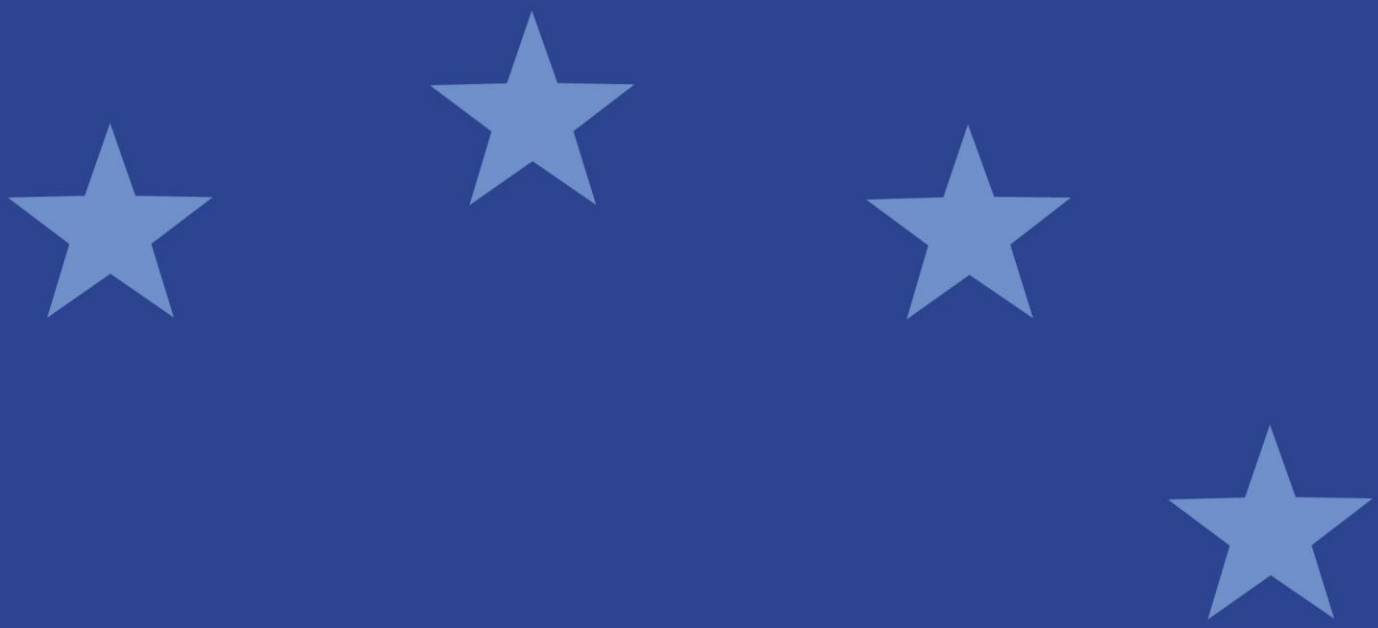
esma European Securities and Markets Authority

Questions and Answers

On MiFID II and MiFIR transparency topics



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Acronyms and definitions used

APA	Approved Publication Arrangement
AOR	Automated Order Router
DVC	Double Volume Cap
DRSP	Data reporting Services Provider
EFP	Exchange For Physical
ESMA	The European Markets and Securities Authority
ETF	Exchange Traded Fund
MiFID I	Markets in Financial Instruments Directive – Directive 2004/39/EC of the European Parliament and of the Council
MiFID II	Markets in Financial Instruments Directive (recast) – Directive 2014/65/EU of the European Parliament and of the Council
MiFIR	Markets in Financial Instruments Regulation – Regulation 600/2014 of the European Parliament and of the Council
MTF	Multilateral Trading Facility
NCA	National Competent Authority
Q&A	Question and answer
RTS	Regulatory Technical Standards
RTS 1	Commission Delegated Regulation (EU) 2017/587 on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser
RTS 2	Commission Delegated Regulation (EU) 2017/583 on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives

RTS 3	Commission Delegated Regulation (EU) 2017/577 on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations
RTS 13	Commission Delegated Regulation (EU) 2017/571 on the authorisation, organisational requirements and the publication of transactions for data reporting services providers
RTS 22	Commission Delegated Regulation (EU) 2017/590 on the reporting of transactions to competent authorities
NAV	Net Asset Value
RM	Regulated Market
SFP	Structured Finance Products

Table of questions

		Topic of the Question	Level 1/Level 2 issue	Last Updated
General Q&As on transparency topics	1	Obligation on trading venues to make available their arrangements for the publication of quotes and transactions	Articles 3(3), 6(2), 8(3) and 10(2) of MiFIR	03/04/2017
	2	Flags and details for the purpose of post-trade transparency	Tables 3 and 4 of Annex I of RTS 1; Tables 2 and 3 of Annex II of RTS 2	03/04/2017
	3	Which investment firm reports	Article 12(4), (5) and (6) of RTS 1 and Article 7(5), (6) and (7) of RTS 2	03/04/2017
	4	Application of the transparency regime for primary transactions	Title II and III of MiFIR	03/04/2017
	5	ISINs for pre-trade transparency	Articles 3 and 8 of MiFIR	03/04/2017
	6	Use of 'PNDG' as price when making transactions public	Articles 20 and 21 of MiFIR, Annex I of RTS 1, Annex II of RTS 2	03/04/2017
	7	RFQ systems	Annex I of RTS 1 and RTS 2	03/10/2017
	8	Application of post-trade transparency requirements by trading venues and SIs	Articles 6 and 10 of MiFIR	03/10/2017
Equity transparency	1	Trading obligation for shares	Article 23 of MiFIR	03/04/2017
Non-equity transparency	1	Definition of Exchange for physical	Article 2(1)(48) of MiFIR	31/05/2017
	2	Deferred publication: application for OTC-trades	Article 21 of MiFIR	03/10/2017
	3	Supplementary deferral regime	Article 11(3)(a) of MiFIR and Article 11(1)(a)(ii) of RTS 2	03/10/2017
	4	Questions related to packages	Article 2(1)(49) & (50) of MiFIR and Article 18 of MiFIR	03/10/2017

	5	Normal trading hours for non-equity instruments	Article 21 of MiFIR	03/10/2017
Pre-trade transparency waivers	1	Pre-trade transparency waivers under MiFID I	Article 4(7) of MiFIR	18/11/2016
	2	Waiver procedure for illiquid non-equity financial instruments	Article 9(1)(c) of MiFIR	18/11/2016
	3	Implementation schedule 2017	Article 3(1) and Article 8(1) of MiFIR	19/12/2016
	4	Substantial and non-substantial amendments to MiFID I waivers	Article 3(1) and Article 8(1) of MiFIR	31/05/2017
	5	Calculation of the "current volume weighted spread reflected in the order book" for negotiated transactions	Article 4(1)(b)(i) of MiFIR	31/05/2017
Double volume cap	1	First calculations to be published on 3 January 2018 - shares admitted to trading on RM	Article 5(4) of MiFIR	03/10/2016
	2	First calculations to be published on 3 January 2018 - MTF only shares, depositary receipts, certificates	Article 5(4) of MiFIR	03/10/2016
	3	Application of the double volume mechanism to newly issued instruments	Article 5(4) of MiFIR	03/10/2016
	4	Mid-month reports	Article 5(6) of MiFIR	03/10/2016
Systematic internaliser regime	1	Schedule for the initial implementation of the systematic internaliser regime	Article 17 of the Commission Delegated Regulation (EU) No 2017/565	03/11/2016
	2	Level at which the firm must perform the calculation where it is part of a group or operates EU branches	Articles 12 to 16 of the Commission Delegated Regulation (EU) No 2017/565	31/01/2017
	3	Transactions that should be exempted from, and included in, the calculation	Articles 12 to 16 of the Commission Delegated Regulation (EU) No 2017/565	31/01/2017
	4	Level of asset class at which the calculation should be performed	Articles 13 to 15 of the Commission	03/10/2017

		for derivatives, bonds and structured finance products	Delegated Regulation (EU) No 2017/565	
	5	Compliance with the quoting obligations for SIs in non-equity instruments	Article 18 of MiFIR	31/05/2017
	6	Compliance with the SI regime and notification to NCAs	Articles 15(1) and 18(4) of MiFIR	31/05/2017
	7	Transactions that should be included in the calculations	Article 4(1)(20) of MiFID II	03/10/2017
	8	Commercial policy of access to quotes	Article 18(5) of MiFIR	03/10/2017
	9	Access to quotes	Article 18(7) of MiFIR	03/10/2017
Data Reporting Services Providers	1	Reports from IF to APAS (time limit for sending the reports and clarification on possible disagreements between the investment firm and the APA)	Articles 7, 11, 20 and 21 of MiFIR	31/05/2017
	2	Assignment of MICs to APAs	Annex I of RTS 1 and Annex II of RTS 2	31/05/2017
Third country issues	1	Application of post-trade transparency requirements for transactions by EU investment firms on third-country trading venues	Articles 20 and 21 of MiFIR	31/05/2017

1 Introduction

Background

The final legislative texts of Directive 2014/65/EU[1] (MiFID II) and Regulation (EU) No 600/2014[2] (MiFIR) were approved by the European Parliament on 15 April 2014 and by the European Council on 13 May 2014. The two texts were published in the Official Journal on 12 June 2014 and entered into force on the twentieth day following this publication – i.e. 2 July 2014.

Many of the obligations under MiFID II and MiFIR were further specified in the Commission Delegated Directive[3] and two Commission Delegated Regulations[4] [5], as well as regulatory and implementing technical standards developed by the European Securities and Markets Authority (ESMA).

MiFID II and MiFIR, together with the Commission delegated acts as well as regulatory and implementing technical standards will be applicable from 3 January 2018.

Purpose

The purpose of this document is to promote common supervisory approaches and practices in the application of MiFID II and MiFIR in relation to transparency topics. It provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of MiFID II and MiFIR.

The content of this document is aimed at competent authorities and firms by providing clarity on the application of the MiFID II and MiFIR requirements.

