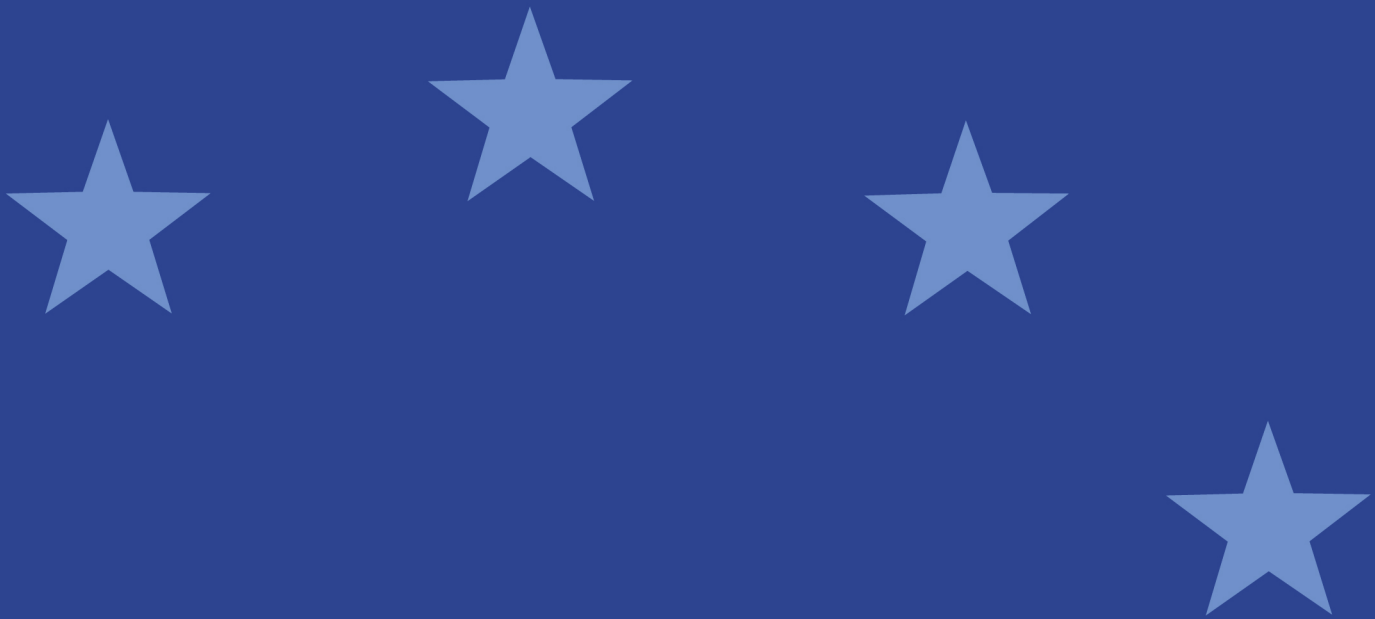




European Securities and
Markets Authority

Response Form to the Consultation Paper

MiFIR report on Systematic Internalisers in non-equity instruments



Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex III. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **18 March 2020**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA_QUESTION_SINE_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA_SINE_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_SINE_ABCD_RESPONSEFORM.

5. Upload the form containing your responses, in Word format, to ESMA's website (www.esma.europa.eu under the heading "Your input – Open Consultations" → "Consultation on MiFIR report on Systematic Internalisers in non-equity instruments").

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading [Legal Notice](#).

Who should read this paper

This paper is of interest mainly to systematic internalisers active in non-equity instruments as well as clients of such systematic internalisers, and any associations representing their interest.

General information about respondent

Name of the company / organisation	Finance Denmark
Activity	Investment Services
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Denmark

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_CP_SINE_1>

Finance Denmark¹ welcomes the opportunity to respond to ESMA's Consultation Paper "MiFIR report on Systematic Internalisers in non-equity instruments". However, as the deadline for this consultation falls within the period of the COVID-19 situation, which puts significant restraints on the functioning of all stakeholders, we reserve the right to come back with further comments at a later stage.

Besides responding to the specific questions in the call for evidence, Finance Denmark would also like to make following general comments:

General comments

Initially, Finance Denmark notes the problems with the data quality in general as also recognized by ESMA. It is Finance Denmark's assessment that these problems also impose uncertainty in relation to the validity of the statistics in general, which should be taken into account in the overall work with the MiFIDII/MiFIR Review.

