

Bundesverband der Wertpapierfirmen e.V.
Friedrichstraße 52, 60323 Frankfurt/Main

European Securities and Markets Authority (ESMA)

CS 60747
103 rue de Grenelle
75345 Paris Cedex 07

France

Transmitted via web-upload: www.esma.europa.eu

your reference
ESMA70-156-1757

your message of
3 February 2020

city_date
Frankfurt/Main, 17.03.2020

ESMA Consultation Paper MiFIR report on Systematic Internalisers in non-equity instruments

3 February 2020 | ESMA70-156-1757

Dear Sir, dear Madam,

The Bundesverband der Wertpapierfirmen e.V. (bwf) is a trade association representing the common professional interests of securities trading firms, market makers and investment firms with various other business models throughout Germany.¹ In this capacity, we expressly welcome the possibility to comment on *ESMA's Consultation Paper MiFIR report on Systematic Internalisers in non-equity instruments*.

As market makers and liquidity providers bwf members play an important role for the functioning of the markets in bond and securitised derivatives. While bwf members traditionally conduct their business as members of the various German exchanges, nowadays – mainly as a result of the MiFID II framework – some of them also act as Systematic Internalisers. Furthermore, on exchange market makers might use Systemic Internalisers and or MTFs to cover or unwind their positions.

In on and off exchange trading, bwf members employ their own capital and absorb market risk when they provide liquidity and play an active role in supporting a robust and fair price determination process.

Bundesverband der Wertpapierfirmen e.V.

Federal Association of Securities Trading Firms – a registered association

Registered Seat
Kurfürstendamm 151
D-10709 Berlin

Postal Address & Office
Friedrichstraße 52
D-60323 Frankfurt/Main

Tel.: +49 (0) 69 92 10 16 91
Fax: +49 (0) 69 92 10 16 92
mail@bwf-verband.de
www.bwf-verband.de

Board of Governors

Dr. Annette Kliffmüller-Frank (Chair)
Carsten Bokelmann
Stefan Bolle
Dirk Freitag
Holger Gröber
Kai Jordan
Torsten Klanten
Annick Kleine
Dirk Schneider

Secretary General

Michael H. Sterzenbach
m.sterzenbach@bwf-verband.de

Legal Adviser

Dr. Hans Mewes
Am Sandtorkai 44, D-20457 Hamburg
Tel.: +49 (0) 40 36 80 5 - 132
Fax: +49 (0) 40 36 80 5 - 333
h.mewes@bwf-verband.de

Banking-Account

DB Privat- und Firmenkundenbank AG
IBAN DE08500700240018321000
BIC DEUTDE33HAN

¹ bwf is listed on the EU register of interest representatives under the ID 258694016925-01

Q 1: Do you consider that there is a need to clarify what a “firm quote” is? If so, in your view, what are the characteristics to be met by such quote?

In our perception, there is a sufficiently precise and coherent understanding among market participants what constitutes a “firm quote”. Furthermore, the term is used for many years in the regulatory context not only within MiFIR but in particular within the EU Short Selling Regulation² of 2012 without any identifiable problems (neither on the side of regulators nor on the side of market participants) resulting from a lack of clarification.

In order to avoid unnecessary further complication of legal provisions – which are already overly complex anyway – we are of the opinion that in general, subsequent clarifications of legal terms should only be considered where the lack of legislative detail has led to problems in the application of the law. Since we are not aware that the lack of clarification of “firm quote” has led to any regulatory concern in the past, we consider further clarifications needless.

Q 2: (For SI clients) As a SI client, do you have easy access to the quotes published, i.e. can you potentially trade against those quotes when you are not the requestor? Do you happen to trade against SIs quotes when you are not the initial requestor? How often? If it varies across asset classes, please explain.

Business policies among SI with respect to the accessibility of requested quotes vary. Therefore there is no general answer to this question.

Q 3: What is your overall assessment of the pre-trade transparency provided by SIs in liquid non-equity instruments? Do you have any suggestion to amend the existing pre-trade transparency obligations? If so, please explain which ones and why.

bwf has no comment on this question.

