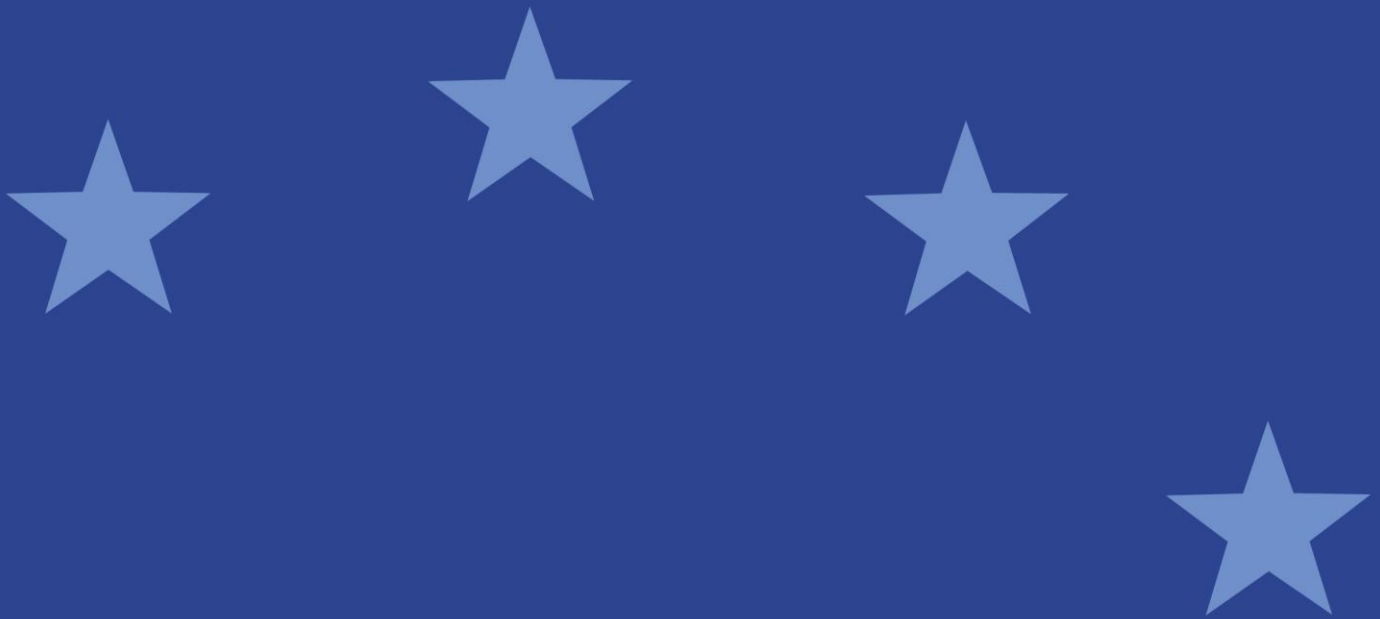




European Securities and
Markets Authority

Reply form for the Consultation Paper on MiFID II/ MiFIR review on the functioning of Organised Trading Facilities (OTF)



Responding to this paper

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

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

ESMA will consider all comments received by **25/11/2020**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA_QUESTION_FOTF_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA_FOTF_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_FOTF_ABCD_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA's website (www.esma.europa.eu under the heading "Your input – Open consultations" → "Consultation on the functioning of the Organised Trading Facility regime").

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading [Legal Notice](#).

Who should read this paper

This document will be of interest to (i) alternative investment fund managers, UCITS management companies, EUSEF managers and/or EuVECA managers and their trade associations, (ii) distributors of UCITS, alternative investment funds, EuSEFs and EuVECAs, as well as (iii) institutional and retail investors investing into UCITS, alternative investment funds, EuSEFs and/or EuVECAs and their associations..

General information about respondent

Name of the company / organisation	Alternative Investment Management Association and Managed Funds Association
Activity	Investment Services
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	International

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_FOTF_1>

[TYPE YOUR TEXT HERE]

<ESMA_COMMENT_FOTF_1>

Questions

Q1: What are your views about the current OTFs landscape in the EU? What is your initial assessment of the efficiency and usefulness of the OTF regime so far?

<ESMA_QUESTION_FOTF_1>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_FOTF_1>

Q2: Trading in OTFs has been fairly stable and concentrated in certain type of instruments throughout the application of MiFID II. How would you explain those findings? What in your view incentivizes market participants to trade on OTFs? How do you see the OTF landscape evolving in the near future?

<ESMA_QUESTION_FOTF_2>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_FOTF_2>

Q3: Do you concur with ESMA's clarifications above regarding the application of Article 1(7) and Article 4(19) of MiFID II? If yes, do you agree with the ESMA proposed amendment of Level 1? Which other amendment of the Level 1 text would you consider to be necessary?

<ESMA_QUESTION_FOTF_3>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_FOTF_3>

Q4: Do you agree with ESMA's two-step approach? If not, which alternative should ESMA consider?

<ESMA_QUESTION_FOTF_4>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_FOTF_4>

Q5: Do you agree with ESMA's proposal not to amend the OTF authorisation regime and not to exempt smaller entities? If not, based on which criteria should those smaller entities potentially subject to an OTF exemption be identified?