The content of this document is not exhaustive and it does not constitute new policy.

Status

The question and answer (Q&A) mechanism is a practical convergence tool used to promote common supervisory approaches and practices under Article 29(2) of the ESMA Regulation[6].

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1 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

2 Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) N0 648/2012.

3 Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits (OJ L 87, 31.3.2017, p. 500–517).

4 Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87, 31.3.2017, p. 1–83).

5 Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions (OJ L 87, 31.3.2017, p. 90–116).

6 Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC Regulation (OJ L 331, 15.12.2010, p. 84).

Due to the nature of Q&As, formal consultation on the draft answers is considered unnecessary. However, even if Q&As are not formally consulted on, ESMA may check them with representatives of ESMA's Securities and Markets Stakeholder Group, the relevant Standing Committees' Consultative Working Group or, where specific expertise is needed, with other external parties.

ESMA will periodically review these Q&As on a regular basis to update them where required and to identify if, in a certain area, there is a need to convert some of the material into ESMA Guidelines and recommendations. In such cases, the procedures foreseen under Article 16 of the ESMA Regulation will be followed.

The Q&As in this document cover only activities of EU investment firms in the EU, unless specifically mentioned otherwise. Third country related issues, and in particular the treatment of non-EU branches of EU investment firms, will be addressed in a dedicated third country section.

Questions and answers

This document is intended to be continually edited and updated as and when new questions are received. The date on which each section was last amended is included for ease of reference.

2 General Q&As on transparency topics [Last update: 03/10/2017]

Question 1 [Last update: 03/04/2017]

Do trading venues have to make available their arrangements covering asset classes beyond their current business?

Answer 1

No. Trading venues have to make available their arrangements for all asset classes for which they provide services but not beyond.

Question 2 [Last update: 03/04/2017]

a) *How are the flags specified in Table 4 of Annex I of RTS 1[7] and Table 3 of Annex II of RTS 2[8] applied? Is it possible to combine flags?*

b) *How is the trade ID used in the case of aggregation of transactions?*

c) *Tables 3 and 4 of Annex I of RTS 1 and tables 2 and 3 of Annex II of RTS 2 require the publication of some information using text fields and 4-character codes that are not suitable for binary digital feeds. How should trading venues and investment firms/ Approved Publication Arrangements (APAs) ensure that transactions are published as close to real-time as technically possible? Is it possible to transport and publish the real-time data via digital feeds or does the data have to be transported and published in the reporting format defined in Annex I of RTS 1 and Annex II of RTS 2?*

Answer 2

a) As a general approach, flags should only be applied in case the circumstances described in Table 4 of Annex 1 of RTS 1 or Table 3 of Annex II of RTS 2 apply. Where none of the specified circumstances apply, the transaction should be published without a flag.

   The flags 'CANC' and 'AMND' apply in the same way for equity and non-equity instruments as specified in Article 12(2) and (3) of RTS 1 and in Article 7(2) and (3) of RTS 2. The flags

[7] Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser (OJ L 87, 31.3.2017, p. 387–410).

[8] Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives (OJ L 87, 31.3.2017, p. 229–349).

‘CANC’ and ‘AMND’ should not be used when publishing all the details of a transaction after the lapse of the supplementary deferrals for non-equity instruments.

While some of the circumstances described in Table 4 of Annex 1 of RTS 1 or Table 3 of Annex II of RTS 2 are mutually exclusive, it is possible that several circumstances apply at the same time, thereby requiring the use of more than one flag. Where a combination of flags is possible, the flags should be reported separated by commas.

Equity flags specified in Table 4 of Annex 1 of RTS 1

i. Descriptive flags: ‘BENC’, ‘ACTX’[9], ‘NPFT’, ‘TNCP’ and ‘SDIV’. They can be combined with each other, with the exception of ACTX which cannot be combined with NPFT, and with the flags under ii), iii), iv), v) and vi).

ii. Post-trade flag: ‘LRGS’. The application of the deferred publication is an option and not an obligation, therefore the ‘LRGS’ flag has to be used only in case of the effective use of the deferred publication. It can be applied alone or in combination with the flags under i), iii), iv), v) and vi)

iii. Pre-trade waiver flags: ‘RFPT’, ‘NLIQ’, ‘OILQ’ and ‘PRIC’. Those flags should only be used in case of the effective use of the reference price waiver or the negotiated transaction waiver. Transactions benefitting from a LIS waiver are not flagged as such. All pre-trade waivers flags are mutually exclusive. Pre-trade waiver flags can be combined with the flags under i), ii) and iv),

iv. Algorithmic trading flag: The ‘ALGO’ flag applies to transactions executed as a result of an investment firm engaging in algorithmic trading as defined in Article 4(1)(39) of MiFID II. The definition of algorithmic trading refers to generation of orders and not to the execution of transactions. In case an order generated automatically by an algorithm matches another order generated with human intervention and results in a transaction, the regulated market or the MTF should report the transaction with the mentioned flag. The flag can be combined with i), ii) and iii).

v. Flags related to Systematic Internalisers: ‘SIZE’, ‘ILQD’ and ‘RPRI’. They can be combined among each other and with the flags under i), ii) and vi).

vi. Flag related to reporting to APAs: ‘DUPL’. In accordance with Article 16(2) of RTS 13[10] APAs should require reporting firms that intend to make public the transaction via more than one APA to flag the original report for publication with ‘ORGN’, and all consecutive duplicative reports concerning the same transaction sent to other APAs as ‘DUPL’. The flag ‘ORGN’ is only used for the communication between the investment firm and the APA that receives the original report. APAs are not expected to use ‘ORGN’ when making a transaction public. However, in accordance with Article

[9] ACTX should only be used when the buyer and the seller is the same investment firm acting on behalf of clients.
[10] Commission Delegated Regulation (EU) 2017/571 of 2 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers (OJ L 87, 31.3.2017, p. 126–141).

16(1) of RTS 1 APAs should always use the flag ‘DUPL’ where the published trade is a duplicate, that is the transaction was flagged as ‘DUPL’ when the reporting firm sent it to the APA ’for publication. The flag can be combined with the equity flags under (i), (ii) and (v).

Non-equity flags specified in Table 3 of Annex II of RTS 2

i. Descriptive flags: ‘BENC’, ‘ACTX’[11] and ‘NPFT’. Descriptive flags can be combined with each other, with the exception of ACTX that cannot be combined with NPFT, as well as with flags under ii) and iv).

ii. Post-trade deferral flags: ‘LRGS’, ‘ILIQ’, ‘SIZE’, ‘TPAC’ and ‘XFPH’. The application of the deferred publication is an option and not an obligation; therefore these flags have to appear only in case of the effective use of the deferred publication. In case of the use of supplementary deferrals under iv), these flags should be used after the supplementary deferral period has lapsed and all the details of the transactions on an individual basis are published. They can be combined among each other, except ‘LRGS’ + ‘SIZE’ and ‘TPAC’ + ‘XFPH’, and with flags under i).

iii. Supplementary deferral flags: ‘LMTF’, ‘DATF’, ‘VOLO’, ‘FWAF’, ’IDAF’, ‘VOLW’ and ‘COAF’. These flags are mutually exclusive. They cannot be combined with descriptive flags, post-trade deferral flags or full detail flags.

iv. Full details flags: ‘FULF’, ‘FULA’, ‘FULV’ and ‘FULJ’. They should be reported once the deferral time period lapses and all the details of the transactions on an individual basis are published.

[11] ACTX should only be used when the buyer and the seller is the same investment firm acting on behalf of clients.

Scheme of non-equity post-trade publication

hidden information

1. Non-Equity Example: D+2 deferral (simple case Art. 8(1) of RTS 2 + Art. 11(1) of MiFIR)

Post-trade monitoring sequence (i.e. visualisation of a trading or data vendor screen)

Trade Date	Time of publication	Trading date and time	Identifier	Price	Venue ID	Price notation	Price Currency	Quantity	Notional amount	Notional currency	Venue of publication	Transaction i	Flags
17/06/2016		11:00:54	ES000000000	100	XXYY	Percentage	EUR	30	30,000,000	EUR	XXYY	A12345	
21/06/2016	no later than 19:00	17/06/16 -11:00:54	ES000000000	100	XXYY	Percentage	EUR	30	30,000,000	EUR	XXYY	A12345	applicable flags according to Article 8(1) of RTS 2: LRGS or SIZE, ILQD, TPAC or XFPH

2. Non-Equity Example: ordinary D+2 deferral (publication of limited details Art. 11(1)(a)(i) of RTS 2 + Art 11(3)(a) of MiFIR)

Post-trade monitoring sequence (i.e. visualisation of a trading or data vendor screen)

Trade Date	Time of publication	Trading date and Time	Identifier	Price	Venue Ident	Price notation	Currency	Quantity	Notional amount	Notional currency	Venue of publication	Transaction i	Flags
17/06/2016	11:00:54	11:00:54	ES000000000	100	XXYY	Percentage	EUR				XXYY	A12345	LMTF
21/06/2016	no later than 19:00	17/06/16 -11:00:54	ES000000000	100	XXYY	Percentage	EUR	30	30,000,000	EUR	XXYY	A12345	FULF, LRGS or SIZE, ILIQ, TPAC or XFPH

3. Non-Equity Example: ordinary D+2 deferral (daily aggregated form Art. 11(1)(a)(ii) of RTS 2 + Art. 11(3)(a) of MiFIR)

Post-trade monitoring sequence (i.e. visualisation of a trading or data vendor screen)

