTV does not cater for important aspects such as the role of liquidity formation within the arrangement of packages, and that fixed income pricing is very dependent upon contingent funding of the transaction in the repo markets. Consequently, there is very little information conferred by the term TOTV across any of the four categories listed.

A replacement to the concept of TOTV should be adopted and it should take the form of a selection of a small number of G4 currency benchmark instruments across the relevant asset classes, which comprise the pricing pillars for those sectors, and which are continuously traded, not newly issued, and priced in a manner not contingent upon other instruments or a specific funding situation. For this small set, transparency must become more meaningful. This means a more immediate post trade reporting requirement, with volumes masked, but on the basis of Unique Product Identifiers [“UPI”] and the CFI classification system for derivatives.

47 If you answered no to question 46:
Do you think the concept of ToTV should be removed for OTC derivatives, and the scope of the transparency regime determined on the basis of whether the instrument is cleared? If so, what definition of ‘cleared’ should be used?

Not only does EVIA consider that the concept of ToTV should be removed more broadly, but also the term ‘OTC Derivative’ is wholly misinformative where the same instruments are admitted to all three categories of trading venue.

Therefore, EVIA believe the scope of the transparency regime for derivatives should not be determined on the basis of whether the instrument is CCP cleared. This invites similar complications and time dependencies on, amongst other things, the continued good standing of the CCPs in question and an absence of other technological paths to ledgers, tokenised collateral, or suitable agency. Rather, we would consider a more subjective determination would be a more appropriate driver of designated trading, clearing, settlement and reporting obligations.

48 Do you think there is another option to determine the scope of the fixed income and derivatives transparency regime? Please separate your answers by fixed income (please treat sovereign bonds, high-yield bonds, and investment-grade bonds separately) and derivatives (please distinguish between exchange traded and OTC derivatives).

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EVIA believes that the scope of the fixed income and derivatives transparency regime can be ascribed more subjectively because it should necessarily be very small and narrow. We understand that there is commonly held view for a small number of benchmark tenors and instruments to constitute a tight transparency regime to a limited small scope of instruments, primarily benchmark derivatives and on the run bonds.

All the instruments within scope would be classified as liquid meaning no calibrations would be required. All other instruments will be subject to appropriate deferrals should prove easy to agree [as they are the instruments traded widely and quoted as a spread base), although a more formal determinations process could be set out if deemed to be better governance. These changes would significantly simplify the liquidity calibrations and transparency operations.

49 What instruments do you think should be in scope of the fixed income and derivatives transparency regime? Please consider fixed income (please treat sovereign bonds, high-yield bonds, and investment-grade bonds separately) ETCs, ETNs, structured finance products, emission allowances and derivatives (please distinguish between exchange traded and OTC derivatives).

The derivatives scope should be limited to cover the IRS benchmark tenors only (EUR/USD/GBP), single currency IRS, and iTraxx main and crossover indices in the CDS market.

For fixed income, predominantly those same instruments as included currently across sovereign, high-yield and investment grade bonds should be in scope of the fixed income regime. We would endorse the approach of AFME in this regard to:

i. Limit the scope to EU issued Govt bonds with a minimum issuance size and outstanding amounts.
ii. Limit the scope to Investment Grade Corporate bonds with a minimum issuance size and outstanding amounts
iii. Focus on outstanding notational instead of total universe/number of bonds
iv. Issuance size , all new issues over a specified threshold to be classed as liquid for a period of 30 days;
v. Filter on bond maturity

Similarly in commodities and foreign exchange, certain products could be duly designated should these asset classes remain in the scope of MiFIR at all.

50 What changes do you think are needed to enable liquidity calculations to work effectively? Please separate your answers by fixed income (sovereign bonds, high-yield bonds and investment-grade bonds) and derivatives (ETDs and OTC derivatives).

Liquidity calculations as we currently know them should be ceased and replaced with the qualitative and predicable approach set out in the answers to questions 47,48 and 49. The current liquidity calculations outlined under MiFIR are complex and do not accurately measure or capture true liquidity within the market.

Clearly the UK market does not operate in isolation.

51 Do you think it would be preferable to move away from regular liquidity calculations towards a mix of qualitative and quantitative criteria? For example, on a sectoral basis? Please separate your answers by fixed income (sovereign bonds, high-yield bonds and investment-grade bonds separately) and derivatives (ETDs and OTC derivatives).

Yes, it follows from our answer to question 49 that a qualitative and predicable approach, couched within the principles of an appropriate governance framework would be a marked improvement. Consequently, this should apply across the board. The only alternative would be for the UK to measure global offshore trading volumes, to which it does not have verified and timely access.

In respect of FX markets that do not currently have a trading or clearing obligation, and which are essentially “cross-border” in nature, it is difficult to consider any trading or trading like test should be applied as noted in paragraph 5.25. It is therefore unclear at this time whether the current proposals for determining liquidity are suitable for the FX markets. Noting the general absence of FX and Money market considerations from the scope of the WMR, yet keen to underline their critical importance to activity, liquidity, and risk transfer from the UK to the global markets, we welcome the opportunity to continue to discuss such considerations, including any new approaches to determining for liquidity as and when appropriate.

52 How do you currently use pre-trade transparency? Is pre-trade information on bonds and derivatives valuable? Please differentiate between fixed income (sovereign bonds, high-yield bonds and investment-grade bonds separately) and derivatives (ETDs and OTC derivatives), and each trading method (for example RFQ, and order book).

