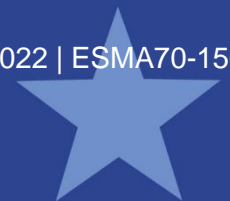


# Reply form

**For the Consultation Paper (CP) on ESMA's Opinion on the trading venue perimeter**



## Responding to this paper

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

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

ESMA will consider all comments received by **29 April 2022**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Your input - Consultations'.

### 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 publicly 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](http://www.esma.europa.eu) under the heading [Legal Notice](#).

### Who should read this paper

This document will be of interest to all stakeholders involved in the securities markets. It is primarily of interest to competent authorities, investment firms and market operators that are subject to MiFID II and MiFIR. This paper is also important for trade associations and industry bodies, institutional and retail investors, their advisers, consumer groups, as well as any market participants because the MiFID II and MiFIR requirements concern the market structure of the EU and the perimeter of trading that should be considered as multilateral and regulated as such.

## Q1 Do you agree with the interpretation of the definition of multilateral systems?

<ESMA\_QUESTION\_TVPM\_1>

The Global Foreign Exchange Division ('GFXD') of the Global Financial Markets Association ('GFMA') welcomes the opportunity to provide comments to the European Securities and Markets Authority (ESMA) on its consultation on the trading venue perimeter published on the 28<sup>th</sup> of January 2022.

The GFXD was formed in cooperation 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 23 global Foreign Exchange (FX) market participants<sup>1</sup>, collectively representing the majority of the FX inter-dealer market<sup>2</sup>. Both the GFXD and its members are committed to ensuring a robust, open and fair marketplace and welcome the opportunity for continued dialogue with global regulators.

No, for FX, the GFXD do not agree with the interpretation of the definition of multilateral systems, and members have several concerns with the definition that ESMA is providing in this consultation.

Firstly, we believe that the interpretation of the definition of multilateral systems is too broad. Consequently, bank-owned systems and third-party providers might be captured in the scope of the definition even though they do not match trading interests. As a result, they would require authorisation as trading venues and some technology providers providing such services may exit the market due to the higher costs required to comply with the new requirements. If this was the case, the new requirements could have unintended consequences on competition, reducing the numbers of market participants, which could impact the cost and the quality of the services.

As this consultation is limited to the European jurisdiction, we note that third country firms would be out of scope. Those firms requiring authorisation as a trading venue for some services in the EU may not fall under the definition of multilateral systems in other jurisdictions. This could result in an unlevel playing field between firms providing services in the EU and those doing so in jurisdictions where different obligations apply. As a result, this would reduce competition and innovation, and dissuade investment in European markets, contrary to the intention of the Capital Markets Union (CMU).

Secondly, we note that the definition provided by ESMA in this consultation seems to differ from the elements included in the definition of Multilateral Trading Facilities (MTFs) and Organised Trading Facilities (OTFs) under Article 18(7) of MiFID II, which states that those systems must "*have at least three materially active members or users, each having the opportunity to interact with all the others in respect to price formation*".

To ensure legal certainty, we recommend avoiding different interpretations of the multiple third-party concept and would welcome further clarity on how the proposals in this consultation are intended to interact with the existing legal framework defined in MiFID II.

Finally, ESMA's interpretation in this consultation seems to be missing a fundamental criterion for the definition of multilateral trading systems. The critical criterion in differentiating trading venues from other

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<sup>1</sup> 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, Standard Chartered Bank, State Street, UBS and Wells Fargo.

<sup>2</sup> According to Euromoney League Tables.

systems consists of the fact that multilateral systems do not only match trading interests, but they do it in a way that results in a negotiation *and* the conclusion of a contract (as per Art.4(1)(22), MiFID II). On the contrary, the interpretation suggested in this consultation only refers to the ability of multilateral systems to match trading interests without mentioning the conclusion of a contract.

