CP UK MiFID II RTS1, Improving Equity Secondary Markets

Chapter 3: Post-Trade Transparency

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Chapter 3: Post-Trade Transparency
Exemptions from post-trade transparency

Q1: Do you agree with maintaining the exemption for inter-funds transfers in Article 13?
Neutral

Any comments / remarks on your response to Q1.
No response

Q2: Do you agree with the new definition of inter-funds transfers?
Neutral

Any comments / remarks on your response to Q2.
No response

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Chapter 3: Post-Trade Policy
Exemptions from post-trade transparency

Q3: Do you agree with amending the exemption from post-trade reporting for give-ups and give-ins?

Strongly agree

Any comments / remarks on your response to Q3.
We concur that the clear segregation of this give-up and give-in activity, where made in relation to RFMD activity has a tangible bearing on the construction effective transparency. This objective can be achieved equally well using a dedicated flag or by removing these trades from transparency, and such an industry standard definition of these as proposed would be needed beyond the current EMSA position. We therefore also agree with the segregation from Benchmark Flagging, albeit that we would also query the role of that flag in later answers.

We would caution about the inclusion of specific language citing the hedging a derivative position as this may add post-trade complexity, draw in the audit process, and exclude some suitable use cases. Such specific language also works against third-country access and deployment, as well as against futureproofing. Rather, a reference toward appropriate activity should be substituted.

Q4: Do you think guidance to clarify further the types of give-ups and give-ins that can benefit from the exemption from post-trade transparency is required?
Disagree

If you agree, what issues do you think it should cover?

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Chapter 3: Post-Trade Policy
Exemptions from post-trade transparency

Q5: Do you agree with introducing an exemption for inter-affiliate trades?
Strongly agree

Any comments / remarks on your response to Q5.

EVIA agrees with the FCA exemption. Functionally, such inter-affiliate transactions are the same as Give-ups and Give-ins in respect of their market transparency information.

Q6: Do you agree with our proposed definition of inter-affiliate trades?
Strongly agree

Any comments / remarks on your response to Q6.

The meaning or common understanding of the term "*Group*" could be clarified and those entities and affiliates sharing a common legal entity identifier could be helpful in any such definition.

We do not see a common and straightforward understanding of the term "*Centralised Booking*." This term is not defined and may not stand the forward-looking test of crypto-assets and virtual financial market infrastructures. The remainder of the definition would work well should that criterion be simply omitted.

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Chapter 3: Post-Trade Policy
Exemptions from post-trade transparency

Q7: Do you agree with the deletion of point d) from Article 13?
Strongly agree

If you disagree, please explain why.

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Chapter 3: Post-Trade Policy
Exemptions from post-trade transparency

Q8: Do you agree with the proposal to introduce a deferral for all transactions within scope of Article 13 of RTS 1?

Agree

If you agree, please explain why.

EVIA agrees with the intent of the FCA as set out in CP22/12 and notes indeed that the near real-time obligations currently in force are often impossible to comply with when trades are executed off-venue. Indeed, such trades, already have a trade flag which allows them to be identified without relying on deferral. The experience of home working during Covid reinforced this viewpoint and mitigates towards rules with sufficient agility.

However, we also add that member venues, especially considering proposed revisions for OTF scope, are continuous and do not hold the opening and closing bells typical of RMs and DCMs. Therefore, a more concise timing term other than “next day opening” would be required.

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Chapter 3: Post-Trade Policy
Alignment between Article 13, Article 2 and Article 6 in UK RTS1

Q9: Do you agree with our proposals to align the definitions of non-price forming trades in Articles 2, 6 and 13?

Strongly agree

If you disagree, please explain why.

Q10: Do you agree with our proposal to amend the definition of benchmark transaction to include transactions that reference to the market closing price?

Disagree

If you disagree, please explain why.

The proposal in 3.41 stands to potentially confuse the regulatory intent with both benchmarks as understood within BMR, and with transactions that result from trades that are specific to a point in time. This is a consequence of MiFID flags pre-dating BMR as well as the technological changes since, and this reconstruction with its view towards a consolidated tape would appear to be apt point to address the fundamental issues around updating and revising flags according to both market model and use case requirements.

We would recommend that firstly, the term benchmark (and therefore of “BENC”) within MiFID should be reserved exclusively to cross-refer to BMR specific activity, and the terminology of reference prices developed.

Secondly, any point in time activity should be given its own distinct flag and distinguished from reference data gathered over incremental time. Again, we note that the concept of “open” and “close” are not natural to either MTF or OTF platforms as they are not to OTC activity, therefore the taxonomy should cater for auctions, fixing and windows as well as the various algorithmic, VWAP, TWAP and BMR related reference outcomes.

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Chapter 3: Post-Trade Policy
Post-trade flags

Q11: Do you agree with the deletion of the SI related flags “SIZE” and “ILQD” and “RPRI”?
Neutral

If you disagree, please explain why by distinguishing your current use of each flag.