It should be noted that EVIA members do not consume pre-trade data to make proprietary trading decisions. Moreover, the current MiFIR pre-trade transparency publication regime for derivatives traded on members’ trading venues does not meaningfully assist price formation or best execution. Members note that, in their experience, pre-trade data is not used and that market makers have never received any client RFQs based on published pre-trade data.

These pre-trade transparency requirements do not meaningfully assist price formation or best execution, primarily because the multilateral derivatives markets and cash equities markets have different features. The pricing of derivatives arranged on member trading facilities is less dependent on pre-trade transparency than cash equities because they transact in core economic terms which are less standardised, highly contingent, and reliant on counterparty credit risk assessments. They are rarely fungible, even when CCP cleared and when the parameters are similar.

We think it is worth reiterating the AFME view that the reason for buyside clients lack of appetite for pre-trade transparency data is because the application of pre-trade transparency does not lend itself well to bond and other wholesale markets which are not order book driven but wherein institutional clients foremost seek liquidity and certainty given the bespoke nature of fixed income instruments. Overall this makes it challenging for pre-trade quotes to be generalised or relied on as a guide price.

53 Is there a case for removing MiFID II pre-trade transparency requirements for any asset class? Please separate your answers by fixed income (sovereign bonds, high-yield bonds and investment-grade bonds separately) and derivatives (ETDs and OTC derivatives).

Consequent to our response to Q52, EVIA firmly believes that there is a strong case for removing the pre-trade transparency regime for fixed income, derivatives, commodities, money markets and foreign exchange. We have detailed the role played by access to indicative pricing information via workflows and trading system in answers to chapter 1 above.

54 If you answered yes to question 53:
Do you think that RFQ, bilateral negotiations and indications of interest provide sufficient information for markets to function effectively? Please separate your answers by fixed income (sovereign bonds, high-yield bonds and investment-grade bonds separately) and derivatives (ETDs and OTC derivatives).

Yes, it follows from our comments above that EVIA does consider that across all the asset classes mentioned, as well as others, the available information and trading systems do provide sufficient information to the market. The variety of different workflows and trading modalities serve to facilitate the market to grow, adapt and drive innovation.

55 How do you use pre-trade quotes streamed by SIs? Please separate your answers by fixed income (sovereign bonds, high-yield bonds and investment-grade bonds separately) and derivatives (ETDs and OTC derivatives).

As mentioned in our comments earlier, our member MTFs, OTFs, ECNs and overseas trading facilities almost all deploy streaming indications and orders from market participants. These may be directly from the SI, or from the same pricing engine that feeds client SIs. Pricing factors and interpolated curves are built from these, and other inputs to drive the trading venue indications.

56 For SIs, what impact do you think removing pre-trade transparency requirements would have on your business? Please separate your answers by fixed income (sovereign bonds, high-yield bonds and investment-grade bonds separately) and derivatives (ETDs and OTC derivatives).

No comment

57 Do you have any other comments on the pre-trade transparency regime?

No comment

58 How do you currently use deferrals? Please separate your answers by fixed income (sovereign bonds, high-yield bonds and investment-grade bonds separately) and derivatives (ETDs and OTC derivatives).

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The MiFIR facilities operated by EVIA members generally deploy the full deferrals to the same extent, which is that made available for all the above asset classes because this suits the demands of market participants who need to manage their ability to offset trading book risks and to seek hedges to avoid exposure to 'undue risk'.

59 Which asset classes should deferrals apply to? Please separate your answers by fixed income (sovereign bonds, high-yield bonds and investment-grade bonds separately) and derivatives (ETDs and OTC derivatives).

Deferrals should apply to all transactions in each of the classes when above a certain size and should also apply to less liquid instruments.

A well calibrated deferral regime is essential for bonds that are considered highly volatile such as high-yield bonds which can turnover large monthly volumes but trade relatively infrequently. Clearly the liquidity profiles of bonds and derivatives within the same sub-asset class can vary significantly, primarily because activity occurs by dint of spreads, packages and funding trades rather than enduring for any instrument. For example, under the current transparency regime all sovereign bonds are subject to the same transparency requirements despite significant differences in the level of trading between these bonds, whether they are spread benchmarks or should they be "special" in the repo market on any day.

We also endorse the AFME-GFXD support for the continued use of deferrals for FX and the suggestion that they are aligned with other jurisdictions. FX is by definition cross-border, as over two-thirds of wholesale FX transactions occur on a cross-border basis[11] and we strongly support regulations being harmonised across jurisdictions. Given the important role deferrals play in the management of risk, challenges arise when a trade is deferred in one jurisdiction but not another and the scale of this challenge could impact the ability of market makers to provide liquidity.

60 Do you agree that the deferral regime would benefit from being simplified?

EVIA does indeed support a simplification of the deferral regime in the UK and likely an effective volume masking regime may be one approach towards achieving this.

61 What do you think the optimum deferral length is? Please separate your answers by fixed income (sovereign bonds, high-yield bonds and investment-grade bonds separately) and derivatives (ETDs and OTC derivatives).

In principle we support the current deferral regime applied by the FCA in the UK, which comprises of 4 weeks for volume omission and the two-day deferral period for price information as this appears comfortable and well bedded-in for wholesale risk transfer which generally occurs from portfolios via packages. Therefore considerations around contingent trades and funding are important in considering the safeguarding of at risk balance sheets.

