



Response: ESMA's consultations on MiFID II transparency requirements
01 October 2021

Background

The World Federation of Exchanges (WFE) is the global trade association for regulated exchanges and clearing houses. We represent over 250 market-infrastructures, spread across the Asia-Pacific region (~37%), EMEA (~43%) and the Americas (~20%). With everything from local entities in emerging markets to groups based in major financial centres. Collectively, member exchanges are home to nearly 53,000 listed companies, and the market capitalisation of these entities is over \$95 trillion, while the 50 distinct CCP clearing services (both vertically integrated and stand-alone) collectively ensure that traders put up \$1 trillion of resources to back their risk positions.

With extensive experience of developing and enforcing high standards of conduct, WFE members support an orderly, secure, fair and transparent environment for investors; for companies that raise capital; and for all who deal with financial risk. We seek outcomes that maximise financial stability, consumer confidence and economic growth. And we engage with policy makers and regulators in an open, collaborative way, reflecting the central, public role that exchanges and CCPs play in an internationally integrated financial system.

If you have any further questions, or wish to follow-up on our contribution, the WFE remains at your disposal. Please contact:

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The WFE's response to ESMA's consultations on MiFID II transparency requirements

The WFE welcomes the opportunity to comment on ESMA's consultations on MIFIR pre- and post-trade transparency requirements.

As ESMA notes, the scope of these consultations is limited, with the more fundamental Level 1 amendments due to be covered in the European Commission's upcoming legislative proposal in Q3/Q4 2021. We encourage ESMA to read our comments here in conjunction with the WFE's fundamental positions on the key MiFID II transparency issues, on which further details can be found in our [response](#) to the European Commission's consultation on the MiFID II review in 2020 (and which we briefly summarise for your convenience below).

Specific feedback on ESMA's RTS 1 and RTS 2

We broadly support the amendments ESMA has set out in these papers, including:

- As a large part of ETF trading volumes are executed under a waiver, we welcome ESMA's proposal to increase the pre-trade LIS threshold to €3m and to raise the post-trade threshold from €10 to €15m.
- We agree with ESMA that a clarification of non-price forming, and non-addressable transactions, and that the reporting of such transactions will be an important step to obtain a more accurate picture of the actual split between lit and dark trading. We believe ESMA's technical clarifications proposed in RTS 1 will lead to more consistency for non-price forming transactions, streamlining the regime for reporting entities as well as receiving parties. But, as we note below, much more work needs to be undertaken to improve the general quality of off-venue data before any consolidated tape can be considered.
- We support ESMA's proposal to harmonise the general format of pre-trade transparency information for equity instruments, and to apply these provisions to both trading venues and Systematic Internalisers.
- We welcome ESMA's intention to align the transparency requirements in the equity and non-equity space to the extent possible and with a view to cater for the specific needs and peculiarities of the different markets.

The WFE's key positions on the MIFID II transparency regime

Consolidated tape (CT)

The WFE understands the policy objective of creating a consolidated post-trade view of the specific trading environment engendered by MiFID II/MiFIR. 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. We believe a post-trade tape of record represents the only consolidated tape which has a clear use case and would be likely to be viable in terms of costs and benefits.

In any case, there are important pre-conditions for the development of a CT. It is essential that data quality of off-venue be improved as a first necessary step to the development of a CT. The aggregation of high-quality data and poor-quality data would inevitably result in poor quality data. While we support ESMA's efforts to clarify the concept of non-addressable liquidity, it is important to note that a CT must provide a complete picture of the entire market (including both addressable and non-addressable liquidity). An incomplete CT, with potential loopholes, could undermine the MIFID II policy goal of increasing transparency. The CT Provider should be subject to robust

standards, including strong governance, contributing trading venues ought to have full representation and voting power on the CTP board, which should also comprise neutral representatives (e.g. ESMA).

In the EU context, the WFE is [concerned](#) that a CT is misused as a backdoor to realising efforts to have more regulatory intervention in the setting of market data prices. The WFE does not believe that shifting revenues and profits from exchanges to other intermediaries is a sound policy rationale for instituting a consolidated tape. Rather, any CT provider should address a legitimate policy objective beyond what existing commercial solutions provide and, in doing so, satisfy a cost/benefit analysis.

Level playing field between SIs and trading venues

The WFE believes the most effective way to address the shortcoming of the SI regime would be to restrict SI activity to above Large-in Scale (LIS) trading. This would protect the price formation process and simplify the fragmented execution landscape.

There needs to be greater scrutiny of how SIs conclude and report transactions. One issue arises from riskless trading. 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. There is no level-playing field with regard to flagging of SI trades at an EU level, and it 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.

Share Trading Obligation (STO)

The WFE [supports](#) ESMA's [proposal](#) (set out in February 2020) to exclude third-country shares from the STO, which would reduce the fragmentation of liquidity pools, ultimately leading to better investor outcomes.

To efficiently achieve ESMA's aim of excluding third-country share from the STO, the WFE recommends instituting a system in which ESMA distinguishes between EU/EEA and third-country shares by using International Securities Identification Numbers (ISINs). In order to make this approach operable, two sorts of special cases must be addressed:

- Dual-listed securities, for which the WFE advocates the flexibility to permit trading by EU investment firms on either listing venue; and
- Securities where EU entities have chosen a non-EU exchange venue as their sole listing, which should in principle be treated as third country shares for the purposes of the STO. By the same token, the shares of non-EU issuers listing on EU markets should be included in the list of EU/EEA shares.