

The WFE's Response to the European Commission Consultation on the MiFID II Review

The World Federation of Exchanges (WFE) is the global trade association for regulated exchanges and clearinghouses (CCPs). We seek outcomes that support market transparency, consumer confidence and economic growth. We represent over 250 market infrastructures, spread across the Asia-Pacific region (~37%), EMEA (~43%) and the Americas (~21%). The nine exchange groups we represent with a presence in the EU operate over 40 cash equities trading venues, which accounted for 73% of average daily turnover in the region in 2019.¹ With extensive experience in developing and enforcing high standards of conduct, WFE members support an orderly, secure, stable, fair and transparent environment for investors and for companies that raise capital within the EU and globally.

We welcome the opportunity to respond to this European Commission consultation on the review of the MiFID II/MiFIR regulatory framework. We aim to contribute to the Commission's consideration of a post-trade tape by contrasting the EU's market structure to that of other jurisdictions. With jurisdictional specificities in mind, we believe that a post-trade tape of record represents the only consolidated tape which has a clear use case and would be likely to be proportionate in terms of costs and benefits.

Regarding the share trading obligation, we set out our view that third country venues and shares are important to the European financial market value chain; we suggest a mechanism for excluding them from the share trading obligation.

We encourage the European Commission to refrain from making changes to the regime for spot FX in the context of the on-going implementation of the Global Code—noting that many authorized trading venues already monitor trading in spot FX transactions in conjunction with FX derivatives in order to detect and prevent market abusive behaviours in this segment of the global FX market. Any future changes ought to be agreed multilaterally, given the global nature of these markets.

In general, with respect to market data, we are concerned that the consumers of market data are using the prospect of an EU consolidated tape not to further the interests of investors, but rather their own commercial interest through regulatory price controls. As the paper we have attached here demonstrates, market data is a valuable product and the data licensed by stock exchanges is used by commercial companies to make profits. Many of these same data consumers also use exchange data to compete with established exchanges for the same order flow, but at significantly lower cost. In many cases, order flow is even controlled by those competitors.

Question 7. What are in your view the reasons why an EU consolidated tape has not yet emerged?

If a business case existed to develop a CTP (as provided for in legislation) in the EU, it would have emerged from an existing market data vendor or even a new entrant. However, it has not. We attribute this to the lack of a regulatory use case, compounded by poor data quality from non-exchange venues. A consolidated tape has a clearly defined purpose in certain other jurisdictions, with regulatory obligations related to the underlying market structure (e.g. in the US, Reg NMS and a form of best execution that arises from this particular market structure). In contrast, in the EU best execution rules, for example, put more emphasis on factors beyond price—just one of many

¹ WFE calculations based on [Fidessa data](#).

differences. These rules are the result of the specificities of EU market structure, which differs from the US in having a non-harmonised settlement process that means an attractive price for a financial instrument in a certain jurisdiction may become uneconomical as a trade if many intermediaries are necessary to conclude and settle it. This cost component of best execution, which EU requirements mandate for consideration, would not be available on any CTP. Whereas commercial incentives are furthermore in place for US exchanges to provide their data to the consolidator, certain discussions in the EU have pointed to the possibility of data sources submitting their data to the CTP at their own expense. This would be an untenable scenario for exchanges.

We nevertheless understand the policy objective of creating a consolidated post-trade view of the specific trading environment engendered by MiFID II/MiFIR. Developing an integrated view of liquidity on EU markets, beyond what is provided by market data vendors, could conceivably have a use for market participants while serving a policy objective. The means of achieving this ought to allow for stock exchanges to further compete with each other, alongside alternative venues, globally and locally, in a fair setting. Such a CTP in the EU should increase transparency rather than merely reproduce what is already provided by data vendors.

Some market data consumers have also endorsed the emergence of a consolidated tape, though sometimes for different reasons than EU authorities. The multinational banking groups and high-frequency traders involved in the debate see a CTP as a backdoor to realising their efforts to have more regulatory intervention in the setting of market data prices. We do not believe that shifting revenues and profits from exchanges to other intermediaries is a sound policy rationale for instituting a consolidated tape, particularly as such action would undermine stock exchanges' investment in delivering on their important and unique role. Rather any CTP should address a legitimate policy objective beyond what existing commercial solutions provide and, in doing so, satisfy a cost/benefit analysis,).

Question 8. Should an EU consolidated tape be mandated under a new dedicated legal framework, what parts of the current consolidated tape framework (Article 65 of MiFID II and the relevant technical standards (Regulation (EU) 2017/571)) would you consider appropriate to incorporate in the future consolidated tape framework?