[11] https://www.bis.org/statistics/rpfx19_fx.htm

For volume masked benchmark ["liquid"] instruments, the optimum deferral length is very shortly after the trade, but not beyond the end of same global trading day. We would suppose the development of a CTP could render this discussion somewhat moot across all asset classes. Nonetheless, the precautionary principle for risk transfer in open markets remains, so for all other large transactions in the less liquid instruments the optimal deferral for volume information would be four weeks, but even here, volume should remain masked in public disclosures as the balance sheet risk endures.

62 What are your views on the government's proposal to delete the size specific to the instrument (SSTI), package order, and EFP deferrals? Do you think it would lead to more meaningful transparency? Please separate your answers by fixed income (sovereign bonds, high-yield bonds and investment-grade bonds separately) and derivatives (ETDs and OTC derivatives).

EVIA disagrees with the proposal to remove the SSTI threshold. This is principally on account of its prescribed role to act as a safeguard to risk transfer and providing a framework for this activity is the paramount duty of the legislative instrument.

In our June 2020 response to the ESMA Consultation Paper on MiFID II/ MiFIR review report on the transparency regime for non-equity and the trading obligations for derivatives[12], we firmly made the case for the SSTI waiver to exist alongside the LIS waiver, and took exception to the ESMA view that simply because phase I of the transparency regime effectively overlaid the two regimes, so the absence of reported data materially denied the use case set out in MiFIR. Rather, it will be precisely the evolution of the transparency regime stages which will reveal the rationale for the SSTI. We remain especially supportive of the pre-trade SSTI, and indeed, some 12-months on from our prior response, we remain firmly in disagreement with general ESMA opinion to remove the SSTI and the specific comment in paragraph 42 of this review that, '*the removal of the pre-trade SSTI waiver and a lowering of the LIS threshold would lead to a more appropriate level of transparency*'.

63 Do you think volume masking and/or aggregation helps to encourage real time publication? Please separate your answers by fixed income (sovereign bonds, high-yield bonds and investment-grade bonds separately) and derivatives (ETDs and OTC derivatives).

[12] EVIA sees no reason to delete the SSTI and therefore disagrees with ESMA's current proposals. We hold this view the same across all asset classes. … the SSTI will become more relevant, relied upon, and reported under the normal course of events as MiFIR passes through the liquidity stages and ongoing recalibration of LiS thresholds. Whilst SSTI may not have been a prominent feature to date, going forwards it will become more relevant. EVIA supported the creation of the Size Specific to the Instrument ("SSTI") waiver and disagrees with the suggestion from ESMA to remove this safeguard. That our trading venues have not reported the use of the SSTI in the initial incarnation of MiFID II/R is due to the very small number of liquid instruments, outside of cash equities, and the broadly comparable starting level of the Large in Scale ("LiS") waiver thresholds. This should not be taken as a sign that the SSTI waiver has no relevance; particularly as LiS thresholds change over time and more instruments are determined to be liquid.

Yes, noting our comments above in full support of volume masking as being a necessary condition but not sufficient protection on its own again liquidity and position risks of market participant clients to member trading venues.

EVIA also wholeheartedly supports a wider role for aggregation which enables more VWAP tools to become available as well as aiding liquidity by enabling a wider and more appropriate spread of algorithmic execution outcomes to align with deeper liquidity.

64 What are the risks and benefits of allowing trading venues to calculate LIS thresholds for ETD post-trade reporting?

All classes of trading venue should be treated equally. Therefore, no specific regime for ETDs on RM should exist that doesn't equally apply to MTFs and OTFs.

Chapter 6: Commodity Markets

65 Do you think that the scope of the 'commodity derivatives' regime should be narrowed to derivatives that are based on physical commodities?

No, EVIA and LEBA disagree. The scope of the 'commodity derivatives' regime should be specified to exclude forward contracts for physically delivered commodities. This would include emissions and relieve the problematic circularity of the PERG C6 exemption. It would also relieve the manifold unintended or inappropriate outcomes from the PERG C7 and PERG C10 drafting which have succumbed to "Quick Fix tinkering's" rather than being drafted correctly according to the intention and the public policy outcomes. Evidence for these failing is quickly found in the size, complexity, and scope of the level three guidance that ESMA has over the lifetime of MiFID II.

In the case of commodities, as with certain other aspects such as payments and SFTs, and EMIR Refit, MiFID II was drafted without proper consideration of the overlaps, interactions and different definitions between the legislative dossiers that were introduced in the decade following 2012. In this case, Energy or commodities regulators should take primacy, and NCAs then cooperate with these agencies, as is the case in the US. Currently there are many aspects of parallel supervision and parallel regulations. Nowhere is this more the case than between MiFID II, REMIT, MAR, and EMIR.

As a topical example, we refer to dialogue with ESMA on how non-cleared commodity forwards can be conceived have a reportable "Open Interest," or how an arranging platform such as an MTF or OTF could know the positions of market participants at any point in time. But there are many others, and unless the markets are "derivatives" in a more purposeful understanding of the term, i.e., cash settled and dependent on a separate settlement price, then inefficient and ineffective markets and supervision will continue.

66 Do you think that financial instruments which refer to commodities as a pricing element but are securities in their legal form, should be removed from the regime?

Yes, EVIA and LEBA does agree that securities in their legal form, should be removed from the commodity derivatives regime. It follows from our answer to Q65 above that a new and purposeful definition of, "A Derivative" would make strides to remove the complicated failings across the Perimeter Guidance ["PERG"], most especially to C10.