Trade Date	Time of publication	Trading date and Time	Identifier	Price	Venue Ident	Price notation	Currency	Quantity	Notional amount	Notional currency	Venue of publication	Transaction i	Flag
17/06/2016		11:00:54	ES0000000001	100	XXYY	Percentage	EUR	10	10,000,000			A12345	
17/06/2016		12:30:35	ES0000000001	100	XXYY	Percentage	EUR	10	10,000,000			A12346	
17/06/2016		13:45:30	ES0000000001	100	XXYY	Percentage	EUR	5	5,000,000			A12347	
17/06/2016		16:00:35	ES0000000001	100	XXYY	Percentage	EUR	7	7,000,000			A12348	
17/06/2016		17:01:15	ES0000000001	100	XXYY	Percentage	EUR	3	3,000,000			A12349	
20/06/2016	**before 09:00**	**17/06/2016**	**ES0000000001**	**vwap =100**	**XXYY**	**Percentage**	**EUR**	**35**	**35,000,000**	**EUR**	**XXYY**		**DATF (transactions in a daily aggregated form)**
21/06/2016	no later than 19:00	17/06/16- 11:00:54	ES0000000001	100	XXYY	Percentage	EUR	10	10,000,000	EUR	XXYY	A12345	FULA, LIS
21/06/2016	no later than 19:00	17/06/16- 12:30:35	ES0000000001	100	XXYY	Percentage	EUR	10	10,000,000	EUR	XXYY	A12346	FULA, LIS
21/06/2016	no later than 19:00	17/06/16- 13:45:30	ES0000000001	100	XXYY	Percentage	EUR	5	5,000,000	EUR	XXYY	A12347	FULA, ILIQ
21/06/2016	no later than 19:00	17/06/2016 16:00	ES0000000001	100	XXYY	Percentage	EUR	7	7,000,000	EUR	XXYY	A12348	FULA, SIZE
21/06/2016	no later than 19:00	17/06/16- 17:01:15	ES0000000001	100	XXYY	Percentage	EUR	3	3,000,000	EUR	XXYY	A12349	FULA, TPAC or XFPH

4. Non-Equity Example: extended period of deferral (Volume omission Art. 11(1)(b) of RTS 2 + art. 11(3)(b) of MiFIR)

Post-trade monitoring sequence (i.e. visualisation of a trading or data vendor screen)

Trade Date	Time of publication	Trading date and time	Identifier	Price	Venue Ident	Price notation	Price Currency	Quantity	Notional amount	Notional currency	Venue of publication	Transaction i	Flags
17/06/2016		11:00:54	ES0000000001	100	XXYY	Percentage	EUR	30	30,000,000	EUR	XXYY	A12345	no publication
21/06/2016	no later than 19:00	17/06/16-11:00:54	ES0000000001	100	XXYY	Percentage	EUR				XXYY	A12345	VOLO
15/07/2016	**before 09:00**	17/06/16 -11:00:54	ES0000000001	100	XXYY	Percentage	EUR	30	30,000,000	EUR	XXYY	A12345	FULF, LRGS or SIZE, ILIQ, TPAC or XFPH

5. Non-Equity Example: extended period of deferral (weekly aggregated form Art. 11(1)(c) of RTS 2 + Art. 11(3)(c) of MiFIR)

Publication of all transactions 4 weeks after the publication of the aggregated transactions.

Trade Date	Time of publication	Trading date and Time	Identifier	Price	Venue Ident	Price notation	Currency	Quantity	Notional amount	Notional currency	Venue of publication	Transaction i	Flag
13/06/2016		11:00:54	ES0000000001	100	XXYY	Percentage	EUR	10	10,000,000	EUR	XXYY	A12345	
14/06/2016		12:30:35	ES0000000001	100	XXYY	Percentage	EUR	10	10,000,000	EUR	XXYY	A12346	
16/06/2016		13:45:30	ES0000000001	100	XXYY	Percentage	EUR	5	5,000,000	EUR	XXYY	A12347	
17/06/2016		16:00:35	ES0000000001	100	XXYY	Percentage	EUR	7	7,000,000	EUR	XXYY	A12348	
17/06/2016		17:01:15	ES0000000001	100	XXYY	Percentage	EUR	3	3,000,000	EUR	XXYY	A12349	
21/06/2016	**before 09:00**		**ES0000000001**	**vwap =100**	**XXYY**	**Percentage**	**EUR**	**35**	**35,000,000**	**EUR**	**XXYY**		**FWAF (transactions in a weekly aggregated format**
19/07/2016	**before 09:00**	13/06/16- 11:00:54	ES0000000001	100	XXYY	Percentage	EUR	10	10,000,000	EUR	XXYY	A12345	FULJ, LIS
19/07/2016	**before 09:00**	14/06/16- 12:30:35	ES0000000001	100	XXYY	Percentage	EUR	10	10,000,000	EUR	XXYY	A12346	FULJ, LIS
19/07/2016	**before 09:00**	16/06/16- 13:45:30	ES0000000001	100	XXYY	Percentage	EUR	5	5,000,000	EUR	XXYY	A12347	FULJ, ILIQ
19/07/2016	**before 09:00**	17/06/16- 16:00:35	ES0000000001	100	XXYY	Percentage	EUR	7	7,000,000	EUR	XXYY	A12348	FULJ, SIZE
19/07/2016	**before 09:00**	17/06/16- 17:01:15	ES0000000001	100	XXYY	Percentage	EUR	3	3,000,000	EUR	XXYY	A12349	FULJ, TPAC

6. Non-Equity Example: extended period of deferral (sovereign debt weekly aggregated form Art. 11(1)(d) of RTS 2 and Art. 11(3)(d) of MiFIR)

Post-trade monitoring sequence (i.e. visualisation of a trading or data vendor screen)

Trade Date	Time of publication	Trading date and Time	Identifier	Price	Venue Ident	Price notation	Currency	Quantity	Notional amount	Notional currency	Venue of publication	Transaction i	Flag
13/06/2016		11:00:54	ES0000000002	100	XXYY	Percentage	EUR	10	10,000,000	EUR	XXYY	A12345	
14/06/2016		12:30:35	ES0000000002	100	XXYY	Percentage	EUR	10	10,000,000	EUR	XXYY	A12346	
16/06/2016		13:45:30	ES0000000002	100	XXYY	Percentage	EUR	5	5,000,000	EUR	XXYY	A12347	
17/06/2016		16:00:35	ES0000000002	100	XXYY	Percentage	EUR	7	7,000,000	EUR	XXYY	A12348	
17/06/2016		17:01:15	ES0000000002	100	XXYY	Percentage	EUR	3	3,000,000	EUR	XXYY	A12349	
21/06/2016	**before 09:00**		**ES0000000002**	**vwap =100**	**XXYY**	**Percentage**	**EUR**	**35**	**35,000,000**	**EUR**	**XXYY**		**IDAF**

7. Non-Equity Example: extended period of deferral combined with volume omission (sovereign debt weekly aggregated form Art. 11(1)(b)+ (d) of RTS 2 + Art. 11(3) of MiFIR)

Trade Date	Time of publication	Trading date and Time	Identifier	Price	Venue Ident	Price notation	Currency	Quantity	Notional amount	Notional currency	Venue of publication	Transaction i	Flag
13/06/2016		11:00:54	ES0000000002	100	XXYY	Percentage	EUR	10	10,000,000	EUR	XXYY	A12345	
15/06/2016	no later than 19:00	13/06/16- 11:00:54	ES0000000002	100	XXYY	Percentage	EUR				XXYY	A12345	VOLW
14/06/2016		12:30:35	ES0000000002	100	XXYY	Percentage	EUR	10	10,000,000	EUR	XXYY	A12346	
16/06/2016	no later than 19:00	14/06/16- 12:30:35	ES0000000002	100	XXYY	Percentage	EUR				XXYY	A12346	VOLW
16/06/2016		13:45:30	ES0000000002	100	XXYY	Percentage	EUR	5	5,000,000	EUR	XXYY	A12347	
20/06/2016	no later than 19:00	16/06/16- 13:45:30	ES0000000002	100	XXYY	Percentage	EUR				XXYY	A12347	VOLW
17/06/2016		16:00:35	ES0000000002	100	XXYY	Percentage	EUR	7	7,000,000	EUR	XXYY	A12348	
21/06/2016	no later than 19:00	17/06/16- 16:00:35	ES0000000002	100	XXYY	Percentage	EUR				XXYY	A12348	VOLW
17/06/2016		17:01:15	ES0000000002	100	XXYY	Percentage	EUR	3	3,000,000	EUR	XXYY	A12349	
21/06/2016	no later than 19:00	17/06/16- 17:01:15	ES0000000002	100	XXYY	Percentage	EUR				XXYY	A12349	VOLW
19/07/2016	**before 09:00**		**ES0000000002**	**vwap =100**	**XXYY**	**Percentage**	**EUR**	**35**	**35,000,000**	**EUR**	**XXYY**		**COAF**
the extended period of deferral would last until 15/07/16 + following Tuesday													

b) Article 11(3) of MiFIR allows competent authorities to make use of supplementary deferrals in conjunction with an authorisation for deferred publication. One of the possibilities for a supplementary deferral is the publication of transactions in an aggregated form.

Where several transactions are published in such an aggregated form, this report should not include a Transaction identification code (Trade ID) as required under Table 2 of Annex II of RTS 2 since this report is only meant to provide temporary information pending the publication of the full details of the transactions on an individual basis. Those subsequent single-transaction reports should incorporate a trade ID as required for all other transactions.

c) MiFIR and RTS 1 and RTS 2 intend to enable data-users to consume highly reliable and comparable sets of data in a fragmented market. This includes the trade flags and details defined by ESMA in Annex I of RTS 1 and Annex II of RTS 2. It is therefore important to ensure that trading venues, market operators and APAs efficiently disseminate unambiguous content.

RTS 1 and 2 do not require the use of a specific technical format (such as XML) for transporting and making data public. Encoding data feeds, including using binary digital feeds, for transportation purposes is therefore possible as long as it contributes to keeping the speed of transmission as close to real time as possible. What matters for meeting the post-trade transparency requirements in MiFIR and RTS 1 and 2 is that post-trade data is published as soon as possible and that the details and flags specified in Annex II of RTS 1 and 2 are used.

Trading venues and APAs have to make sure that at the point of converting digital real-time feed into human readable data points the details and flags as specified in Annex I of RTS 1 and Annex II of RTS 2 are used.