Exchange data is already consolidated by market data vendors and available to any interested party. The information missing within such aggregations is off-venue data, as these commercial service providers often choose not to include off-venue data because of its poor quality. The aggregation of high-quality data and poor-quality data inevitably results in poor quality data. The added value a CTP could potentially provide would be a comprehensive view of the EU market including off-venue data. To be useful, this data would have to be reliable as well as comprehensive. Consequently, it is essential that data quality be improved as a first necessary step.

For the avoidance of doubt, the WFE does not support the introduction of a pre-trade CTP; such a CTP would add yet additional costs to the industry and lack a clear use case.

Question 10. What do you consider to be the use cases for an EU consolidated tape?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Transaction cost analysis (TCA)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ensuring best execution	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Documenting best execution						

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	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Better control of order & execution management	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Regulatory reporting requirements	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Market surveillance	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Liquidity risk management	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Making market data accessible at a reasonable cost	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Identify available liquidity	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Portfolio valuation	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

We would encourage the European Commission to focus first on fostering transparency where it is lacking, especially as use cases put forward by the Commission would apply to any asset class in similar ways. Equity markets are highly transparent compared to other markets such as bonds or ETFs.

The buy-side may be able to benefit from a consolidated tape of record which provides for an integrated view of EU markets and allows buy-side institutions to easily examine the execution quality with a comprehensive overview of on- and off-venue liquidity. This could furthermore offer an opportunity for investors to evaluate their positions and portfolios or identify liquidity within selected instruments across the EU. We believe such a tape could be delivered in an accessible manner, without risking the competitiveness of EU exchanges.

Question 11. Which of the following features, as described above, do you consider important for the creation of an EU consolidated tape?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
High level of data quality	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Mandatory contributions	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mandatory consumption	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Full coverage	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Very high coverage (not lower than 90% of the market)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Real-time (minimum standards on latency)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The existence of an order protection rule	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Single provider per asset class	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Strong governance framework	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Information displayed on a CTP should be clearly labelled according to its data source to ensure reliable and transparent data provision.

A CTP should not be allowed to change requirements on the content of trading venues' data, i.e. it should not be considered a path for ever more granular data. As exchange data is produced based on very complex and public rulebooks, changing or manipulating this data could create a considerable amount of damage to both the consumer and the relevant markets operated by the exchanges. Liabilities resulting out of any wrongly displayed data ought to be clarified upfront, considering the substantive sanctions possible under MiFID II/MiFIR. A CTP ought not to be positioned preferentially vis-à-vis other providers with respect to the provision of ancillary services beyond a consolidated tape, i.e. there ought to be a fair and level playing field within the EU.

Question 11.1 Please explain your answers to question 11 and provide if possible detailed suggestions on how the above success factors should be implemented (e.g. how data quality should be improved; what should be the optimal latency and coverage; what should the governance framework include; the optimal number of providers):

Strong governance will be essential to a CTP and we regard the regulations applicable to data reporting services providers to be the baseline for a regulated CT—including but not limited to protections against conflicts of interest, corporate transparency and business continuity. Contributing trading venues ought to have full representation and voting power on the CTP board, which should also comprise neutral representatives (e.g. ESMA). We believe ESMA ought to be vested with responsibilities for monitoring the impact of the CT on the financial markets, using appropriately specialised techniques to monitor issues such as latency, and report their findings (including risks, costs and benefits for the industry to NCAs).

Question 12. If you support mandatory consumption of the tape, how would you recommend to structure such mandatory consumption?

The CT will be a new market data aggregator in addition to those data vendors already active in aggregating market data. A consolidated real-time tape therefore requires a valid and strong business case, facilitated by a clear regulatory use case. In short, it will only generate sufficient revenue if it were mandated for purchase by one means or another.

There will be significant start-up and on-going costs associated with a consolidated tape. These costs must be funded by the industry and come in addition to existing costs spent on aggregated data. Suggestions of using public funds to start up and operate a CT for the purported benefit of the wholesale financial services sector would be an anathema.

If pricing policies are deemed necessary for a CT which is mandated for use and payment, they should take account not only of the prevailing economics of the exchanges' business (akin to the Canadian pass-through model), but also the additional costs of implementing the tape. Prices for market data are and should remain subject to market forces, allowing for competitive differentiation while being set by exchanges in a transparent manner.

Care should be taken to ensure exchanges and especially smaller stock exchanges are appropriately compensated given the economics of implementing technology change and of running these markets, which are vital to local economies and the Capital Markets Union's success.

Question 14. Do you agree with the [proposed] features in relation to the provision, governance and funding of the consolidated tape?