67 Do you think economically equivalent OTC commodity derivative contracts should be removed from the commodity derivatives regime?

As operators of MTFs, OTFs, SEFs and OMPs, together with acting as limited activity brokers in arranging and bringing about transactions as "Exchange Blocks;" LEBA and EVIA members have had no direct engagement with the EEOTC aspects of MiFID II. It is, however, clearly and immediately apparent that this regime has failed to hold any merits whatsoever. It should therefore be removed.

Rather, a move by the UK to implement a straightforward legislative determination of what constitutes a "multilateral system" would profoundly obviate any need to have the concept of EEOTC. The point here is that private bilateral transactions are not price forming by definition. MiFID II only need focus on those transactions which fulfil the criteria of being both in financial instruments which are derivatives and those which are taking place in multilateral systems.

68 Are there any other instruments that you think should be deleted from the commodity derivatives regime?

The UK should take a principles led approach to the perimeter, rather than a case by case, or any *instrument-by-instrument triage* as suggested in this consultation question. It follows from our answer to Q65, Q66 and Q67 above that a new and purposeful definition of, "A Derivative" would make strides to remove the complicated failings across the Perimeter Guidance ["PERG"], most especially to C10 and C7 should the overly complex and failing C6 aspects be effectively addressed. To be clear, the key characteristics of a derivative involve a remote reference price, cash settlement and margin leverage subject to netting. For the avoidance of doubt, forwards are not derivatives.

In particular, the intent of MiFID II to capture emissions markets is inappropriate. Given the forward-looking importance of these instruments as the international PHASE 2 Kyoto accords play out via COP26, combined with their intrinsically international application, these markets, together with the underlying certificates themselves, require a bespoke regime away from MiFIR.

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69 What would be the risks and benefits of transferring responsibility for position limits from the FCA to trading venues?

It follows from our dialogues with both the FCA and with ESMA, as well as consequential to our answers to questions Q65, Q66, Q67 and Q68 above, that trading venues have no knowledge of the positions held by market participants. Rather some CCPs know their own open interest by clearing member, but this does not extend to other positions that are held in other CCPs or under credit annex agreements as physical forwards or those relevant spot positions. Therefore, Q69 has very limited application and the topic confers even less information unless the FCA intends multiple trading venues to act as prudential supervisors for both financial and non-financial market participants like who would need to disclose their global risk set back to trading venues. In short this is a nonsense because MiFID was not built to regulate post-trading risk and any use case analysis belies why the across-the-board consideration of trading rules concerning commodities requires a thorough revision.

EVIA/LEBA understands that the key risks of transferring responsibility for position limits from the FCA to trading venues would lie in any lack of competition and choice on the part of the market participant, who would normally seek the most prudent and responsible venue to facilitate their risk management and client services. Therefore, ongoing structural distortions which disincentivise competition, especially from smaller challenger businesses or start-ups should be a focus in the revisions to onshored rules. Meaningful examples of these current propagated by the FCA include: the denial of onshoring "open access provisions" in Articles 35 and 36 of MiFIR[13]; the imposition of public commission schedule rules; and the reference to the concept of a "Primary Venue."

EVIA/LEBA understands that there are no key benefits of transferring responsibility for position limits from the FCA to trading venues, but that there may be should they be conferred to CCPs. Such an adjustment would be to remove an aspect of MiFID which makes no sense and offers none of the intended outcomes in the initial drafting. To be clear, the role of position limits are to control for delivery squeezes and for market abuse related to throttling. These can only be achieved at the level of a CCP, which may, or may not have close links to a particular trading venue. It is important to draft the UK rules in a manner which recognises that trading venues and CCPs are quite separate functions and permissions. This is clearly a core failure in the current versions of MiFID and MiFIR.

70 What specific factors do you think should be addressed in the framework of requirements that UK authorities would provide for trading venues?

In this section [6.8 – 6.13] pertaining to position limits, the consultation interchanges the use of "*trading venues*" and "*exchange traded contracts*" in an unspecific and ill-defined manner. This does reflect the inconsistent and misconstrued drafting of MiFID2 in seeking to regulate post-trade risk and positions that may be netted, fungible, traded out of, or held in third countries. We reiterate our point made in the answer above that whilst MIFID2 and MiFIR should treat all

[13] MiFID II – ESMA: no need to temporarily exclude ETDs from open access to trading venues and CCPs (europa.eu) and ESMA publishes statement on MiFIR open access and COVID-19 (europa.eu)

trading venues the same, they are not in a position to regulate client positions, whether held under credit annexes, on CCPs or on distributed ledgers.

All these requirements should be removed in favour of existing rules covering orderly trading, together with EMIR, REFIT, and the ongoing proportionate application of prudential rules directly to supervised entities who may be market participants. Essentially, this constitutes a reversion to MiFID1 in respect of commodities, and therefore an OMPs and EMPs regime would appear to hold value.

71 Do you think that the scope of contracts that are automatically subject to position limits should be limited? If yes, do you think that it should be limited to contracts that are critical or significant, which includes those that are physically settled, and agricultural?

With reference to our answers to questions Q65 - Q71 above, we do not see any value in a UK commodity derivatives regime, either free-standing, or in concert with mutual recognition to third country regimes. These aspects should be subsumed into the supervisory applications of the orderly trading requirements for trading venues, the risk management of CCPs and the prudential supervision of UK authorised market participants where appropriate. For energy markets, this would require a purposeful OMPs and EMPs regime similar to that under MiFID1.