We suggest to clearly state that the characteristics of a multilateral system, as outlined in this consultation in Par.11, should be cumulative; hence a system would need to incorporate all of them to be considered as a trading venue, in line with other definitions in MiFID II.

<ESMA\_QUESTION\_TVPM\_1>

**Q2 Are there any other relevant characteristics to a multilateral system that should be taken into consideration when assessing the trading venue authorisation perimeter?**

<ESMA\_QUESTION\_TVPM\_2>

Yes, there are relevant characteristics and practical criteria to consider when defining a multilateral system.

Overall, the features below should be considered when addressing whether a system is acting as a trading venue, and therefore would need to require an authorisation.

1. The system provides the exchange methodology (i.e. a trading protocol)
2. The system requires a trade execution timestamp, signalling where the trade is matched and executed, and an execution protocol, such as a single rulebook.
3. The system has at least three materially active members or users, each having the opportunity to interact with all the others in respect to price formation, as per Art.18(7) of MiFID II.

We would also like to note that, contrary to the proposals in this consultation, the definition of a multilateral system should not rely on the type of technology used by third-party platform, as this can hinder innovation and might capture systems which are instead bilateral. We will provide more clarity on this point under question 6.

<ESMA\_QUESTION\_TVPM\_2>

**Q3 In your experience, is there any communication tool service that goes beyond providing information and allows trading to take place? If so, please describe the systems' characteristics.**

<ESMA\_QUESTION\_TVPM\_3>

No, for FX, GFXD members are not aware of any communication tools that go beyond providing information.

Members agree that communication tools, such as electronic web chats which facilitate communication between different counterparties, should not require a trading venue authorisation, as they do not match

trading interests and do not facilitate the conclusion of a trade. As stated in our response to questions 1 and 6, multilateral systems can be defined as such if they are directly involved in the execution of the trade; hence, communication tools fall outside the logic of this definition.

By way of clarity, we believe that the following would not fall under the scope of these requirements:

- systems that do not match or dictate protocols;
- structured and unstructured bilateral chats (e.g. chat bots) and electronic multilateral unstructured chat providers (used to reach out simultaneously to multiple dealers, on the basis that it is non structured, does not give a protocol or organise the products it can trade or the dealers to poll); and
- bulletin boards with communication tools (on the basis that they may not be aware of the execution and are not ‘organising’ the execution);
- telephone lines;
- notification of matches and systems with STP affirmation or post trade notifications; and
- APIs.

Therefore, we would welcome further clarity on the exclusion of these systems from the scope of the definition of multilateral systems.

<ESMA\_QUESTION\_TVPM\_3>

**Q4 Are you aware of any EMS or OMS that, considering their functioning, should be subject to trading venue authorisation? If yes, please provide a description.**

<ESMA\_QUESTION\_TVPM\_4>

No, for FX, GFXD members are not aware of any Execution Management Systems (EMS) or Organised Management Systems (OMS) that should be subject to a trading venue authorisation. On the contrary, some EMSs, which simply allow connectivity to dealers, may end up inappropriately classified as “venues” given the possible broad interpretation of the definition included in this consultation. Specifically, members would like to outline that EMSs are used by FX market participants, such as banks and asset managers, via a license to aggregate liquidity for risk management purposes.

Thus, members would welcome further clarity on the exclusion of EMSs from the scope of the definition of multilateral systems.

<ESMA\_QUESTION\_TVPM\_4>

**Q5 Do you agree that Figure 4 as described illustrates the operation of a bilateral system operated by an investment firm that should not require authorisation as a trading venue?**

<ESMA\_QUESTION\_TVPM\_5>

Yes, for FX, GFXD members agree that bank-owned single-dealer platforms should be confirmed to be out of the scope; hence should not be required to register as trading venues. Moreover, single-dealer platforms are already regulated as SIs, hence the regulatory perimeter is already clearly defined.