Question 14. Do you agree with the following features in relation to the provision, governance and funding of the consolidated tape?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The CT should be funded on the basis of user fees	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Fees should be differentiated according to type of use	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Revenue should be redistributed among contributing venues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
In redistributing revenue, price-forming trades should be compensated at a higher rate than other trades	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The position of CTP should be put up for tender every 5-7 years	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

A CT would have to charge for the provision of consolidated data and redistribute a meaningful part of the revenues to the contributing entities, reference price forming venues especially. Contributors cannot be

asked to contribute data in the absence of (or in exchange for very limited) compensation; this would have a particularly deleterious impact on smaller exchanges. Smaller and less diversified exchange groups, which generate revenue primarily from trading and data, rely in particular on the steady revenue streams related to data (as opposed to the more volatile trading business), in order to fund the high fixed costs related to running and investing in their businesses. In this context, it is essential that price formation by exchanges is being fairly rewarded regardless of the medium by which it is distributed.

Question 21. What is your appraisal of the impact of the share trading obligation on the transparency of share trading and the competitiveness of EU exchanges and market participants?

The uncertainty caused by MiFIR Article 23 has been and continues to be a concern for third-country venues and EU participants in those markets. We support ESMA's proposal that MiFIR Article 23 be revised to exclude third-country shares. We believe that the proposal adheres to a helpful principle, namely that any regulation that had the effect of fragmenting liquidity pools would be to the detriment of price discovery and, ultimately, investor outcomes.

Trading third-country shares on third-country markets is of great importance to the European financial market value chain. Capital flows in either direction between the EU and third countries supports European businesses and investors, and contributes to the efficient allocation of capital. In certain, relatively rare and more complicated cases, notably shares dually listed in the EU and a third country, choice between EU and non-EU exchanges enables intermediaries to achieve the best possible execution for investors.

We regret the lack of an equivalence determination for Switzerland and the use of equivalence for political purposes. The result of this dispute has not been positive for the competitiveness of EU exchanges or market participants.

Question 22. Do you believe there is sufficient clarity on the scope of the trades included or exempted from the STO, in particular having regards to shares not (or not only) admitted to an EU regulated market or EU MTF?

The STO is an essential instrument to increase transparency of share trading; the competitiveness of EU venues and market participants will be improved with modifications to it. We believe that a new regime ought to be instituted to achieve the aims described in our response to Question 21. To exclude third-country shares and appropriately achieve the policy objective, we recommend instituting a system in which ESMA defines EU/EEA shares using the ISIN-based approach described in its [communication of 29 May 2019](#).

At the same time, ESMA would also take steps to identify and remove from this list (ie, the list of EU/EEA ISINs) any shares where an EU issuer has chosen to have its sole primary listing on a third-country venue. The shares identified by this process would be considered third-country shares and excluded from the Share Trading Obligation. (Conversely, third-country issuers that have chosen to have their sole primary listing on an EU trading venue ought to be within scope of the Share Trading Obligation).

For dual-listed securities (where the issuer has chosen to have one of the two listings in the EU), investment firms should have the possibility to trade on either listing venue. To address the consequences of this exemption, reporting arrangements for such dual listed shares ought to be devised to achieve the transparency of these shares in the EU.

Contingent upon such a satisfactory solution to the issue of third country shares coming into force, the exemption of “non-systematic, ad-hoc, irregular and infrequent” should be removed. Instead, exemptions should only apply for those trades that do not contribute to price formation based on a clear and consistent list of qualifying non-price forming trades.

The scope of the STO should be extended to other asset classes (e.g. ETFs) to incentivize lit trading and ensure investor protection. This would enhance investors’ ability to take informed investment decisions and prevent negative effects arising from market fragmentation. It should follow the same methodology for STO determination by assessing where the issuer has chosen to add the same financial instrument to a EU and/or third country trading venue.

Question 24. Do you consider that the status of systematic internalisers, which are eligible venues for compliance with the STO, should be revisited and how?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N.A.
SIs should keep the same current status under the STO	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SIs should no longer be eligible execution venues under the STO	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Please explain in what other way(s) the status of systematic internalisers, which are eligible venues for compliance with the STO, should be revisited:

WFE believes that the SI status should be revisited: We suggest modifying the SI regime for equities and equity-like instruments to trading only above LIS. Indeed, while WFE acknowledges the need for bilateral trading as investors performing large block transactions may have legitimate value from trading via a SI we suggest restricting trading in SIs to trading above LIS in order to protect the price formation process and simplify the fragmented execution landscape. Above LIS trading would thereby constitute a legitimate dark space in which trades across bilateral execution venues and multilateral trading venues are not subject to pre-trade transparency and would benefit from delayed post-trade transparency. Our proposal implies that the pre-trade transparency requirements will no longer apply for SIs as SIs will only be allowed to trade above LIS with no restrictions apart from fulfilling post-trade transparency requirements. Note that the concept of standard market size (SMS) would consequently be obsolete. We feel that a modification of the SI regime appears as the most pragmatic and effective way to address the existing shortcomings of the SI regime when it comes to inconsistent flagging of trades or the question of riskless principal trading being based on a bilateral relationship. Our proposal also achieves to reduce complexity by providing a much simpler market structure.

