

ESMA Consultation Paper on MiFID II/MiFIR review report on the transparency regime for equity and equity-like instruments, the double volume cap mechanism and the trading obligations for shares (STO)

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1. - Who should read this paper

This consultation is mainly addressed to all stakeholders involved in the securities markets. In particular, it is of interest to competent authorities and firms subject to MiFID II and MiFIR – mainly investment firms and credit institutions performing investment services and activities. It is also important for trade associations and industry bodies, institutional and retail investors, their advisers and consumer groups as well as any market participant because the MiFID II and MiFIR requirements seek to implement enhanced provisions to ensure transparency and orderly running of financial markets with potential impacts for all those engaged in the dealing with or processing of financial instruments.

2. - Information Note

The Consultation covers the mandates under Articles 52(1), 52(2) and 52(3) of MiFIR which require ESMA to submit a report to the European Parliament and the European Council on the impact in practice of the transparency obligations established pursuant to Articles 3 to 13 of MiFIR. In order to provide a comprehensive assessment ESMA has decided, on its own initiative, to also include an assessment of other important transparency provisions and in particular the share trading obligation (STO, Article 23 of MiFIR) and the transparency provisions applicable to systematic internalisers (SIs, Articles 14-21 of MiFIR). After analysis by ESMA of the responses received, the final report is expected to be sent to the European Commission in July 2020.

For practical reasons, ESMA has decided to publish two consultation documents. The document to which a link is provided in this note focuses on the transparency regime applicable to equity and equity-like instruments. The report analysing the transparency regime applicable to non-equity instruments will be published separately.

This consultation on the transparency regime applicable to equity and equity-like instruments contains proposals aimed at simplifying the structure of the transparency regime while trying to improve the overall trade transparency available to market participants.

Section 2 contains a brief introduction.

Section 3 begins with an analysis of the pre-trade transparency regime for equity and equity-like instruments.

In particular, three dimensions are considered: (1) the evolution of trading executed on- and off-venue (including SIs), (2) the split between lit and dark trading on-venue through the use of waivers, and (3) the evolution in the use of different types of waivers.

Three main conclusions are drawn from this analysis. Firstly, contrary to expectations, considering the introduction by MiFID II/ MiFIR of the STO, for shares, there has been no significant change in the share of trading volume executed on-venue. Secondly, the trading volume executed on-venue has increased but the volume executed under waivers is high, and therefore, there has been no substantial increase in trading transparency. Consequently, a large share of trading volume executed on-venue is not subject to pre-trade transparency. Finally, the use of waivers has changed mainly due to the application of the double volume cap mechanism. Large-in-scale (LIS) waivers are currently the most widely used.

Section 3.2 focuses on the SI regime, while section 3.3 covers the double volume cap mechanism. Section 3.4 analyses the post-trade transparency regime for equity and equity-like instruments and sections 3.5 and 3.6 close the Consultation, respectively, with analyses of the STO and the increasing volume traded in closing auctions.

3.- Submission of comments

Due to the extraordinary circumstances resulting from the Covid-19 outbreak, ESMA has decided to extend the deadline of this consultation until **14 April 2020**.

Respondents may send their comments through ESMA's website: www.esma.europa.eu. Both the paper of this consultation and the response form are available in the section [Consultations](#) (place the cursor on the word to obtain the link).

Likewise, please send a copy of your answers to the CNMV to the following email address: documentosinternacional@cnmv.es

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