Question 3 [Last update: 03/04/2017]

a) Clarification on which investment firm has to report a transaction and on who is in charge of reporting back-to-back trades (Article 12(4), (5) and (6) of RTS 1 and Article 7(5), (6) and (7) of RTS 2)

b) In the case of OTC transactions that are reported to an APA by the investment firm selling the financial instrument, is it possible for the investment firm to outsource the post-transparency reporting requirement?

Answer 3

a) MiFIR requires investment firms to make public, through an APA, post-trade information in relation to financial instruments traded on a trading venue. When a transaction is executed between an investment firm and a client of the firm that is not an investment firm, the obligation rests only on the investment firm.

However, when a transaction is executed between two MiFID investment firms outside the rules of a trading venue, Article 12(4) of RTS 1 and Article 7(5) of RTS 2 clarify that only the investment firm that sells the financial instrument concerned makes the transaction public trough an APA.

In addition, according to Article 12(5) of RTS 1 and Article 7(6) of RTS 2 if only one of the investment firms is a systematic internaliser in the given financial instrument and it is acting as the buying firm, only that firm should make the transaction public trough an APA.

The following table presents the possible constellations and clarifies who is in charge of making the transaction public via an APA:

Trade	Buyer	Seller	IF that reports to APA
Trade 1	IF A	Client of IF A	IF A
Trade 2	Client of IF A	IF A	IF A
Trade 3	IF A	IF B	IF B
Trade 4	SI A	IF B	SI A
Trade 5	IF A	Client of IF B (IF B on behalf of a client)	IF B

According to Article 12(6) of RTS 1 and Article7(7) of RTS 2 two matching trades entered at the same time and for the same price with a single party interposed should be published as a single transaction. Following the general rule, the seller should report the transaction. The party that interposes its own account should not report the trade, except if the seller is not an investment firm. The following table clarifies who is in charge of making the transaction public through an APA:

Case	Trade	Amount	Price	Buyer	Seller	IF that reports to the APA
1	Trade 1	500	20	IF A	IF B	IF B
	Trade 2	500	20	IF C	IF A	Not reported
2	Trade 1	500	20	IF A	Client of IF A	IF A
	Trade 2	500	20	Client of IF A	IF A	Not reported
3	Trade 1	500	20	IF A	IF B	IF B
	Trade 2	500	21	IF C	IF A	IF A

- Case 1: IF A is interposing its own account with no difference in prices. Trade 1 and 2 should be reported as a single transaction by IF B.

- Case 2: IF A is interposing its own account with no difference in price. Trade 1 and 2 should be reported as a single trade by IF A.

- Case 3: The price in trade 1 and 2 is not the same. The conditions for a matched trade are therefore not met and both transactions should be reported by the seller.

There are cases where the determination of the seller needs to be clarified. For the purposes of reporting the transaction to an APA the seller should be the same as specified in field 16 of Table 2 of Annex I of RTS 22[12]. Therefore:

i. In case of options and swaptions, the buyer shall be the counterparty that holds the right to exercise the option and the seller should be the counterparty that sells the option and receives a premium.

ii. In case of futures, forwards and CFDs other than futures and forwards relating to currencies, the buyer should be the counterparty buying the instrument and the seller the counterparty selling the instrument.

iii. In the case of swaps relating to securities, the buyer should be the counterparty that gets the risk of price movement of the underlying security and receives the security amount. The seller should be the counterparty paying the security amount.

iv. In the case of swaps related to interest rates or inflation indices, the buyer shall be the counterparty paying the fixed rate. The seller should be the counterparty receiving the fixed rate. In case of basis swaps (float-to-float interest rate swaps), the buyer should be the counterparty that pays the spread and the seller the counterparty that receives the spread.

v. In the case of swaps and futures and forwards related to currencies and of cross currency swaps, the buyer should be the counterparty receiving the currency which is first when sorted alphabetically by ISO 4217 standard and the seller should be the counterparty delivering this currency.

vi. In the case of swap related to dividends, the buyer should be the counterparty receiving the equivalent actual dividend payments. The seller is the counterparty paying the dividend and receiving the fixed rate.

[12] Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities (OJ L 87, 31.3.2017, p. 449–478).

vii. In the case of derivative instruments for the transfer of credit risk except options and swaptions, the buyer should be the counterparty buying the protection. The seller is the counterparty selling the protection.

viii. In case of derivative contracts related to commodities, the buyer should be the counterparty that receives the commodity specified in the report and the seller the counterparty delivering this commodity.

ix. In case of forward rate agreements, the buyer should be the counterparty paying the fixed rate and the seller the counterparty receiving the fixed rate.

b) Yes, the investment firm can outsource the reporting of OTC transactions to an APA to a third party. However, the investment firm will remain fully responsible for discharging its obligations under MiFID II/MiFIR. Moreover, in case of outsourcing the reporting of OTC transactions to a third party, the investment firm has to ensure that the third party informs the APA of the transparency regime applicable to the investment firm subject to the reporting obligation. This ensures that the APA is in a position to make the transaction public using the transparency regime applicable to the investment firm subject to the reporting obligation.

Question 4 [Last update: 03/04/2017]

Is the transparency regime in MiFIR applicable to primary market transactions?

Answer 4

The transparency obligations should not be applicable to primary market transactions such as issuance, allotment or subscription for securities and the creation and redemption of units in ETFs.

Question 5 [Last update: 03/04/2017]

Does an ISIN need to be included for pre-trade quote publication?

Answer 5

Pre-trade transparency information should allow identifying unequivocally the financial instrument to which the information published refers. ISINs are one of the available ways to ensure the unequivocal identification of a financial instrument. However, ESMA recognises that ISINs may not always be available when providing a quote. Trading venues and systematic internalisers are free to use other ways for identifying instruments for pre-trade transparency purposes as long as the financial instrument can be unequivocally identified.

Question 6 [Last update: 03/04/2017]

Where the price of a transaction is not available at the time of execution (e.g. the Net Asset Value (NAV) for ETFs), how can investment firms fulfil their post-trade transparency obligations under Articles 20 and 21 of MiFIR and their transaction reporting obligations under Article 26 of MiFIR for those transactions?

Answer 6

If the price of a transaction is not available at the time of execution, investment firms should fulfil the applicable reporting obligations using 'PNDG' as price, specified in the field 'Price' of table 3 of Annex I of RTS 1, table 2 of Annex II of RTS 2 and/or field 33 of table 2 of Annex I of RTS 22. As soon as the price of the transactions (including the NAV in the particular case of ETFs) becomes available, investment firms should cancel the original reports with the 'PNDG' price (using the cancellation flag for post-trade transparency publication purposes) and publish new reports / send new transaction reports pertaining to the given transactions using the actual price that became available (using the amendment flag for post-trade transparency publication purposes). The date and time specified in the field "Publication date and time" of table 3 of Annex I of RTS 1, table 2 of Annex II of RTS 2 and/or field 28 of table 2 of Annex I of RTS 22 should always refer to the original date and time of the execution.

Question 7 [Last update: 03/10/2017]

When should the operator of an RFQ system provide pre-trade transparency?

Answer 7

Trading venues are responsible for designing their RFQ systems in compliance with the pre-trade transparency requirements defined in MiFIR and specified in Annex I of RTS 1 and RTS 2. The arrangements used may differ depending on the approach chosen by individual trading venues. Such approaches might include arrangements where trading interests become executable after a pre-defined period of time but would, in any circumstances, require the indications of interest to be disclosed no later than when they become actionable and in any case before the conclusion of a transaction.

The disclosure of the pre-trade quotes or actionable indications of interest only at the time of execution would not be consistent with the obligations set in Annex I of RTS 1 and 2.

Question 8 [Last update: 03/10/2017]

Do real time post-trade transparency requirements apply equally to trading venues and systematic internalisers?

Answer 8

Yes, the requirements in Articles 6 and 10 of MiFIR as further specified in Article 14 of RTS 1 and Article 7 of RTS 2 apply to both trading venues and investment firms. ESMA expects that trading venues and investment firms, in particular systematic internalisers, that use expedient systems publish transactions as close to real time as technically possible. In particular, since systematic internalisers are competing with trading venues over customers' order flow, it is important to provide for a level playing field. Therefore, trading venues and systematic internalisers using similar technology and systems should process transactions for post-trade publication at the same speed.

3 Equity transparency [Last update: 03/04/2017]

Question 1 [Last update: 03/04/2017]

Are primary market transactions, block trades (accelerated book-building) and share buy-backs subject to trading obligation for shares?

Answer 1

Primary market transactions (see Q&A 4 within the section on General Q&As on transparency topics) are not subject to the MiFIR transparency requirements and the trading obligation for shares. Block trades (accelerated book-building) and share buy backs on the other hand are secondary market transactions and therefore subject to the trading obligation for shares.

4 Non-equity transparency [Last update: 03/10/2017]

Question 1 [Last update: 31/05/2017]

How is the term "an underlying physical asset" in the context of the definition of an Exchange For Physical (EFP) to be understood? Can a financial instrument be considered as a physical asset?

Answer 1

ESMA is aware that currently many trading venues consider also financial instruments as an eligible underlying for EFPs. However, the definition of EFPs in Article 2(1)(48) MiFIR is narrow. Underlying physical assets in that sense only include truly physical assets, such as commodities, but do not include financial instruments as listed under section C of Annex I of MiFID II. In consequence, a financial instrument can never be a physical asset for the purpose of the EFPs. Orders/transactions composed of two financial instruments may meet the definition for other package orders/transactions as specified in Article 2(1)(49)(b) and (50)(b) of MiFIR and thereby be eligible for a waiver/deferral.

Question 2 [Last update: 03/10/2017]

a) *Which deferral regime applies to investment firms trading OTC?*

b) *Is it relevant in what Member State the relevant instrument is traded or admitted to trading on a trading venue?*

Answer 2

a) The deferral regime applicable to OTC trades is determined by the deferral regime applicable in the Member State where the investment firm that has to make the transaction public is established. The location of the APA through which a transaction is made public is not relevant. Where it is for an EU branch to make a transaction public, the deferral regime applicable in the Member State where that branch is located should apply.

b) No, for OTC transactions only the deferral regime applicable to the investment firm that has to make a transaction public is relevant.