That said, Finance Denmark suggests that a review of the pre-trade transparency requirements should include a cost-benefit analysis of the information provided to the public. In this context, it is important to take the characteristics of different asset classes into account. For OTC derivatives, our general view is that the published information has limited value to clients and that the requirements create a lot of legal uncertainty and administrative burdens for EU investment firms.

First, the scope of MiFID II, art. 27 (3) and RTS 27 and SI determination in Delegated Regulation 2017/565, art. 12 og 13 should be limited to bonds and derivatives which are traded on a trading venue (ToTV).

¹ Finance Denmark is a business association for banks, mortgage institutions, asset management, securities trading and investment funds in Denmark.

EU Transparency Register – registration number 20705158207-35

Second, the SI determination as scheduled in Delegated Regulation 2017/565, art. 13 was, very late in the process, changed for bonds from "per ISIN" to "per asset class". The change was not in accordance with MiFIDII/MiFIR, e.g. MiFIDII, art. 4 (2) (20) and MiFIR, rec. 19. Furthermore, the wording "issued by the same entity or by any entity within the same group" implies that an investment firm deemed an SI in e.g. one covered bond will become an SI in all covered bonds issued by the relevant mortgage bond institution. We understand that you had corporate bonds in mind when changing the approach and aimed to ensure SIs in at least some corporate bonds (due to their decreasing liquidity profile). However, this is not in line with level 1. Additionally, there are approximately 2700 ISINs in Denmark issued primarily by 6 large mortgage bond institutions. If a firm for example is deemed an SI in 1 (one) ISIN in each of the 6 mortgage bond institutions, the firm becomes an SI in all 2700 ISINs.

However, in case

1. the proposals in Q8 in respect of art. 18.6 and 18.7 are implemented and art. 18.5 in addition is deleted in order to remove the obligation to provide quotes to other clients and
2. the best execution reporting requirements (MiFIDII, art. 27, RTS 27 and RTS 28) are modified for SIs,

the "per asset class" approach can in our view continue. If this is not the case, Finance Denmark suggests to limit the applicability so that if the "classes of bonds.." encompass more than X ISINs, the IBIA approach (per ISIN) is chosen instead for the SI determination. If X is set to for example 20 or 30 ISINs, then if the "classes of bonds" contains more than 20 or 30 ISINs, the approach would be that the consideration on whether an investment firm is to be considered as SI will be set in respect of each bond (= ISIN level) where it internalises according to the criteria in art. 13 (similar to the original approach and for shares in art. 12). With X set to 20 or 30 only a few corporate bonds will be subject to the IBIA approach and the vast majority (+90%) of the affected ISINs will be banks /financials issuers, which are normally not considered being "corporate bonds". If an additional criterion of newly issue size above 1 bn EUR is added, the amount is even lower.

Third, Finance Denmark would like to stress the urgent problem with many trading venues', if not all, charging fees from Systematic Internalisers' (SIs) for distributing and publishing the SI's own quotes. This is one part of the problems with increasing market data costs as also documented in Finance Denmark's reply² to the ESMA consultation on market data and as also reflected in ESMA's final report³. These problems must be addressed by the Commission as also suggested by ESMA in their final report following the market data consultation. In this context it is important to stress that a consolidated tape will not solve the problems with market data costs.

<ESMA_COMMENT_CP_SINE_1>

² https://finansdanmark.dk/media/40034/response_to_esma_consultation_on_the_development_in_prices_for_pre-_and_post-trade_data_and_on_the_consolidated_tape_for_equity_instruments_final_0-finance-denmark.pdf

³

https://www.esma.europa.eu/sites/default/files/library/mifid_ii_mifir_review_report_no_1_on_prices_for_market_data_and_the_equity_ct.pdf

Questions

Q1 : Do you consider that there is a need to clarify what a “firm quote” is? If so, in your view, what are the characteristics to be met by such quote?

<ESMA_QUESTION_CP_SINE_1>

No, Finance Denmark does not consider that there is a need to clarify in MiFIR what a “firm quote” is. To our knowledge there has not been any problems resulting from the lack of a legal definition and we see a risk that a definition could increase the complexity of the SI-rules even further.

<ESMA_QUESTION_CP_SINE_1>

Q2 : (For SI clients) As a SI client, do you have easy access to the quotes published, i.e. can you potentially trade against those quotes when you are not the requestor? Do you happen to trade against SIs quotes when you are not the initial requestor? How often? If it varies across asset classes, please explain.

<ESMA_QUESTION_CP_SINE_2>

N.a.