Question 26. What would you consider to be appropriate steps to ensure a level-playing field between trading venues and systematic internalisers? Please explain your answer:

WFE thinks that there are several aspects that put SIs at a competitive advantage compared to trading venues (TVs). Compared to MiFID I the current minimum quoting size requirement 10% of SMS only increased by 250 EUR to 1,000 Euro, which effectively is meaningless to increase transparency.

When it comes to the instruments in scope currently, WFE would agree with ESMA’s proposal in its consultation that an extension of the transparency obligation for SIs to illiquid instruments would be an effective way to improve market transparency and level the playing field between on-venue and SI trading. Illiquid instruments are in scope for pre-trade transparency for all TVs unless a waiver from

pre-trade transparency is used. WFE is not of the view that such new requirements would be overly burdensome for SIs rather they would effectively foster lit trading and overall transparency.

Furthermore, we believe that ESMA should review how SIs operate by looking more deeply into the transactions they conclude and report. One issue results from riskless trading. Hubs that have the potential to link up SIs and counterparties should be monitored to guarantee that they always work on a bilateral basis, and in case they do not but operate an internal matching system they must operate an MTF. Such activities must be monitored as there is the risk that trading takes place on a multilateral rather than bilateral basis and hence would be in violation with the legislation. Moreover, there does not seem to be any specific details of the operation of the business model required. This is in contrast with what MTFs and Regulated Markets need to fulfil. Hence, we suggest establishing a level-playing field as regards the description of the business model and how regulatory compliance is maintained. In addition, there is no level-playing field with regard to flagging of SI trades at an EU level. Even more than 2 years after MiFID II got introduced the flagging is very unclear and inconsistent. One way to address this would also be a broader implementation of the Market Model Typology (MMT) which currently ensures consistency of exchange data. We think that the extension of the MMT would promote enhancing data consistency and contribute to the increase of regulatory oversight of SI activity.

That being said, we however believe that the most effective way to address the shortcomings of the SI regime would be to restrict SI activity to above LIS trading. WFE believes that such enhancements are necessary in order to increase transparency as well as price formation and promote a level playing field between TVs and SIs. Above LIS trading would constitute a legitimate dark space in which trades across bilateral execution venues and multilateral TVs are not subject to pre-trade transparency and would benefit from delayed post-trade transparency.

Question 27. In your view, what would merit attention to further promote the price discovery process in equity trading?

In order to ensure the quality and robustness of the price determination mechanism for shares and other equity-like instruments, e.g. ETFs, which Regulated Markets set WFE proposes changes to the current regulatory framework by re-balancing rights and obligations deriving from the given structural features and a simplification of the overall structure. The first changes revolve around the large in scale (LIS) threshold as the main tool to delineate between lit and dark equity trading as developed below.

The first proposal is to reduce the number of waivers to order management facility (OMF) and LIS in order to effectively limit dark trading which consequently leads to the removal of the DVC mechanism. The main purpose of the waiver regime is to protect market participants from adverse market movements following the execution of large orders, thus, there seems to be little market impact by trading small orders. Hence, all standard orders below LIS should be subject to full transparency requirements to contribute to price formation.

The second proposal suggests fundamental modifications to the SI regime. Although WFE acknowledges the need for bilateral trading we suggest restricting trading in SIs to trading above LIS in order to protect the price formation process and simplify the fragmented execution landscape. Above LIS trading would thereby constitute a legitimate dark space in which trades across bilateral execution venues and multilateral trading venues are not be subject to pre-trade transparency and would benefit from delayed post-trade transparency. In this context, such a modification of the SI regime appears as the most pragmatic and effective way to address the existing shortcomings of the SI regime when it comes to inconsistent flagging of trades or the question of riskless principal trading being based on a bilateral relationship.

Question 92. Do you believe that the current regulatory framework is adequately calibrated to prevent misbehaviours in the area of spot foreign exchange (FX) transactions?

We support the implementation of the FX Global Code and suggest that any further policy development, including bringing spot FX within the regulatory perimeter, similarly be agreed multilaterally. To do otherwise could potentially give rise to higher costs for EU firms while introducing opportunities for regulatory arbitrage.

We note that that many authorized trading venues already monitor trading in spot FX transactions in conjunction with FX derivatives in order to detect and prevent market abusive behaviours in this segment of the global FX market.