Question 3 [Last update: 03/10/2017]

Publication of transactions in aggregated form (Article 11(3)(a) of MiFIR, Article 11(1)(a)(ii) of RTS 2): What happens if there are less than five transactions executed on the same day? Does this imply that no publication has to be made?

Answer 3

Article 11(3)(a) of MiFIR allows NCAs to request, in conjunction with an authorisation for deferred publication, the publication of several transactions in aggregated form during the time period of deferral. This requirement is further specified in Article 11(1)(a)(ii) of RTS 2 which requires that, where NCAs make use of this supplementary deferral requirement, transactions should be published in an aggregated form where a minimum number of 5 transactions have been executed on the same day. Therefore, in case less than five transactions were executed on the same day, no details of those transactions in an aggregated form have to be made public.

Question 4 [Last update: 03/10/2017]

a) *How is the requirement for a package order/transaction that 'Each component of the transactions bears meaningful economic or financial risk related to all the other components' to be interpreted?*

b) *Can package orders/transactions also include equity instruments? If yes, how is pre- and post-trade transparency applied?*

c) *When does an investment firm apply the systematic internaliser obligations on a package order level?*

Answer 4

a) The requirement of meaningful economic and financial risk related to all the other components (mefrroc) aims at ensuring that only components that are economically and financially related can constitute a package order/transaction, and to avoid that components that are not economically or financially related in a meaningful manner are declared as a package order/transaction with the main objective of benefitting from the transparency regime for package orders/transactions.

   ESMA expects trading venues and market participants trading packages to document how the meffroc requirement is met, either in the contract specifications for packages traded on trading venues or on a package-by-package basis in case of OTC-transactions.

b) No they cannot. Package orders/transactions have to be exclusively composed of non-equity instruments. The waivers/deferrals for packages are available under Articles 9 and 11 of MiFIR, which cover only non-equity instruments.

c) For pre-trade transparency obligations to apply at package order level, including for an exchange for physical, an investment firm must be a systematic internaliser in all financial instrument components of the order. Where an investment firm is prompted for a quote for a package order for which it is a systematic internaliser only for some components, the investment firm can decide either to provide a firm quote for the whole package or only for the components for which it is a systematic internaliser.

Question 5 [Last update: 03/10/2017]

What are normal trading hours for non-equity instruments? Are investment firms allowed to postpone publication of transactions until the opening of the next trading day in respect of trades in non-equity instruments taking place outside of normal trading hours?

Answer 5

Normal trading hours for non-equity instruments should be set on basis of the daily trading hours of trading venues trading non-equity instruments. Normal trading hours may therefore be different for different (classes of) non-equity instruments.

Transactions that take place on a given trading venue should be made public as close to real-time as possible. Transactions in a non-equity instrument that take place outside a trading venue during the normal trading hours of the trading venues trading that instrument should be published as close to real-time as possible. Where more than one trading venue trades that instrument, investment firms/APAs are expected to check whether the transaction took place within the daily trading hours of any of those trading venues. Transactions that take place outside the daily trading hours of trading venues trading that instrument should be made public before the opening of trading on those trading venues on the next trading day.

5 Pre-trade transparency waivers [Last update: 31/05/2017]

Question 1 [Last update: 18/11/2016]

Does paragraph 7 of Article 4 of MiFIR allow competent authorities to grandfather waivers granted under MiFID I for a period of 2 years after the application of MiFIR on 3 January 2018?

Answer 1

Paragraph 7 of Article 4 of MiFIR provides for a review of the waivers granted in accordance with MiFID I (i.e. before 3 January 2018) to be carried out by relevant national competent authorities (NCAs) in order to assess the continued compatibility of those waivers with MiFIR. ESMA must conclude the review and issue an opinion on each of the waivers to the relevant NCA by 3 January 2020. As clarified under Recital 13 of MiFIR the review should be carried out in accordance with Article 29 of ESMA Regulation 1095/2010 to foster consistency in supervisory practices and, therefore, ensure uniform application of MiFIR. The 2-year period following the application of MiFIR aims to alleviate the possible operational challenges involved in reviewing all of the waivers already granted across the Union to ensure a smooth convergence process in the supervisory practices between NCAs.

The 2-year period following application of MiFIR should not be interpreted as a grandfathering of waivers granted in accordance with MiFID I. MiFIR applies from 3 January 2018 and trading venues are required to comply with the new requirements from that date. That means that trading venues must, depending on the type of waiver used, implement the necessary technical modifications to their systems and regulatory changes to their rules to ensure compliance when MiFIR applies. NCAs remain responsible for the granting of waivers and to supervise how they are used, in advance of 3 January 2018, to ensure proper transition to MiFIR in their jurisdictions.

Question 2 [Last update: 18/11/2016]

Which procedure applies to granting a waiver from pre-trade transparency obligations for non-equity financial instruments for which there is not a liquid market under Article 9(1)(c) of MiFIR?

Answer 2

All waivers from pre-trade transparency under Article 9(1) of MiFIR originate with an application for a waiver by a trading venue which may then be granted by the relevant NCA. Each waiver also has to go through an ESMA opinion process as described in Article 9(2) of MiFIR.

The waiver for illiquid instruments described in Article 9(1)(c) of MiFIR is special in that it does not apply to specific order types or sizes, but that it renders all non-equity instruments deemed illiquid under MiFIR and RTS 2 for non-equity transparency eligible for a waiver from pre-trade

transparency. ESMA expects an extremely large number of instruments will be eligible for this waiver, and considers that it would not be possible operationally for this waiver to be granted on a per-instrument basis. Furthermore, ESMA does not understand the legal text to impose an obligation to grant the waiver on a per instrument basis.

Instead ESMA considers that the asset classes of instruments as categorised in Annex III of RTS 2 (examples for asset classes are bonds, interest rate derivatives, commodity derivatives, credit derivatives, etc.) should be the basis for applying for the "illiquid waiver". This means that trading venues should apply for the waiver on an asset class basis and all illiquid instruments that fall within those asset classes which are already traded on the venue or in the process of being admitted to trading, or that will be traded on the venue at a later point in time would be eligible to benefit from the waiver, if granted. Also instruments within the specified asset classes which move from liquid to illiquid following the calculations as per RTS 2 would be eligible to benefit from the same waiver.

Each waiver application can comprise different asset classes so that trading venues would only have to apply for the illiquid waiver once in the run-up to MiFID II application. A new waiver application would only be necessary in case the trading venue intends to start trading a new asset class based on the categorisation in RTS 2.

Question 3 [Last update: 31/05/2017]

When a modification is required to a trading venue system that benefits from a waiver granted in accordance with MiFID I in order to make it compliant with MiFIR, what is the appropriate process?

Answer 3

There will be varying degrees of modifications that will need to be made to existing waivers granted in accordance with MiFID I in order to make them compliant with MiFIR. Trading venues should consider whether modifications to their systems that benefit from waivers granted in accordance with MiFID I are necessary to make them MiFIR compliant. In some cases, the modifications could constitute a new waiver and consequently go through the ESMA opinion process before MiFIR applies. Systems for which waivers were granted in accordance with MiFID I that only require non-substantial modifications to be MiFIR compliant are not expected to go through a waiver application process, however they will be subject to the review that ESMA is required to conclude by 3 January 2020. In this regard, non-substantial modifications may include, but are not limited to, the following examples:

- For reference price waivers: when the reference price currently based on best bid, best offer or mid-price is modified to utilise only the midpoint within the bid and offer prices (or, when it is not available, the opening or closing price of the relevant trading session), in accordance with Article 4(2) of MiFIR;

- For order management facility waivers: when they are modified by introducing a minimum order size for orders held in an order management facility pending disclosure, in accordance with Article 8(2) of RTS 1;

- For large in scale waivers: when the minimum size is modified to be in accordance with table 1 of Annex II of RTS 1.

Combination of waivers will be assessed on an individual basis and amendments may qualify as non-substantial depending on the circumstances.

The transparency and waiver regimes under MiFID I only apply to shares admitted to trading on a regulated market. Therefore, where a waiver granted in accordance with MiFID I is extended to other equity-like instruments (i.e. ETFs, depositary receipts, certificates or any other equity-like instruments as well as non-equity instruments), this is considered as granting a new waiver, and this new waiver needs to go through the ESMA opinion process.

Question 4 [Last update: 31/05/2017]

How should the "current volume weighted spread reflected in the order book" be calculated for negotiated transactions under Article 4(1)(b)(i) of MiFIR?

Answer 4

The volume weighted spread should be calculated as the spread between the volume weighted bid and offer prices of orders on the trading venue's public order book aggregated to the size of the negotiated transaction.

The volume weighted bid (offer) should be calculated considering all bid (sell) orders in the order book that would theoretically be executed if a sell (buy) order of a size equivalent to the negotiated transaction was introduced in the order book. Where the transaction size is larger than the volume of buy (sell) orders on the order book it will be the average price of the transaction assuming that a sell (buy) order is executed against all buy (sell) orders on the order book.

Orders benefitting from a pre-trade transparency waiver should not be included in the calculation.

6 The double volume cap mechanism [Last update: 03/10/2016]

Question 1 [Last update: 03/10/2016]

What are the necessary adjustments to data on MiFID I waivers (shares traded only on regulated markets/shares traded on regulated markets and MTFs) in respect of the DVC? What is the volume traded under the waivers to be reported in the year before the application of MiFIR?

Answer 1

According to recital 11 of draft RTS 3[13] trading venues should base their report on the adjusted volumes of trading executed under equivalent waivers granted under Directive 2004/39/EC of the European Parliament and of the Council and Commission Regulation (EC) No 1287/2006 (MiFID I).

In particular, Article 5 of MiFIR caps the trading executed under:

i. systems matching orders based on a trading methodology by which the price is determined in accordance with a reference price; and

ii. negotiated transactions in liquid instruments carried out under limb (i) of Article 4(1)(b) of MiFIR.