<ESMA_QUESTION_CP_SINE_2>

Q3 : What is your overall assessment of the pre-trade transparency provided by SIs in liquid non-equity instruments? Do you have any suggestion to amend the existing pre-trade transparency obligations? If so, please explain which ones and why.

<ESMA_QUESTION_CP_SINE_3>

First, Finance Denmark would like to stress the urgent problem with many trading venues', if not all, charging fees from Systematic Internalisers' (SIs) for distributing and publishing the SI's own quotes as referred to under “general comments”. This is one part of the problems with increasing market data costs as also documented in Finance Denmark's reply to the ESMA consultation on market data and as also reflected in the ESMA final report.

This cost is one of the reasons why the value of the quotes is lower than the costs of the data. Market participants use to a greater extent bilateral communication of interest instead of the pre-trade non-equity quotes.

ESMA may consider removing all pre-trade transparency and instead focus on improving the post-trade transparency, which add much more value than the pre-trade information.

<ESMA_QUESTION_CP_SINE_3>

Q4 : (For SI clients) do you have access to quotes in illiquid instruments? If so, how often do you request access to those quotes? What is your assessment of the pre-trade transparency provided by SIs in illiquid instruments?

<ESMA_QUESTION_CP_SINE_4>

N.a.

<ESMA_QUESTION_CP_SINE_4>

Q5 : (For SIs) Do you disclose quotes in illiquid instruments to clients upon request or do you operate under a pre-trade transparency waiver? In the former case, how often are you requested to disclose quotes (rarely, often, very often)? Does it vary across instruments / asset classes?

<ESMA_QUESTION_CP_SINE_5>

Finance Denmark considers that art. 18.2 covers two issues: First, the possibility to provide a quote to a client if the SI agrees to provide a quote in an illiquid instrument. Second, the requirement to disclose such quote to other clients if they may ask for such.

For the first part, when receiving a request for quote from a client who wants to trade, the SIs quote in both liquid and illiquid instruments.

For the second part, The Danish FSA has not granted the illiquidity waiver and SIs can provide the historical quotes if requested. SIs' do only rarely, if ever, receive request from clients on access to historical quotes.

<ESMA_QUESTION_CP_SINE_5>

Q6 : Do you consider that there is an unlevel playing field between SIs and multilateral trading venues active in non-equity instruments, in particular with respect to pre-trade transparency? If so, please explain why and suggest potential remedies.

<ESMA_QUESTION_CP_SINE_6>

Yes. As SIs in contrast to trading venues put their own capital at risk, they are more exposed to the consequences of transparency. This exposure increases as SIs – also in contrast to trading venues – have to disclose their identity when their quotes are made public. This can be considered as an unlevel playing field as the execution venues do not compete on similar terms. In case art. 18.6 and 18.7 are deleted, the present requirements for SIs to publish quotes with name/MIC can be deleted. Additionally, Finance Denmark suggests deletion of art. 18.5 so there only is a requirement to publish quotes, not give access to other clients due to the risks associated with this. This would be a natural consequence of the deletion of art. 18.6 and 18.7.

As for the discussion around SI networks this is – if at all – an equity-related issue. In our experience, SIs which are active on the non-equity market provide quotes on a bilateral basis either on the phone, though electronic systems or via trading venues facilities.

<ESMA_QUESTION_CP_SINE_6>

Q7 : (for SIs who are also providing liquidity on trading venues): What are the key factors that determine whether quote requesters (your clients) want to receive the quote through the facilities of a trading venue or through your own bilateral trading facilities?

<ESMA_QUESTION_CP_SINE_7>

Finance Denmark experiences an increase in market makers/SIs providing liquidity through the facilities of trading venues. The key factors which have driven this development are that the requirements in MiFID II/MiFIR have created an incentive for clients to move non-equity trading to venues since this makes their compliance with various reporting requirements (e.g. transparency and execution quality) easier. When trading on venues there is no legal uncertainty on reporting.

In short, trading via trading venues is STP and fast transaction typically small trades or a list of small trades. Using trading venues is also a way for clients to prove best execution when asking several dealers in competition.

Trading via SIs is typically in large sizes (and often in less liquid instruments) where the SIs puts its own capital at risks and manage this risk. SIs are often acting as a "buffer" (intermediary) ensuring that unequal (opposite) order sizes can be facilitated efficiently via using the SI using its risk capital (e.g. when two clients want to trade in the same instrument but in unequal sizes or all want either to sell or to

buy at the same time). Trading via SIs is also often in complex or customized products and/or where the client wants to discuss the market, the product, the price etc.

