



Advice to ESMA

Response to ESMA's Consultation Paper concerning MIFIR transparency regime for equity etc.

On 4 February 2020 ESMA published a Consultation on MiFID II/MIFIR review report on the transparency regime for equity and equity-like instruments, the double volume cap mechanism and the trading obligation for shares. The paper seeks stakeholders' views on the findings set out in the paper and on a number of proposals made by ESMA.

This CP is one of a number issued by ESMA (and one from the European Commission) as part of the 2020 review of the MiFID II/R package following its implementation at the beginning of 2018.

1. The SMSG believes that the evidence and the proposals presented by ESMA are very important and require in depth review and discussion in order for appropriate actions to be taken by regulators and co-legislators to ensure the proper functioning of markets. The SMSG has agreed to include only common views in this advice; areas where members have different views will be set out by (the organisations of) those members in separate responses to the consultation paper.
2. The SMSG agrees that an efficient equity market structure is a prerequisite for a successful CMU and must include the possibility for retail investors to be active participants in the equity market.
3. The SMSG agrees to ESMA's proposal to keep the waiver for large in scale orders and order management facility since we believe it is important to protect large orders from market impact. SMSG members have different views as to the waivers for reference price orders and negotiated trades.
4. The SMSG is in favour of a simplification of the double volume cap mechanism, if maintained at all, such as for example moving to just one EU wide cap and introducing an only monthly calculation. The SMSG considers that such simplification would not negatively change the positive effect, if any, of the DVC, but rather limit some of the negative effects of DVC. Simplifying the DVC to one Volume Cap for of the entire EU would limit the administrative burdens for investment firms, trading venues, competent authorities and ESMA to provide correct data (which was a huge problem to start with), calculate and keep abreast of the relevant cap.

5. The SMSG agrees to ESMA's conclusions and proposals in the area of post-trade transparency.
6. The SMSG believes that the scope of the share trading obligation in Article 23 of MiFIR should be reduced and not include third-country shares, since EU regulation should not have extra-territorial reach. The ISIN should be used as the first basis for this assessment. However, as recognised by ESMA, this approach is not suitable in all cases and complimentary criteria are therefore necessary, and a clear priority order should be established.
7. The SMSG recognises that the volumes have increased at closing auctions. It can be assumed that the increase is due to market participants' interest in having access to as much liquidity as possible. It is likely that the increase in passive investment strategies is another reason for the concentration of orders in closing auctions. The SMSG advises that ESMA should not take action at this time, but should continue to study the issue of increasing proportions of daily trading volumes in closing auctions.
8. Lastly, the SMSG is of the opinion that quality and consistency of reporting and flagging are necessary in order to improve the levels of transparency available to market participants. In order to achieve this, the SMSG advises to extend the Market Model Typology (MMT) to all execution venues under ESMA's governance in order to ensure that proper flagging takes place. The SMSG is also of the opinion that investors need to get better access to pre- and post-trade data published by APAs. A first step would be to have an easily found list of all APAs on ESMA's and the NCA's webpages, including a link to each APA. Furthermore, a standard for the APA's publication should be agreed upon both as regard content (e.g. actual name of instrument) and searchability.

Adopted on 23 March 2020

[signed]

Veerle Colaert

Chair, Securities and Markets Stakeholder Group