With regard to the reference price waiver, the requirement under MiFID I that the reference price must be widely published and regarded as reliable has been maintained under MiFIR. The only difference is that such elements are codified as an implementing measure under MiFID I (in Article 18(1)(a) of MiFID I implementing regulation[14]) whereas they are part of the Level 1 text of MiFIR.

Furthermore, compared to MiFID I, MiFIR narrows down the set of eligible prices that can be used by those reference price systems in two different ways.

First, any reference price can only be either:

[13] Commission Delegated Regulation (EU) 2017/577 of 13 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations (OJ L 87, 31.3.2017, p. 174–182).

[14] Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards recordkeeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive.

i. the midpoint within the current bid and offer prices of the most relevant market in terms of liquidity or the market where the financial instrument in question was first admitted to trading; or

ii. the opening or closing price of the relevant trading session if the trading occurs outside the continuous trading phase.

Second, any reference price can only be derived from the most relevant market in terms of liquidity or the market of first admission of the financial instrument.

Taking note of those differences ESMA considers that for properly implementing the double volume cap from 3 January 2018 all transactions executed in 2017 in accordance with reference price waivers granted under MiFID I should be included in the numerator for the purposes of the double volume cap calculations as per Article 5 of MiFIR.

With regard to the negotiated transactions waivers, in comparison to MiFID I, negotiated transactions are subject to some restrictions on admissible execution prices depending on the type of the transaction and the trading characteristics of the financial instrument being traded. In particular:

i. Negotiated transactions which are subject to conditions other than the current market price can be executed at any price in accordance with the rules of the trading venue.

ii. Negotiated transactions which are subject to the current market price must instead comply with price conditions as specified below:

    a. for liquid financial instruments negotiated transactions must be executed within the spread - negotiated transactions falling under this limb are subject to the double volume cap (DVC) mechanism.

    b. for illiquid financial instruments negotiated transactions can be executed at any price falling within a certain percentage of a suitable reference price provided both the reference price and the percentage are set in advance by the system operator.

With respect to the negotiated transactions trading venues are required to properly identify, to the extent possible, transactions under the negotiated transaction waiver volume comparable to point (a) above which are the only negotiated transactions covered by the DVC mechanism. Therefore, ESMA considers that all transactions executed under the MiFID I negotiated trade waivers in liquid shares should count towards the double volume cap and should be reported by trading venues for the purpose of the double volume cap calculations. However, the calculation should exclude negotiated transactions in liquid shares subject to conditions other than the current market price executed in accordance with Article 18(b)(ii) of MiFID I implementing regulation.

Transactions executed on the basis of two orders benefitting from the large in scale waiver should not count towards the volumes calculated under the reference price and the negotiated trade waiver.

Question 2 [Last update: 03/10/2016]

How would the double volume cap be applied from January 2018 in relation to financial instruments (shares traded only on MTFs, depositary receipts, ETFs, certificates) which currently do not operate under any waiver?

Answer 2

Article 5(4) of MiFIR requires ESMA to publish the total volume of Union trading per financial instrument and the percentage of trading in a financial instrument carried out under the reference price waiver and for negotiated transactions under Article 4(1)(b)(i) in the previous 12 months.

Concerning the total volume of Union trading per financial instrument, ESMA will publish the volume traded on all EU venues over the last 12 months.

Concerning the percentage of trading in a financial instrument carried out under the reference price waiver and the negotiated transactions waiver, two scenarios need to be distinguished:

a) Prior to the date of application of MiFID II/MiFIR: The pre-trade transparency requirements of MiFID I, and therefore also the possibility to benefit from MiFID waivers, apply only to shares admitted to trading on regulated markets. While MiFID II/MiFIR extend the transparency regime to other equity-like instruments and to shares traded only on MTFs, these instruments until the date of application of MiFID II/MiFIR do not have any formally approved waivers. Therefore, the volume traded under MiFID waivers for those instruments not covered by the scope of the MiFID I pre-trade transparency regime (the numerator) will be zero for the monitoring period starting one year before the date of application of MiFID II/MiFIR.

b) After the date of application of MiFID II/MiFIR: With the application of MiFID II/MiFIR equity and equity-like instruments newly covered by the MiFIR transparency provisions can have formally approved waivers. For the purpose of performing the calculations for determining the percentage of trading in a financial instrument under the relevant waivers, ESMA will accumulate the volume traded under the reference price and negotiated transactions waivers on a venue/all EU venues (the numerator) over the first 12 months. This means that at the end of the first month after the date of the application of MiFID II/MiFIR in 2018, the trading under the waivers will cover a period of one month. At the end of the second month after the date of application of MiFID II/MiFIR, the trading under the waivers will cover a period of two months, and so forth until a 12-month period is covered.

The applicable denominator (volume traded on all EU venues) will be based on the traded volumes of the previous 12 months at each point in time.

ESMA considers that this calculation method reflects the co-legislators' intention to at all points in time cover the actual volumes traded under MiFID approved waivers in the numerator and compare it to total trading in the denominator over the previous 12 months.

Question 3 [Last update: 03/10/2016]

How will the DVC be applied to newly issued shares?

Answer 3

ESMA will publish the percentage of trading in a financial instrument carried out under the reference price waiver and the negotiated transactions waiver under Article 4(1)(b)(i) of MiFIR for shares newly admitted to trading or traded from the start of trading.

However, since according to Article 5(1) of MiFIR the double volume cap mechanism can only apply where the relevant thresholds are breached over the previous 12 months, the suspension of waivers when the thresholds are breached can only be triggered when at least 12 months of data for the volume of total trading and the percentage carried out under the waivers is available.

Question 4 [Last update: 03/10/2016]

What are the implications of exceeding a relevant threshold in a mid-month report?

Answer 4

Pursuant to Article 5(4) of MiFIR ESMA shall publish within five working days of the end of each calendar month, the total volume of Union trading per financial instrument in the previous 12 months, the percentage of trading in a financial instrument carried out across the Union under the waivers and on each trading venue in the previous 12 months, and the methodology that is used to derive at those percentages.

In the event that the report referred to in Article 5(4) of MiFIR identifies any trading venue where trading in any financial instrument carried out under the waivers has exceeded 3,75 % of the total trading in the Union in that financial instrument or that overall Union trading in any financial instrument carried out under the waivers has exceeded 7,75 % based on the previous 12 months' trading, respectively, ESMA shall publish an additional report within five working days of the 15th day of the calendar month in which the report referred to in Article 5(4) of MiFIR is published. That report shall contain the information specified in Article 5(4) in respect of those financial instruments where 3,75 % has been exceeded or in respect of those financial instruments where 7,75 % has been exceeded, respectively (see Article 5(5) and (6) of MiFIR).

The question is what the consequences are if according to the aforementioned “mid-month reports” one or more of the respective thresholds (the 3,75%, the 7,75%, the 4% or the 8%) are exceeded.

Pursuant to Article 5(2) of MiFIR, the NCA that authorised the use of the respective waivers shall within two working days suspend their use on that venue in that financial instrument based on the data published by ESMA referred to in Article 5(4) of MiFIR, for a period of six months when the percentage of trading in a financial instrument carried out on a trading venue under the waivers has exceeded the limit referred to in Article 5(1)(a) of MiFIR. When the percentage of trading in a financial instrument carried out on all trading venues across the Union under those waivers has exceeded the limit referred to in Article 5(1)(b) of MiFIR, all NCAs shall within two working days suspend the use of those waivers across the Union for a period of six months.

On this basis the obligation to suspend trading derives from the thresholds as laid down in Article 5(1) of MiFIR. However, factually, suspension for a period of six months is ordered by the NCA on the basis of the ESMA report pursuant to Article 5(4) of MiFIR, as explicitly stated in Article 5(2) and (3), respectively. As a trading suspension is ordered on the basis of the report pursuant to Article 5(4) and as the legal hook for a trading suspension does not cross-refer to the mid-months reports pursuant to Article 5(5) and (6), there is no direct legal consequence of these reports even if they were to state that trading has exceeded 4 % or 8 %, respectively.

7 The systematic internaliser regime [Last update: 03/10/2017]

Question 1 [Last update: 03/11/2016]

By when will ESMA publish information about the total number and the volume of transactions executed in the Union and when do investment firms have to perform the assessment whether they should be considered as systematic internalisers for the first time in 2018 as well as for subsequent periods?

Answer 1

Commission Delegated Regulation (EU) No 2017/565[15] does not provide for any transitional provision which would allow the systematic internaliser regime to be fully applicable as of 3 January 2018. In the absence of such provisions, the first calculations are expected to be performed only when, in accordance with Article 17 of the Commission Delegated Regulation (EU) No 2017/565, there will be 6 months of data available.

In accordance with the clarifications provided below:

a) ESMA will publish the necessary data (EU wide data) for the first time by 1 August 2018 covering a period from 3 January 2018 to 30 June 2018.

b) Investment firms will have to perform their first assessment and, where appropriate, comply with the systematic internaliser obligations (including notifying their NCA) by 1 September 2018.

This timeline applies also to investment firms trading in illiquid instruments. While it is possible for those firms to carry out part of the test based on data at their disposal, the complete determination of the SI activity necessitates an assessment of the investment firms OTC-trading activity in a particular instrument in relation to overall trading in the Union. In order to ensure a consistent assessment and to ensure that all investment firms are treated in the same manner, for all instruments, irrespective of their liquidity status, the assessment should therefore be performed by 1 September 2018.

Similarly, although Commission Delegated Regulation (EU) No 2017/565 allows shorter look-back periods for newly issued instruments compared to the six months described above, ESMA considers that it is important to ensure a level playing field between all instruments and, therefore, suggests to apply the schedule proposed above also to newly issued instruments -

[15] Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87, 31.3.2017, p. 1–83).

i.e. first publication by ESMA of the necessary EU-wide data by 1 August 2018 and earliest deadline to comply, where necessary, with the SI regime set on 1 September 2018.

It is nevertheless important to stress that investment firms should be able to opt-in to the systematic internaliser regime for all financial instruments from 3 January 2018, for example, as a means to comply with the trading obligation for shares.