72 Do you think that the UK commodity derivatives regime should allow position limits exemptions for liquidity providers?

With reference to our answers to questions Q65 - Q71 above, EVIA/LEBA does not see any value in a UK commodity derivatives regime, either free-standing, or in concert with mutual recognition to third country regimes.

Furthermore, since the definition and application of either "*liquidity providers*" and of "*market making regimes*," is very loose stemming from pure commercial incentives and holds no economic meaning; so, the application of bespoke and complicated rules to entities allege to provide liquidity in unspecific instruments, amounts and timing would only serve to add complications, competitive distortions and rules which convey no benefits whatsoever.

73 Do you think that the UK commodity derivatives regime should introduce a 'pass through' hedging exemption to enable investment firms to support a wider range of hedging practices?

Whilst we support the principles underlying the suggestion for a UK 'pass through' hedging exemption, and we recognise that the differential application to investment firms has been obstructive; we cannot understand how the proposals [in 6.16] may act in practice where the market participants themselves, together with the onwards chain of clients would likely be non-UK entities. Further, we refer to the answers to questions Q65 - Q72 above wherein the concept

of position limits and therefore to hedging exemptions is deeply flawed in a market conduct regulation.

Rather we believe a reversion to the approach under MiFID I should be taken wherein a qualitative disclosure as the nature of the counterparty may be disclosed to trading venues, and then, any risk-based supervision should be conferred to prudential compliance or to CCP supervision under EMIR.

74 Do you think any other activities should be exempt from the regime?

We do not see any rationale for a position limits regime at the level of trading venues, nor for the segregation of ETDs given current technological capabilities. Rather we believe a reversion to the approach under MiFID I should be taken wherein a qualitative disclosure as the nature of the counterparty may be disclosed to trading venues, and then, any risk-based supervision should be conferred to prudential compliance or to CCP supervision under EMIR.

75 Are there areas of the UK's position reporting regime which could be improved?

We do not see any rationale for a position limits regime at the level of trading venues who only know their own daily trading flow, and therefore little prospect of any value in a position reporting regime being administrated and facilitated at the level of trading venues. Rather, transaction reporting, as is currently the case, should suffice and that should apply only for that subset of the current definition of derivatives that we specify in our answer to questions 66, 67, and 68 above.

Clearly other reporting requirements, notably REMIT in the case of Wholesale Energy Products for instance, or SFTR in the case of commodity repo and lending, should apply to commodities not defined and classified as derivatives.

76 Do you think that the ancillary activities test (AAT) should revert to a qualitative assessment of the activities performed by a market participant?

Yes, EVIA/LEBA agrees that the ancillary activities test should revert to a qualitative assessment of the activities performed by a market participant.

77 Do you think that the basis of the AAT should be expected activity, rather than historic activity?

EVIA/LEBA has no comment regarding whether the basis of the AAT should be expected activity, but we would add the general note that such a move would be in accordance with more

reliance on a firm's disclosures, which could include a public, audited statement as to the level and scope for expected activity.

78 Do you agree that the annual notification requirement should be abolished?

EVIA/LEBA has no comment regarding whether the annual notification requirement should be abolished, but we would add the general note that such a move would be in accordance with more reliance on a firm's disclosures, which could include a public, audited statement as to the level and scope for expected activity.

79 Does the continued existence of the separate Oil Market Participant (OMP) and Energy Market Participant (EMP) regimes for commodity derivative market participants serve any meaningful purpose?

Should moves to remove position limits and position reporting at trading venue level be removed in accordance with our answers above [in Q66 – Q76] and in line with a broad reversions to the scope of MiFID I; then indeed EVIA/LEBA would see value in some prudential controls on UK non-financial firms via the Oil Market Participant (OMP) and Energy Market Participant (EMP) regimes for commodity derivative market participants would indeed appear to serve purpose.

80 Do you think that the OMP and EMP regimes should be removed as particular regulatory statuses from the UK's regulatory perimeter?

Whilst it follows from our answer to Q79 above that this regime could replace position limits and reporting, we can see particular value in the application at Level 1 inside the legislative perimeter. It should suffice to operate in the FCA Rules only, unless observed not to garner the intended outcomes.

81 Do you think any changes would need to be made to the MiFID II regime, if the OMP and EMP regimes are removed as particular regulatory statuses?

No, EVIA/LEBA does not think any changes would need to be made to the MiFID II regime to remove the OMP and EMP regimes in accordance with the position stated [in 6.29]. Indeed, given our answers above, we could envisage that changes only at the level of the FCA Rules would be more appropriate should the assessment be made to revert to the MiFID I approach, wherein the regime took the place of inappropriate position related rules and reporting at the level of trading venues.

Chapter 7: Market Data

82 Do you agree that the government should take action to encourage the development of a CT?

Yes, despite the challenges, EVIA/LEBA would agree that the government should take action to encourage the development of a Consolidated Tape in the UK ["UKCT"]. This view hinges on the greatly advantageous concomitant benefits of removing the entire pre-trade transparency regime from MiFIR, together with the acknowledgement that contemporary technological adoptions, especially including "data-lakes," ISO standards, distributed ledgers and common domain models are 'gamechangers'. We generally endorse the comments of AFME in this regard covering the scope, contributions and governance required. We would add that it would be complicated for the UK to create a particularly immediate CT by central coordination, so deferrals up to end of day are more likely and appropriate.

