Response Form to the Consultation Paper

MiFIR report on Systematic Internalisers in non-equity instruments

3 February 2020 | ESMA70-156-2347

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	Global Foreign Exchange Division (GFXD) of the Global Financial Markets Associuation (GFMA)
Activity	Investment Services
Are you representing an association?	☒
Country/Region	International

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_CP_SINE_1>

The Global Foreign Exchange Division ('GFXD') of the Global Financial Markets Association ('GFMA') welcomes the opportunity to provide comments to ESMA on its MiFID Report on Systematic Internalisers in Non-Equity Instruments, ('the Consultation Paper'), published on 3 February 2020.

The GFXD was formed in co-operation with the Association for Financial Markets in Europe ('AFME'), the Securities Industry and Financial Markets Association ('SIFMA') and the Asia Securities Industry and Financial Markets Association ('ASIFMA'). Its members comprise 25 global FX market participants,[1] collectively representing the majority of the FX inter-dealer market.[2]

The FX market is the world's largest financial market. Effective and efficient exchange of currencies underpins the world's entire financial system. Many of the current legislative and regulatory reforms have had, and will continue to have, a significant impact upon the operation of the global FX market, and the GFXD wishes to emphasise the desire of our members for globally co-ordinated regulation which we believe will be of benefit to both regulators and market participants alike.

[1] Bank of America, Bank of New York Mellon, Barclays, BNP Paribas, Citi, Credit Agricole, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Lloyds, Mizuho, Morgan Stanley, MUFG Bank, NatWest Markets, Nomura, Northern Trust, RBC, Scotiabank, Standard Chartered Bank, State Street, UBS, Wells Fargo and Westpac.
[2] According to Euromoney league tables.

<ESMA_COMMENT_CP_SINE_1>

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>
The GFXD does not believe that further clarification on the definition of 'firm quote' is required. The industry has undertaken significant work to classify quotes and implement the required pre-trade transparency obligations.

As ESMA notes in paragraph 30, the timing of a quote becoming firm may in practice mean that pre-trade transparency is made available only shortly before post-trade transparency. However, this is due to the structure of the quoting process, rather than the definition given in MiFID for a firm quote.
<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>
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<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>
Given the detemination that FX as an asset class is illiquid, the GFXD notes that there are no pre-trade transparency obligations currently applicable to FX transactions.
<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>
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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>

While many of GFXD's members do operate under a pre-trade transparency waiver, it is also extremely unusual for a client to request a quote in an illiquid instrument in the manner envisaged in MiFIR Article 18(2). Therefore, in practice this obligation is not generally (if ever) required to be met.
<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>
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<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>
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<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>
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<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>
The GFXD agrees with ESMA's analysis and its proposal to adopt Option 3, subject to the supervisory convergence tools being no more onerous than the current obligation that is being removed. As noted in our response to Q5, the obligation under MiFIR 18(2) is rarely, if ever, triggered by clients.
<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>
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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>
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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>
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<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>
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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>
Given the detemination that FX as an asset class is illiquid, the GFXD notes that there are no pre-trade transparency obligations currently applicable to FX transactions. However, we suggest that analysis of data from key trading venues for each asset class may be the most helpful way for ESMA to fulfil its mandate. Reliance on data published under RTS 27 is not optimal for FX as the data are only published quarterly and many of the data tables and fields are not applicable to FX transactions.
<ESMA_QUESTION_CP_SINE_14>