In accordance with Article 94 of MiFID II, the systematic internaliser definition and the transparency regime applicable to internalisers in shares admitted to trading on a regulated market under MiFID I will be repealed by MiFID II by 3 January 2018. Those firms, following the publication of the data of the first six months from 3 January 2018, will also have to determine whether their activity is frequent, systematic and substantial on the basis of the available data published in accordance with this note.

For subsequent assessments, ESMA intends to publish the necessary information within a month after the end of each assessment period as defined under Article 17 of the Commission Delegated Regulation (EU) No 2017/565 – i.e. by the first calendar day of months of February, May, August and November every year. After the first assessment, investment firms are expected to perform the calculations and comply with the systematic internaliser regime (including notification to their NCA) no later than two weeks after the publication by ESMA – i.e. by the fifteenth calendar day of the months of February, May, August and November every year.

Question 2 [Last update: 31/01/2017]

Do the calculations to identify if an investment firm is systematic internaliser have to be carried out at legal entity level or a group level? How are branches of investment firms being treated?

Answer 2

The definition of systematic internaliser under Article 4(1)(20) of MiFID II refers to “investment firms” established in the EU and, therefore, the calculations should be carried out at legal entity level. For EU investment firms operating branches in the Union, the activity of those branches would need to be consolidated for the purpose of the systematic internaliser calculations.

Question 3 [Last update: 31/01/2017]

a) *Should investment firms, when determining if they are a systematic internaliser, include (i) transactions that are not contributing to the price formation process and/or are not reportable and (ii) primary market transactions?*

b) *Should investment firms, when determining if they are a systematic internaliser, include trades executed on own account on a trading venue but following an order from the client?*

c) *Are off order book trades that are reported to a regulated market, MTF or OTF under its rules excluded from the quantitative thresholds for determining when an investment firm is a systematic internaliser?*

Answer 3

a) Article 13 of RTS 1 and Article 12 of RTS 2 exempt investment firms from reporting certain types of transactions for the purposes of post-trade transparency. ESMA is of the view that those types of transactions should not be part of the calculations for the purposes of the definition of the systematic internaliser regime, both for the numerator and the denominator of the quantitative thresholds specified in the Commission delegated regulation (EU) No 2017/565. The types of transactions included in Articles 13 of RTS 1 and 12 of RTS 2 are technical and cannot be characterised as transactions where an investment firm is executing a client order by dealing on own account. More importantly, the lack of a reporting obligation for those types of transactions would be a considerable challenge for competent authorities to supervise and for investment firms to comply with the systematic internaliser regime.

   Primary market transactions in securities as well as creation and redemption of ETFs' units should not be included in the calculations.

b) Article 12(6) of RTS 1 and in Article 7(7) of RTS 2 clarify that two matching trades entered at the same time and for the same price with a single party interposed are considered as a single transaction. An investment firm may, on the back of a client order, execute a trade on own account on a trading venue and back it immediately to the original client. While the trade can be broken down into two transactions - the first transaction executed on own account by the investment firm on the trading venue and the second transaction executed between the investment firm and the client - such transactions should be considered economically as one trade. ESMA is of the view that where the market leg is executed on a trading venue and immediately backed to the client at the same price, the investment firm is not deemed to execute a client trade outside a regulated market, an MTF or an OTF. Therefore, only one trade should be counted for the denominator for determining the systematic internaliser activity (total trading in the EU), and no trade should be included in the numerator when determining whether an investment firms is a systematic internaliser.

   However, in case the market leg transaction is not immediately backed to the client or in case the price is not the same, the trades should be counted as two for the denominator and the trade with the client should be counted for the numerator.

c) An investment firm dealing on a trading venue is not deemed to act as a systematic internaliser. A trading venue is a multilateral system that operates in accordance with the provisions of Title II of MiFID II concerning MTFs and OTFs or the provisions of Title III concerning regulated markets. According to recital (7) of MiFIR a market which is composed by a set of rules that governs aspects related to membership, admission of instruments to trading, trading between members, reporting and, where applicable, transparency obligations is a regulated market or an MTF.

A transaction is deemed to be executed on a trading venue if it is carried out through the systems or under the rules of that trading venue. There is no requirement for the transactions to be executed on an electronic order book for the trade to be subject to the trading venue's rules. Therefore, only off order book transactions that benefit from a waiver from pre-trade transparency should be considered as executed on a trading venue, and should not count for the numerator when determining whether an investment firm is a systematic internaliser.

Question 4 [Last update: 03/10/2017]

a) *On which level is the systematic internaliser threshold to be calculated for derivatives? On a sub-class level or on a more granular level?*

b) *On which level is the systematic internaliser threshold to be calculated for structured finance products (SFPs)?*

c) *What constitutes a 'class of bonds' under Article 13 of Commission Delegated Regulation (EU) No 2017/565[16]? Do senior, subordinated or convertible bonds from the same issuer constitute different classes?*

d) *On which level is the systematic internaliser threshold to be calculated for emission allowances*

Answer 4

a) The calculation should be performed at the most granular class level as identified in RTS 2. Where an investment firm meets the thresholds for such a class, it should be considered as a systematic internaliser for all derivatives within that most granular class. In particular, both the numerator and the denominator should refer to the same class of derivatives.

   With respect to equity derivatives, the sub-classes as defined in Table 6.2 of Annex III of RTS 2 for LIS and SSTI should be used.

b) For SFPs, calculations should be performed at ISIN level and where, for a specific ISIN, an investment firm is above the thresholds prescribed, it should be considered a systematic internaliser for all SFPs issued by the same entity or by any entity within the same group.

c) A class of bonds issued by the same entity, or by any entity within the same group is a subset of a class of bonds in table 2.2 of Annex III of RTS 2 (sovereign bond, other public bond, convertible bond, covered bond, corporate bond, other bond). Hence, where an investment firm passes the relevant thresholds in a bond it will be considered to be a

[16] Commission Delegated Regulation of 25.4.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

systematic internaliser in all bonds belonging to the same class of bonds according to table 2.2. of Annex III of RTS 2 issued by the same entity, or by any entity within the same group.

It is therefore possible to distinguish between, for instance, corporate bonds and convertible bonds as different classes of bonds, but the debt seniority of a bond does not constitute a different class.

d) The calculation should be performed at the level of the emission allowance type. In other words, both the numerator and the denominator shall refer to the same sub-asset class level as identified in RTS 2.

Question 5 [Last update: 31/05/2017]

a) Can systematic internalisers meet their quoting obligations under Article 18(1) of MiFIR for liquid instruments by providing executable quotes on a continuous basis?

b) Can client orders routed by an automated order router (AOR) system be considered as 'prompting for a quote' according to Article 18(1)(a) of MiFIR?

c) For how long should quotes provided by systematic internalisers be firm, or executable?

d) What are the obligations for systematic internalisers dealing in non-equity instruments for which there is no liquid market under Article 18(2) of MiFIR?

e) Which arrangements should systematic internalisers use when publishing firm quotes? Should these be the same arrangements as for equity instruments?

f) Should systematic internalisers disclose their identity when publishing firm quotes?

Answer 5

a) The systematic internaliser regime for non-equity instruments is predicated around a protocol whereby the systematic internaliser provides a quote or quotes to a client on request. However, nothing prevents the systematic internaliser, especially in the most liquid instruments, to stream prices to clients. Where those prices are firm, i.e. executable by clients up to the displayed size (provided the size is less than the size specific to the instrument), the systematic internaliser would be deemed to have complied with the quoting obligation under Article 18(1) of MiFIR. The systematic internaliser can, in justified cases, execute orders at a better price than the streaming quote.

b) Yes. The provisions in Article 18 of MiFIR are neutral concerning the technology used for prompting quotes. A systematic internaliser can be prompted for and provide quotes through any electronic system.

c) The quote should remain valid for a reasonable period of time allowing clients to execute against it. A systematic internaliser may update its quotes at any time, provided at all times

that the updated quotes are the consequence of, and consistent with, genuine intentions of the systematic internaliser to trade with its clients in a non-discriminatory manner.

d) Where a systematic internaliser receives a request from a client for a quote for an instrument which is traded on a trading venue and for which there is not a liquid market, and the systematic internaliser agrees to provide that quote, the systematic internaliser does not have an obligation to make this quote available to other clients and to make it public. However, Article 18(2) of MiFIR requires the systematic internaliser to disclose to clients on request the quotes provided in illiquid financial instruments. That obligation can be met by allowing clients, on a systematic or on a request basis, to have access to those quotes.

   This is without prejudice to the possibility for systematic internalisers to benefit from a waiver for this obligation where, as set out in the last sentence of Article 18(2) of MiFIR, the conditions in Article 9(1) of MiFIR are met.

e) Article 13 of the Commission Delegated Regulation (EU) No 2017/567 specifies how systematic internalisers should make their quotes public and easily accessible for equity instruments. There are no corresponding provisions on the publication arrangements for systematic internalisers for non-equity instruments, but Article 18(8) of MiFIR requires the quotes to be "made public in a manner which is easily accessible to other market participants".

   ESMA considers that systematic internalisers should use the same means and arrangements when publishing firm quotes in non-equity instruments as for equity instruments as specified in Article 13 of the Commission Delegated Regulation (EU) No 2017/567. Furthermore, the quotes should be made public in a machine-readable format as specified in the above mentioned Regulation and the quotes should be time-stamped as specified in Article 9(d) of RTS 1.

f) Yes, as for equity instruments, systematic internalisers should disclose their identity when making quotes public through the facilities of a regulated market or an APA.

Question 6 [Last update: 31/05/2017]

a) What information should the notification from systematic internalisers to their NCA contain?

b) For what period of time should an investment firm follow the obligations for systematic internalisers after crossing the relevant thresholds in a financial instrument?

c) When/How often do investment firms have to notify their NCAs of their systematic internaliser status?