<ESMA_QUESTION_CP_SINE_7>

Q8 : What is your view on the proposal to simplify the requirements in relation to SI quotes in liquid non-equity instruments under Article 16(6) and 18(7)?

<ESMA_QUESTION_CP_SINE_8>

Finance Denmark welcomes and supports ESMA's proposal to delete both article 18(6) and article 18(7) as this is a significant step to limit the SI risks to a reasonable level and to incorporate the existing ESMA Q&As on these questions. This will also create a more level playing field compared to trading venues having no similar requirements to commit to trade multiple times on a displayed quote.

In order to make the simplification consistent, Finance Denmark suggests deleting art. 18.5 so it is only a requirement to publish quotes to the market and not make the quotes available to the other clients.

<ESMA_QUESTION_CP_SINE_8>

Q9 : Do you consider that the requirements in relation to SI quotes in illiquid non-equity instruments (Article 18(2)) are appropriate? What is your preference between the options presented in paragraph 52 (please justify)?

<ESMA_QUESTION_CP_SINE_9>

Please beware there is an error in no 51 ("i.e. liquid above SSTI") it should be corrected to "i.e. liquid below SSTI".

First, Finance Denmark believes that the transparency regime should be harmonized across Europe and that it is inappropriate for the market efficiency that National Competent Authorities individually can assess whether investment firms can use the waiver for illiquid quotes or not. This creates an unlevel playing field.

As for the proposed options, neither are satisfactory with the above comment in mind. However, for want of better, option 1 is the preferred option.

<ESMA_QUESTION_CP_SINE_9>

Q10 : What is your view on the recommendation to specify the arrangements for publishing quotes?

<ESMA_QUESTION_CP_SINE_10>

No, Finance Denmark does not consider that there is a need to clarify the arrangements for publishing quotes in MiFIR. To our knowledge, there has not been any problems in respect hereof.

However, Finance Denmark would like to stress the urgent problem with many trading venues', if not all, charging fees from Systematic Internalisers (SIs) for distributing and publishing the SI's own quotes as highlighted both in "general comments" and Q1.

<ESMA_QUESTION_CP_SINE_10>

Q11 : Do you have any comment on the analysis of Bond data and the relation with the SSTI thresholds as presented above?

<ESMA_QUESTION_CP_SINE_11>

Finance Denmark has no comments as the result is as expected.

<ESMA_QUESTION_CP_SINE_11>

Q12 : Do you have any comment on the analysis of derivatives data and the relation with the SSTI threshold as presented above?

<ESMA_QUESTION_CP_SINE_12>

Finance Denmark has no comments as the result is as expected.

<ESMA_QUESTION_CP_SINE_12>

Q13 : What is your view on the influence of the SSTI thresholds on the pre-trade transparency framework for SI active in non-equity instruments? Are there any changes to the legal framework that you would consider necessary in this respect?

<ESMA_QUESTION_CP_SINE_13>

Finance Denmark suggests changing the methodology from pan European based percentiles for both SSTI and LIS to fixed thresholds. A dynamic figure as percentiles creates uncertainty and as the calibration in addition is based on pan European figures, the uncertainty is even larger. However, any such fixed threshold would of course need to be determined in a way so that the policy objective of protecting SIs against undue risk is fulfilled. The level of the threshold will differ across asset classes. For instance, the SSTI threshold should be set at a reasonable level, not exceeding the present floor as this level is representative for the retail sizes.

<ESMA_QUESTION_CP_SINE_13>

Q14 : What is your view on the best way for ESMA to fulfil the mandate related to whether quoted and traded prices reflect prevailing market conditions and in particular: (1) the source of data for the SI quotes/trades (RTS 27, APA); (2) the source of market data prices; and (3) the methodology to compare the two and formulate an assessment?

<ESMA_QUESTION_CP_SINE_14>

Finance Denmark is sympathetic towards the difficult task that has been given to ESMA to determine whether quotes and traded prices reflect prevailing market conditions.

As for the RTS 27 report, the value is very questionable in general and in particular as a reliable source for data regarding SI trading.

As for 1) a way could – in our view - be to use data from APAs provided that the data quality can be ensured.

As for 2) the best way to get the information from trading venues is with Firm Prices/Orders/CLOB trading. A caveat is that most non-equity instruments are RFQ traded so it would be only possible to get a very small subset of all instruments as firm prices.

As for 3) a way could be to perform an assessment like the ESMA pre-trade transparency assessment for SIs in October 2019.

<ESMA_QUESTION_CP_SINE_14>