<ESMA\_QUESTION\_TVPM\_5>

**Q6 Do you agree that a “single-dealer” system operator by a third party, as described in Figure 5, should be considered as a multilateral system? If not, please explain.**

<ESMA\_QUESTION\_TVPM\_6>

No, for FX, GFXD members do not agree with the interpretation that “single-dealer” system operator by a third party should be considered as a multilateral system. Indeed, members are concerned that some 1-to-1 Request for Quotes (RFQ) systems which aggregate quotes may also be captured by the definition. Those systems do not match trading interests and do not facilitate the conclusion of a contract; therefore, we would welcome clarity on their exclusion from the scope of the definition of multilateral systems.

Members do not agree with the suggestion that two trading systems with the exact same functionalities and features might be bilateral or multilateral depending for example on whether the technology used is developed by the sell-side or the buy-side or by a third-party provider, as outlined in Figure 5 in this consultation.

Technology should not be considered in the assessment of a multilateral system, as this is not a criterion under MiFID II. Therefore, single-dealer platforms using third party technologies should not be considered as multilateral trading systems, as they act as bilateral systems instead.

Members would welcome a clear distinction between:

- (a) systems where key parameters or rules which influence the interaction of multilateral trading interests are determined or applied centrally by an organising or operating entity in common to all users who may interact (i.e. a single rulebook), and
- (b) systems which provide trading capabilities to individual users of the system but allow for each user of the system to apply, disapply or customise the parameters or rules independently such that the system cannot be said to operate under a single rulebook.

In line with ESMA’s overall objective of enhancing innovation, members support the increasing adoption of technology in trading workflows as it leads to greater efficiency, reduced risk of human error and an overall reduction in costs to the benefit of EU markets in general, and in turn, end users and investors.

A restrictive approach towards the use of technology as proposed in the consultation could hinder innovation and reduce market participants’ incentives to increase electronification. Indeed, should third party platforms be considered multilateral systems based on the technology they use, technology providers might not invest in such technology as they would need to comply with the requirement to register as a trading venue in the European jurisdiction. As a result, this will drive innovation and more efficient markets to develop elsewhere in more favourable jurisdictions.

<ESMA\_QUESTION\_TVPM\_6>

**Q7 Do you agree that systems pre-arranging transactions that are formalised on a trading venue, even when arranged in a multilateral way, should not be required**

**to be authorised as trading venues? Do you agree with the justification for such approach?**

<ESMA\_QUESTION\_TVPM\_7>

Yes, for FX, the GFXD agree that systems pre-arranging transactions that are formalised on a trading venue, even when arranged in a multilateral way, should not be required to be authorised as trading venues. Indeed, the registration requirement would be duplicative if the transaction was to be formalised on a trading venue.

This is the case for example of some FX brokers in emerging markets, which report the trade to an OTF or a trading venue.

<ESMA\_QUESTION\_TVPM\_7>

**Q8 Are there any other conditions that should apply to these pre-arranged systems?**

<ESMA\_QUESTION\_TVPM\_8>

No, for FX, we are not aware of any other conditions that should apply to pre-arranged systems.

<ESMA\_QUESTION\_TVPM\_8>

**Q9 Are there in your views any circumstances where it would not be possible for an executing trading venue to sign contractual arrangements with the pre-arranging platforms? If yes, please elaborate**

<ESMA\_QUESTION\_TVPM\_9>

No, for FX, we are not aware of any circumstances where it would not be possible for an executing trading venue to sign contractual arrangements with the pre-arranging platforms.

We appreciate the opportunity to share our views on this Consultation Paper. Please do not hesitate to contact Andrew Harvey at +44 (0) 203 828 2694/ [aharvey@eu.gfma.org](mailto:aharvey@eu.gfma.org) or Sara Scognamiglio at +44 (0) 203 828 2711 / [sscognamiglio@eu.gfma.org](mailto:sscognamiglio@eu.gfma.org) should you wish to discuss any of the above.

<ESMA\_QUESTION\_TVPM\_9>