Given that our only experience is looking over to Reg NMS in the US, in our opinion it is difficult *not to see* how any development of a UKCT should focus first on cash equity securities which trade more or less continuously, if not limited to "UK liquid" instruments. With respect to technical aspects of a CT other than liquid cash equities, we note that specific questions on the construction of a consolidated tape are primarily devoted to equity and fixed income instruments rather than derivatives wherein the current adoption of the ISIN system, counterparty credit considerations[14], together with the ubiquity of long deferrals, immediately renders the consolidation of trades quite indeterminate. In this regard we note ISDA's response to this question and support their recommendations without repeating them.

It is also important to set out that any CT provider should not become a for-profit arrangement at the commercial expense of the submitters of market data. The purpose of the CT should be to help overcome the consequences of market fragmentation that arise when the same instruments are traded on more than one trading venue. The overall benefits would be reduced if a commercial project were to profit from the collection and distribution of data at the commercial expense of submitters. The competition between trading venues for trading of instruments can help to reduce transaction costs, but a CT can help to balance the costs which arise from investors connecting to multiple venues. The preferred model is that a CT service provider pays for the data submitted to it or returns value to submitters through royalties or a profit share.

With respect to Fixed Income markets, whilst reference data and deferrals are not quite such obstacles, the episodic nature of transactions, their common occurrence as contingent spreads, packages or portfolios and the individual trade level reliance on the cost of related funding trades all make for serious existential challenges. We note that industry discussions are still very divided on the notion of "*MEFRROC*[15]" and for which trades are relevant for any consolidated tape let alone the further constraints around a UKCT. Clearly these require a

[14] These include the basis between CCPs
[15] ESMA, in its Q&As on Transparency topics, Chapter 4 Question 4 (a) defines this requirement as "*MEFRROC*" and clarifies that it expects "trading venues … to document how the *MEFRROC* requirement is met, either in contract specifications for packages traded on trading venues or on a package-by-package basis in case of OTC-transactions."

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definition and capture for and trades that could affect the price together with those trades that genuinely reflect the liquidity (volume) of a bond or security. In this regard we note ICMA's response together with that of the FIX trading community to this question and support their recommendations without repeating them.

If you answered yes to question 82:
83 Do you think a fixed income tape should be prioritised?

No, we do not consider that a fixed income tape for corporate bonds and government bonds should be prioritised over an equity CT, given the relative data quality issues and volumes. A post-trade bond CT and a cash equity CT could be specified, built, and launched independent of each other; however, this is far from the case for derivatives.

Rather, the establishment of any UKCT for post-trade information consolidated tape in different asset classes (specifically therefore equities and bonds) requires international co-ordination on specification and design standards with particular emphasis on trade flags and the different requirements of each asset class. This would require more engagement with industry than hitherto as any UKCT should also be introduced in a manner and speed which is sympathetic with the commercial constraints and business models of the relevant market infrastructures and intermediaries.

84 Do you think that it would be beneficial for a fixed income CT to include post-trade data only, or would there be value in a tape covering pre-trade data too?

We believe any UKCT should comprise of post-trade data only.

Consequently, we reiterate that any CT developed for bonds must not result in the priority of transparency over liquidity which could compromise committed liquidity providers provision of risk capital. It is essential that the UK maintains the current MiFIR option of 4-week volume omission and two day deferral period for price information regime already in operation, such that trades which benefit from deferred publication are not published on the tape until after the deferral period has expired.

85 Is there any value in a delayed data CT for fixed income markets?

No, EVIA understands that any UKCT, especially fixed income markets given their heterogeneity, should be simple, comprehensible, and achievable. Therefore, neither delayed data, nor near-real-time data would be prudent, at least at the outset, with End-of-Day or End-of-Session outcomes being the most expedient.

86 Is it valuable for an equity CT to include pre- and post-trade data?

No, EVIA understands that any UKCT, including an equity CT, should comprise of post-trade data only.

87 Is there any value in a delayed data CT for equity markets?

EVIA understands that neither delayed data, nor near-real-time data would be prudent, at least at the outset, with End-of-Day or End-of-Session outcomes being the most expedient.

88 Should the government amend legislation to enable a market-led private sector CT to develop, or do you think UK authorities should be actively involved in creating a CT?

It is clear from the absence of even any prospect of a private UKCT to date that the government is required to undertake certain actions to facilitate and to encourage any development of a UKCT. HMT and FCA would likely hold a significant role in setting the appropriate framework and governance structure of a CTP. This will be important to ensure that the operation of a CT remains a commercially attractive option while also ensuring that the CT results in benefits to the consumers of market data. This may indeed include legislative amendments to enable a public-private institution or a market-led private sector tape to develop. However, it would be very unhelpful should a UKCT become a for-profit arrangement without choice and competition and at the commercial expense of the submitters of market data.

This extends to situations, also familiar, where not-for-profit oligopolies are barriers to effective and efficient markets. The purpose of the UKCT should be to help overcome the consequences of market fragmentation that arise when the same instruments are traded on more than one trading venue. The overall benefits would be reduced if a commercial project were to profit from the collection and distribution of data at the commercial expense of submitters. The preferred model is that a CT service provider pays for the data submitted to it or returns value to submitters through royalties or a profit share.

We note that whilst the competition which currently exists between trading venues can help to reduce transaction costs, a CT may nonetheless help to offset, or to mitigate further, costs which apply to investors needing to connect to multiple venues.