Q 4: (For SI clients) do you have access to quotes in illiquid instruments? If so, how often do you request access to those quotes? What is your assessment of the pre-trade transparency provided by SIs in illiquid instruments.

A huge majority of bond issues can be considered illiquid in the sense that they are simply not deliverable. Consequently, such issues are rarely quoted.

² REGULATION (EU) No 236/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 March 2012 on short selling and certain aspects of credit default swaps

Q 5: (For SIs) Do you disclose quotes in illiquid instruments to clients upon request or do you operate under a pre-trade transparency waiver? In the former case, how often are you requested to disclose quotes (rarely, often, very often)? Does it vary across instruments / asset classes.

According to our members who are acting as SIs themselves, they rarely quote and are also rarely requested to quote in illiquid instruments.

Q 6: Do you consider that there is an unlevel playing field between SIs and multi-lateral trading venues active in non-equity instruments, in particular with respect to pre-trade transparency? If so, please explain why and suggest potential remedies.

Despite ambitious legislative and regulatory attempts to further level the playing field among different types of trading venues, in practice there are still different levels of regulation with regulated markets, without doubt are still operating under the most demanding regulatory standards.

Q 7 (for SIs who are also providing liquidity on trading venues): What are the key factors that determine whether quote requesters (your clients) want to receive the quote through the facilities of a trading venue or through your own bilateral trading facilities?

According to feedback received from our member firms operating SIs as well as from member firms which are clients of SIs, the main driver for client's preference for SI based trading are comparably lower trading- and to some extent also settlement costs. In a minority of cases ease of access and technical connectivity might also be relevant factors.

Q 8: What is your view on the proposal to simplify the requirements in relation to SI quotes in liquid non-equity instruments under Article 16(6) and 18(7)?

While we would support the deletion of the first paragraph of Article 18(6), we are skeptical with respect to the deletion of Article 18(7). Since SIs are employing their own capital when dealing with clients, they must be able – for economic and regulatory (prudential) reasons alike, to effectively limit the number (and the volume) of transactions they undertake.

Q 9: Do you consider that the requirements in relation to SI quotes in illiquid non-equity instruments (Article 18(2)) are appropriate? What is your preference between the options presented in paragraph 52 (please justify)?

Here, bwf member firms articulated a clear preference for option 3.

Q 10: What is your view on the recommendation to specify the arrangements for publishing quotes?

While the proposal to specify the arrangements for publishing quotes in the non-equity field might look persuasive at first glance since a similar provision exists for equities, we still do not see a need or a convincing regulatory benefit from such a specification. As mentioned before, any new provision or technological requirement which will necessarily further increase the complexity of the regulatory framework should only be considered if deemed helpful to solve a clearly identified, serious regulatory problem.

Aside from the argument of avoiding unnecessary complexity that any new specification would inevitably require costly changes to existing IT-infrastructure which should be avoided if any possible.

Q 11: Do you have any comment on the analysis of Bond data and the relation with the SSTI thresholds as presented above?

bwf has no comment on this question.

Q 12: Do you have any comment on the analysis of derivatives data and the relation with the SSTI threshold as presented above?

bwf has no comment on this question.

Q 13: What is your view on the influence of the SSTI thresholds on the pre-trade transparency framework for SI active in non-equity instruments? Are there any changes to the legal framework that you would consider necessary in this respect?

bwf member firms consider the current framework with respect to SSTI to be appropriate and do not propose changes.

Q 14: What is your view on the best way for ESMA to fulfil the mandate related to whether quoted and traded prices reflect prevailing market conditions and in particular: (1) the source of data for the SI quotes/trades (RTS 27, APA); (2) the source of market data prices; and (3) the methodology to compare the two and formulate an assessment?

Most respondents were of the opinion that the underlying data availability and quality issues which currently impede the monitoring whether quoted and traded prices reflect prevailing market conditions could be solved by the introduction of a mandatory consolidated tape.

Yours sincerely,

Michael H. Sterzenbach
Secretary General