

WFE Response to ESMA's Consultation 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



Background

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.

Q31: Do you agree that the scope of the share trading obligation in Article 23 of MiFIR should be reduced to exclude third-country shares? If yes, what is the best way to identify such shares, keeping in mind that ESMA does not have data on the relative liquidity of shares in the EU versus in third countries? More generally, would you include any additional criteria to define the scope of the share trading obligation and, if yes, which ones?

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.

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.

We are keen to facilitate a dialogue between third-country venues and ESMA about this issue and others impacting third-country venues that may arise in the course of the MiFID Review and more generally. To that end, we are at your disposal should you welcome a meeting.

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