89 What are the legislative barriers for a private sector-led CT to emerge? Do you agree with the legislative changes identified above? Are there additional changes that UK authorities should be considering?

We do not see particular legislative barriers for a private sector led UKCT and broadly agree with the comments in paragraph 7.9 and 7.11.

90 Do you see any risks with removing the obligation for CTs to provide data for free after 15 minutes?

No, outside the scope of cash equity instruments, we do not see any risks with removing the obligation for CTs to provide data for free after 15 minutes.

91 What are the potential advantages and disadvantages of multiple private-sector CTs for each asset class?

Having multiple CTs could mean the faster and more effective development of data standards, trading flag protocols and process related common domain models. Clearly this would encourage competition in terms of service and commercial models, but it could lead also to dispersed data and standardisation issues. From the point of view of an end user, the benefit of multiple private-sector UKCTs would be the aggregated view which the active market users already build at great expense via the development of proprietary API translations and integrations.

Whilst competition, in theory, could aid with lowering pricing, this is a function that is likely to operate best as a quasi-public utility. Its outputs should be subject to specifications, and its inputs should be provided subject to regulatory controls to ensure that there is fair pricing.

92 Do you have any suggestions on further areas that UK authorities should be considering when making changes to market data, especially in relation to requirements that are set out in legislation?

Notwithstanding our commendation that pre-trade transparency be generally removed from UK MiFIR, we would still require that UK legislation expressly conditions the prevention of any reuse of required transparency data for commercial purposed such as the creation of "*derived-data*" or its resale in different formats, in bundles or in third countries. For the avoidance of doubt, and at the same time endorsing the fair and reasonable access pricing conditions; any commercial use-case for required data should require a commercial license from the submitting firm or venue.

We also refer to the EVIA response to the FCA's Call for Input on market data which closed on 21 January earlier this year. We note that the high price of market data is largely attributable to the existence of trademarks and IPR stemming from completely restricted access provisions for trading venues to access post-trading infrastructures. We would urge the UK to reconsider setting an open and competitive domestic environment.

Chapter 8: Reporting

93 Where do the current regulatory reporting regimes for wholesale markets contain duplicative reporting requirements?

EVIA/LEBA support standards and technological work to the effect that data should be reported once and used for multiple purposes. We have found that duplicative reporting requirements occur in a number of aspects:

Firstly, there is overlap of similar data across the European reporting regimes; notably for members these are: MIFID2; SFTR; EMIR; MAR and REMIT. For example, the requirement to

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report SFTs with the BoE and ESCB members under the second subparagraph of RTS 22 Article 2(5) is not particularly logical and therefore it is common consensus that any SFTs with the European central banks participate on UK trading venues should be removed from the scope of MiFIR transaction reporting.

Secondly there is duplicative reporting between national regimes where arranging and execution activities occur cross border, and where clients are accessing trading venues in third countries. This is especially relevant between European venues and SEFs, together with the operation of UK and EU MiFID2 in respect of financial counterparties who hitherto self-reported. Similar situations have arisen in respect of UK REMIT and EU REMIT.

Additionally, there is both inconsistency in terminology (i.e., the same attributes are called different things across the reporting obligations) and inconsistency in how the same attributes are required to be reported. We defer to the annex deposition of the AFME-GFXD submission for a summary of the different reporting obligations a firm faces when trading between the US and the UK together. If there are reporting obligations, any reportable data element should be reported once (e.g., by using UPI) and that global harmonisation should be key in defining the reporting obligations (e.g., by harmonising UTI, UPI, CDE). Consideration around the management and sharing of personal data ["PIId"] should be a high-level priority for the UK as these matters transcend the authority of the competent authorities but may be solved with the interventions of both government and technological innovation.

In situations where there are overlapping requirements within regulations, there is an opportunity to reduce costs by aligning the definitions of those requirements by use of a standard data model. In the case of UK EMIR and UK MiFIR, if a data model were to represent the same trade in a consistent way, firms may only need to report the trade once in order to fulfil the requirements of both regimes. This should reduce data reporting operating costs further. A standard data model should not be applicable to UK reporting only but be applicable across global jurisdictions thereby improving efficiency and accuracy, whilst reducing costs and duplication of work. ISDA have developed a common domain model ["CDM"] to establish a standard representation of trade components and their lifecycle events.

94 Is intervention needed to mitigate against duplicative reporting for firms undertaking securities financing transactions (SFTs) with members of the European System of Central Banks?

We agree that any SFTs where the Bank of England or European central banks participate on UK trading venues should be removed from the scope of MiFIR transaction reporting. The FCA's Temporary Transitional Powers (TTP) allow that parties subject to SFTR in the UK will not have to report SFTs transacted with ESCB central banks, as these will be exempt under the TTP until 31 March 2022.

After this date however, and unless there is a change to the Binding Technical Standards, entities reporting under UK SFTR would have to report SFTs with members of the ESCB under both UK MiFIR and UK SFTR. Therefore, there is a need for intervention to mitigate against duplicative reporting.

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95 Do you think the 10% loss reporting rules for portfolios and contingent liability transactions offer effective investor protection? If not, how do you think the rules in this area should be revised?

No comment.

96 Do you think electronic communication should become the default means of communication for disclosures and reporting to retail clients, and, if so, what protections are needed for retail clients around such a change?

No comment.