<ESMA_QUESTION_FOTF_5>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_FOTF_5>

Q6: Which provisions applicable to OTFs are particularly burdensome to apply for less sophisticated firms? Which Level 1 or Level 2 amendments would alleviate this regulatory burden without jeopardising the level playing field between OTFs and the convergent application of MiFID II/MiFIR rules in the EU?

<ESMA_QUESTION_FOTF_6>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_FOTF_6>

Q7: Do you consider that ESMA should publish further guidance on the difference between the operation of an OTF, or other multilateral systems, and other investment services (primarily Reception and Transmission of Orders and Execution of orders on behalf of clients)? If yes, what elements should be considered to differentiate between the operation of multilateral systems and these other investment services?

<ESMA_QUESTION_FOTF_7>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_FOTF_7>

Q8: Do you consider that there are networks of SIs currently operating in such a way that it would in your view qualify as a multilateral system? Please give concrete examples.

<ESMA_QUESTION_FOTF_8>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_FOTF_8>

Q9: Do you agree that the line differentiating bilateral and multilateral trading in the context of SIs is sufficiently clear? Do you think there should be a Level 1 amendment?

<ESMA_QUESTION_FOTF_9>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_FOTF_9>

Q10: What are the main characteristics of software providers and how to categorise them? Amongst these business models of software providers, which are those that in your view constitute a multilateral system and should be authorised as such?

<ESMA_QUESTION_FOTF_10>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_FOTF_10>

Q11: Do you agree with the approach suggested by ESMA regarding software providers that pre-arranged transactions formalised on other authorised trading venues? Do you consider that this approach is sufficient to ensure a level playing field or do you think that ESMA should provide further clarifications or propose specific Level 1 amendments, and if so, which ones?

<ESMA_QUESTION_FOTF_11>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_FOTF_11>

Q12: Do you agree with the principles suggested by ESMA to identify a bulletin board? If not, please elaborate. Do you agree to amend Level 1 to include a definition of bulletin board?

<ESMA_QUESTION_FOTF_12>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_FOTF_12>

Q13: Are you aware of any facility operating as a bulletin board that would not comply with the principles identified above?

<ESMA_QUESTION_FOTF_13>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_FOTF_13>

Q14: Market participants that currently operate such systems are invited to share more detailed information on their crossing systems (scale of the activity, geographical coverage, instruments concerned, etc...), providing examples of such platforms and describing how much costs & fees are saved this way as opposed to executing the relevant transactions via brokers or trading venues.

<ESMA_QUESTION_FOTF_14>

Many large investment managers employ the technique of centrally managing trading flow of individual funds and accounts to reduce execution costs for investors. This might entail combining all trading instructions centrally, identifying which trades can be crossed between funds, and then executing all remaining trades on the market. As ESMA notes, the crossing price is typically based on an externally-provided mid-price with zero commission. Such crossing can reduce the need to execute with external counterparties, saving significant execution costs for investors and thereby enhancing return potential. Crossing practices are typically explained to investors prior to the commencement of the investment mandate to ensure that they understand the controls that are in place to achieve consistency and fairness across funds and accounts.

<ESMA_QUESTION_FOTF_14>

Q15: Do you consider that internal crossing systems allowing different fund managers within the same group to transact between themselves should be in scope of MiFID II or regarded as an investment management function covered under the AIFMD and UCITS? Please explain. In your view, should the regulatory treatment of these internal crossing system be clarified via a Level 1 change?

<ESMA_QUESTION_FOTF_15>

We do not believe this activity needs to be addressed further, given adequate controls are already in place to ensure that funds/accounts are treated in a consistent and fair way. We would be concerned at any move to restrict this practice through regulation, given that investors will ultimately end up carrying these additional costs without providing any meaningful improvement in investor protection.

Q16: Do you agree with the interpretation provided by ESMA regarding how discretion should be applied and do you think the concept of discretion should be further clarified?

<ESMA_QUESTION_FOTF_16>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_FOTF_16>

Q17: For OTF operators: Do you apply discretion predominantly in placement of orders or in execution of orders? Does this depend on the type of trading system you operate? Please explain.

<ESMA_QUESTION_FOTF_17>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_FOTF_17>

Q18: For OTF clients: Do you face any issue in the way OTF operators exercise discretion for order placement and order execution? If so, please explain. Does it appear to be used regularly in practice by OTF operators?

<ESMA_QUESTION_FOTF_18>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_FOTF_18>

Q19: Do you think ESMA should clarify any aspect in relation to MPT or that any specific measure in relation to MPT shall be recommended?

<ESMA_QUESTION_FOTF_19>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_FOTF_19>

Q20: In your view what is the difference between MPT and riskless principal trading and should this difference be clarified in Level 1?. In addition, what, in your view, incentivizes a firm to engage in MPT rather than in agency cross trades (i.e. trades where a broker arranges transactions between two of its clients but without interposing itself)?

<ESMA_QUESTION_FOTF_20>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_FOTF_20>

Q21: Do you agree with ESMA's proposal to clarify that the prohibition of investment firms or market operators operating an MTF to execute client orders against proprietary capital or to engage in matched principal trading only applies to the MTF they operate, in line with the same wording as applicable to regulated markets?

<ESMA_QUESTION_FOTF_21>

[TYPE YOUR TEXT HERE]

<ESMA_QUESTION_FOTF_21>