Answer 6

a) The notification from systematic internalisers to their NCA should contain information that is at least provided at the level of the MiFIR identifier as specified in field 4 of table 2 of Annex III of RTS 1 (i.e. shares, depositary receipts, exchange traded funds, certificates and other equity-like financial instruments) and in field 3 of table 2 of Annex IV of RTS 2 (i.e. bonds, ETNs, ETCs, structured finance products, securitised derivatives, derivatives, and emission allowances) for the instruments and classes of instruments for which the investment firm is a systematic internaliser. This is without prejudice of the possibility for CAs to require the submission of more granular information if considered appropriate.

b) The obligation will last for three months after crossing the relevant thresholds in a financial instrument at the relevant quarterly assessment. The obligation period will be slightly shorter for the first assessment in 2018, which covers 1 September to 15 November 2018.

c) Investment firms are required to notify their NCA in case of a change in status, i.e. where an investment firm passed the thresholds for an instrument with a particular MiFIR identifier in the previous period, but did not meet the thresholds for any instrument with the same MiFIR identifier in the consecutive assessment period, it should notify its CA of its change of status. Where there is no change in the systematic internaliser status from one assessment period to the next (i.e. where the investment firms is still above the threshold or decides to voluntarily opt-in as systematic internaliser for any instrument with the same MiFIR identifier), the firm does not have to notify its NCA thereof.

Question 7 [Last update: 03/10/2017]

For the purpose of the SI determination, when should an investment firm be considered as "executing client orders" when dealing on own account outside of trading venues?

Answer 7

For the purposes of the SIs' determination, ESMA considers that in all circumstances where an investment firm is dealing with a counterparty that is not a financial institution authorised or regulated under Union law or under the national law of a Member State ('financial institution'), the investment firm is deemed to be executing a client order and the transaction should count towards the calculations (both the numerator and the denominator). Where the investment firm is dealing with a financial institution, ESMA considers that one party to the transaction will always act in a client capacity. Therefore, in order to determine when an investment firm is "executing client orders" when dealing on own account outside of trading venues, investment firms need to assess which of the two parties to the transactions acts in the capacity of executing client orders.

Investment firms may determine this either on a transaction by transaction basis or by type of transactions or type of counterparties. Different indicators could be used for determining which party executed a client order: e.g. whether an investment firm has classified the counterparty as a professional client, who initiated the trade or who received the instruction to deal and the extent to which the counterparty relied on the other party to conclude the transaction.

Question 8 **[Last update: 03/10/2017]**

What are the limitations to the commercial policy for restricting access to quotes in accordance with Article 18(5) of MiFIR?

Answer 8

The commercial policy needs to be set out and made available to clients in advance. The commercial policy should determine meaningful categories of clients to which quotes are made available. Systematic internalisers should only be able to group clients based on non-discriminatory criteria taking into consideration the counterparty risk, or the final settlement of the transaction.

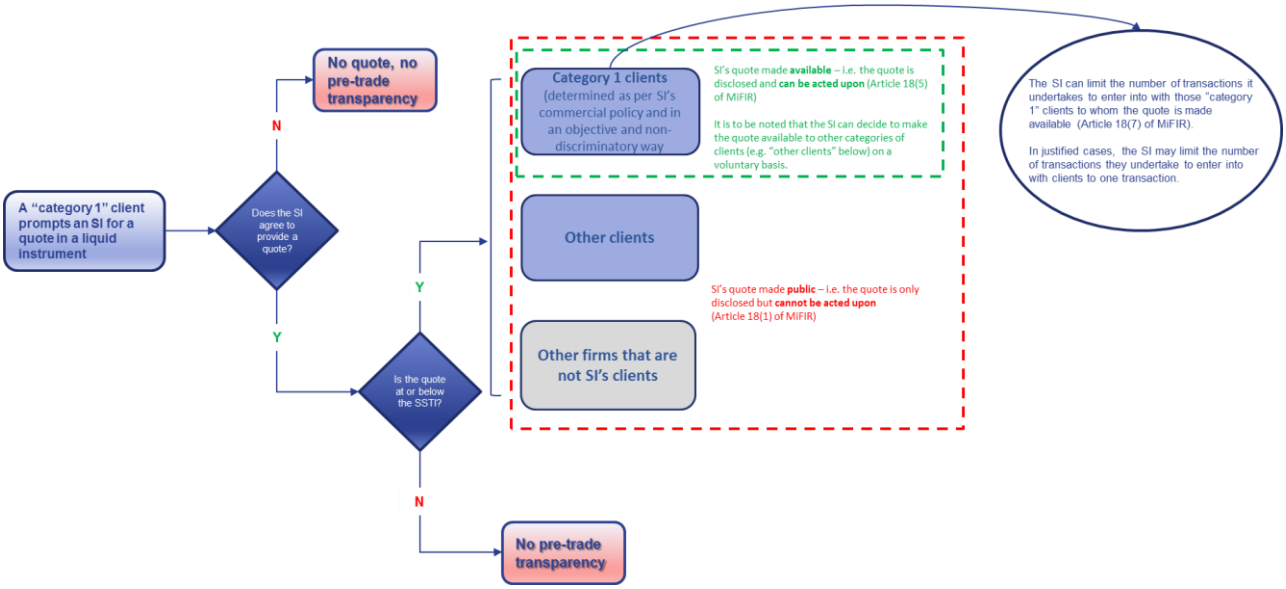
Furthermore, a number of provisions safeguard the ability of the systematic internaliser to properly manage risk. For example, a systematic internaliser may update its quotes at any time (Article 18(3) of MiFIR) and can limit the number of transactions they undertake to enter into with clients pursuant any given quote (Article 18(7) of MiFIR).

Question 9 **[Last update: 03/10/2017]**

Are systematic internalisers allowed to limit the number of transactions they undertake to enter into with clients pursuant to any given quote under Article 18(7) of MiFIR to one transaction?

Answer 9

Yes, Systematic internalisers may limit the number of transactions they undertake to enter into with clients to one transaction. As a minimum the quote provided to a client following the request for such a quote should be potentially executable by any other clients where for example the requesting client has decided not to trade against it (or to execute only part of it). In any case, should SIs decide to establish non-discriminatory and transparent limits on the number of transactions they undertake to enter into with clients, they should make these limits public and provide a justification.


A "category 1" client prompts an SI for a quote in a liquid instrument
Does the SI agree to provide a quote?
N
No quote, no pre-trade transparency
Y
Is the quote at or below the SSTI?
Y
N
No pre-trade transparency
Category 1 clients (determined as per SI's commercial policy and in an objective and non-discriminatory way
SI's quote made available – i.e. the quote is disclosed and can be acted upon (Article 18(5) of MiFIR)
It is to be noted that the SI can decide to make the quote available to other categories of clients (e.g. "other clients" below) on a voluntary basis.
Other clients
Other firms that are not SI's clients
SI's quote made public – i.e. the quote is only disclosed but cannot be acted upon (Article 18(1) of MiFIR)
The SI can limit the number of transactions it undertakes to enter into with those "category 1" clients to whom the quote is made available (Article 18(7) of MiFIR).
In justified cases, the SI may limit the number of transactions they undertake to enter into with clients to one transaction.

8 Data reporting services providers [Last update: 31/05/2017]

Question 1 [Last update: 31/05/2017]

What is the time limit for investment firms to report post-trade information to APAs, in particular should information be delayed in case of deferral? Who decides on the applicable deferral period given the possibility of disagreement between the APA and the investment Firm?

Answer 1

According to Articles 7 and 20 (equity instruments) and 11 and 21 (non-equity instruments) of MiFIR, NCAs may authorise market operators and investment firms to provide for a deferred publication of certain transactions. Since the authorisation for granting the deferred publication is addressed to market operators and investment firms, it is the investment firm's responsibility to ensure that the APA is informed thereof and publishes the information no later than after the lapse of the deferral.

The investment firm should report the transaction to the APA as soon as technically possible after the execution, regardless of the application of any deferrals. The APA should be in charge of publishing the transaction in due time, according to the deferral period that applies to the specific transaction.

Question 2 [Last update: 31/05/2017]

Who will assign the identifier for the APA?

Answer 2

According to table 3 of Annex I of RTS 1 and table 2 of Annex II of RTS 2, APAs will be identified by either a MIC or a 4-character code. ESMA considers that the best way to ensure a harmonised and unequivocal identification of APAs and trading venues is to provide for a harmonised allocation of the identifier, such as MICs. While there is no legal obligation for APAs to use MICs, ESMA recommends that APAs request the MIC code from the ISO 10383 Registration Authority (SWIFT). The creation, maintenance and deactivation of MICs is free of charge.

9 Third country issues [Last update: 31/05/2017]

Question 1 [Last update: 31/05/2017]

Should EU investment firms trading on a third-country trading venue make information about these transactions public through an APA in the EU (Articles 20 and 21 of MiFIR)?

Answer 1

Whether or not information on transactions in instruments traded on a trading venue by investment firms on a third-country trading venue have to be made public through an APA in accordance with Articles 20 and 21 of MiFIR depends on the characteristics of that third-country trading venue as set out in the ESMA Opinion (ESMA70-154-165, 31.05.2017).

Investment firms trading on third-country trading venues that need guidance on whether information on transactions executed on third-country trading venues have to be made public through an APA should contact their CAs to make them aware of the third-country trading venue(s) on which they are trading. The CA will then get in touch with the third-country trading venue with a request for further information. Based on the information provided, ESMA will determine whether the third-country trading venue meets the criteria set out in the ESMA Opinion. If so, the respective third-country trading venue will be listed in an Annex to the Opinion.

Only transactions concluded by investment firms on third-country trading venues that are listed in the Annex to the ESMA Opinion do not need to be made public through an APA. Investment firms trading on third country trading venues that are not included in the list in the Annex of the ESMA Opinion should make information on those transactions public through an APA.

Only notifications from EU investment firms will be processed. Third country trading venues cannot directly approach NCAs, but their cooperation will be important when determining whether the criteria set out in the ESMA opinion are met.

ESMA is aware that it is important for EU investment firms to have legal certainty as soon as possible on the treatment of their transactions on third-country trading venues for the purposes of the MiFIR transparency regime. While ESMA cannot commit to any set timeline, all notifications will be processed as expediently as possible.