97 Are there any other changes to the conduct rules in the MiFID delegated regulation that you think could be made to reduce costs whilst continuing to offer meaningful investor protection?

One aspect that we would seek to amend would be the free-form construction of the "TVTIC". Whilst likely an FCA level change, it would benefit all parties if this were standardised as a Unique Trade Identifier ["UTI"].

Both ESMA and the FCA are aware of issues relating to TVTIC, notably the inconsistent approach taken by trading venues when generating and disseminating the TVTIC. The FCA indeed acknowledged this within Market Watch 65 from September 2020 where the FCA confirm they have '*…identified inconsistent dissemination of TVTICs by trading venues to investment firms. We recommend that trading venues review their procedures for the generation and distribution of TVTICs to ensure they facilitate the consistent reporting of a unique code to be used by both the buying and selling parties*.' Due to this, FCA confirmed that they have 'encountered investment firms failing to report the TVTIC accurately, including instances where the field has been left blank, reported with an internal code, or reported with a code that fails to follow any guidelines provided by the respective trading venue.'

98 Do you think other changes are needed to ensure that the reporting regime correctly balances investor protection and transparency?

No comment.

99 Have you experienced any issues with the utilisation of International Securities Identification Number (ISINs) as identifiers?

Yes, ISINs are not fit for purpose for derivatives, money markets, forwards, foreign-exchange, and commodities markets. More than some 60 million ISINs have now been issued for "*OTC derivatives*" under MiFID II. Several trade-level attributes are included which result in the identifier losing all capacity for effective instrument identification. Indeed, the same interest rate OIS, SPS, IRS and swaptions are traded every day with different maturity dates and therefore mapped to different ISINs.

We wholeheartedly agree with the advocacy of ISDA that IRS and other derivatives should be referenced only the tenor of a swap, instead of also requiring the maturity date; a change that would dramatically reduce the number of ISINs required for what would essentially be the same swap product.[16] We also note that some price forming attributes, such as 'effective date,' are not included in ISINs for certain OTC derivatives instruments, leading to the same ISIN being used for what are, from the market standpoint, different instruments.

The implementation of the ISIN via an oligopolistic structure has added to an expensive and inflexible regime over the period of MiFIR to date.

Both the process burdens and the costs are overly concentrated on trading venues , without any supervisory oversight or rights of appeal. The creation of a European oligopoly has been problematic; not least because it was able to establish itself without a clear public sector mandate or control. Moreover, there are parallel, yet disconnected, resources replicated between FIRDS/FITRS and the ANNA_DSB. Beyond repairing the architectural form and function, we urge that the UK take steps so that the costs of reference data are more evenly distributed across market participants.

100 Do you have any suggestions on how the use of identifiers could be improved?

We urge the UK to align fully with global standards in this respect and therefore directly adopt the CPMI IOSCO technical guidance on harmonisation of the Unique Transaction Identifier ["UTI"] and the Unique Product Identifier ["UPI"]. This will direct empower delegated reporting, supervisory MOUs and promote substituted compliance with third countries. Such a globally consistent transaction identifier can help to produce and share aggregated trade data across global jurisdictions.

For example, in the case of FX markets in particular, and as stated under question 99, adopting a UPI as product identifier would be beneficial. Given the nature of the UPI, which is defined by the instrument tenor rather than the Settlement Date, it would provide more transparency to FX markets and would avoid duplication.

Chapter 9: Cross Cutting Issues

101 What further steps can UK authorities take to enable firms to take advantage of technological innovation in capital markets?

We would encourage UK authorities to consider and embrace the evolving global standards around the broad technological, economic, and legal features of the different types of digital assets; most specifically including asset reference tokens ["stablecoins"]. The aim should be to develop legislation which takes account of the international dimensions of markets for novel

[16] While tenor was introduced in ESMA's Q&A on September 26, 2018 (and subsequently on-shored to UK reporting), it was added alongside maturity date, resulting in more ISINs, not less.

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assets and provides a framework for them to be included within the UK's capital markets and financial markets infrastructure. We note the work currently being undertaken by the Law Commission in this regard and hope its outcomes include proposals to address, among other things, trade certainty and settlement finality.

What is essential is that the current regulatory framework is not bifurcated between novel assets and other capital markets products. The roles played by actors in the financial and commodities markets, including trading venues, CCPs and CSDs, have systemic importance, and the deployment of systems that purport to disintermediate markets also has the possibility to circumvent important controls. The introduction of new business models should be carefully assessed, so that functionally similar arrangements are subject to the same requirements. There might need to be adjustments to the way that the markets are regulated, in order to address the specific features of new technology, but the overall aim should be to maintain the high standards of regulation and supervision.

102 What further steps can UK authorities take to support the wholesale markets sector as we move towards a low carbon economy?

The UK can do little more than promote the development and speed the adoption of global practice standards together with generally accepted principles and definitions. In particular we would advocate the potential for scaling voluntary carbon markets and the underlying voluntary carbon credits. Consequently, it remains an imperative to link together the new UK Emissions Trading System with not only the EU's Emissions Trading System, but eventually those in China and the US to allow both the UK and EU to reach net zero faster and more cost effectively.

103 How do companies harness retail investment whilst ensuring investor protection?

No comment.

104 How do companies take advantage of the globalisation of information to reach investors?

No comment.

105 Is there a role for UK authorities to play to facilitate retail access to capital markets, while continuing to offer high standards of investor protection?

No comment.

Ends.