EVIA members do not operate SIs.

Q12: Do you agree with the deletion of the agency cross flag “ACTX”, the duplicate trade flag “DUPL” and the algorithmic trade flag “ALGO”?

Agree

If you disagree, please explain the value these flags offer, how providing practical examples.

EVIA members, whether acting as Investment Firms or as Trading Venue MTFs have rarely used the ‘ALGO’ flag, and never used the ‘ACTX,’ nor ‘DUPL’ flags.

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Chapter 3: Post-Trade Policy
Aggregation of flags

Q13: Do you agree with the proposal of identifying “benchmark”, “portfolio” and “contingent” trades with one single flag, “TNCP”?
Disagree

If you disagree, please explain why and set out your preferred approach.

Following on from our answers above, EVIA does not consider that ‘BENC’ remains an optimal flag as it stands, unless specifically delineating a valid cross reference to BMR compliant fixings. We do consider that such a specific use-case could be appropriate given the both the dynamic nature of the setting of such fixings; the consequence that such reference trades could usually be price forming by dint of their effect on the benchmark outcome; and the longer term [“Passive” or “ETF”] market growth trend for more assets to follow benchmarks and transact at their fixings. Clearly therefore, this would currently be an advocation to depart from ESMA alignment.

Further, and with reference to discussions within the FIX Org forum, we are more generally concerned with the proposal to consolidate these three flags because it would lead to a loss of granularity between the market operations under reference. Each of ‘BENC,’ ‘PORT’ and ‘CONT’ delineate a different origin of any bargain with respect to addressable liquidity pertaining at the time.

In respect of ‘PORT’ and ‘CONT,’ there is value in recording the distinct features of these trades and we do not currently see a sufficient reason to depart from the ESMA alignment.

We would like to highlight use-cases such as the spread to closing price [“MOC”] relating to reference point trades where a price is not known at the time where the transaction takes place. For these transactions, reporting at the end of the trading day would be more effective than reporting the spread to the reference entity.

Q14: Do you agree with our proposal to aggregate the three negotiated transactions flags into one single flag, “NETW”?

Disagree

If you disagree, please explain why.
EVIA notes that when considering the proposed licensing of the OTF venue category for cash equities, these venues with embedded discretion and a more complicated activity basis including packages and the segregation of arranging from execution, could likely bestow the ‘NLIQ’, ‘OILQ’ and ‘PRIC’ flags with renewed utility by dint of their flexibility of market model.

Further and with reference to the CP22/12 discussions within the FIX Org fora, we are concerned with the proposal to consolidate these flags because it would lead to a loss of granularity between the market addressable liquidity pertaining to the origin of the trades.

Q15: Are there any other flags that we should consider removing, amending or adding?
Yes

Any comments / remarks on your response to Q15.

Noting our response to questions 10 and 13 above, we propose the addition of “PORT” and “CONT” and specific context for the ‘BENC’ flag.

Further and with reference to discussions within the FIX Org fora, we consider that two further flags would be beneficial to post-trade transparency:
Firstly, again mindful of the OTF addition, a flag to identify negotiated trades above large in scale, which would allow them to be distinguishable from ‘CLOB’ LiS trades where venues do not deploy functionally delineating segment MICs – FIX propose ‘NTLS’ for this.
Secondly, when considering the bifurcation of trading venue licenses across jurisdictions, a flag to denote where a transaction could be potentially reported more than once due to overlapping regulatory reporting rules in different jurisdictions – we proposed ‘XBDT’ for this.

Q16: Do our proposals to modify the flags for trade reporting impact your systems for transaction reporting?
Yes

If you answered 'yes' to Q16, could you describe how and what problems maintaining the flags for transaction reporting would cause?

Should the change proposals be adopted then it follows that they would directly impact the reporting via MTFs, but EVIA does not consider these to be necessarily in any way that could be particularly problematic. Similarly, when considering opening to the scope to OTFs, clearly the requirements would create some material systems changes from their current locus, but again not in any way that we consider would immediately present any readily identifiable problems.

Rather, challenges and hurdles may present themselves where the generation of RTS1 reports also directly informs other RTS reporting and record keeping requirements, and there these second order or pass-through contingencies may hold challenges. We would add here to the widespread industry identification of the alignment between RTS 1 and RTS 22 trade flags.

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Chapter 3: Post-Trade Policy
Content of the reporting fields

Q17: Do you agree with the proposed changes to the reporting fields?

Strongly agree

If you disagree, please explain why.

Q18: Are there other changes that you suggest we should make to the fields of reported transactions?
No

Any comments / remarks on your response to Q18.

EVIA fully endorses both the segregation of 'PNDG' into its own field (and hence not overwriting text flags into any purely numeric field) together with the implementation of ISO 4217 currency codes. This also moves away from the complications of unexplained modifications and cancellations to submitted reports as such details become available (this is a prime complication in REMIT Reporting). In this vein we highlight ESMA's current proposal to create a 'NOAP' flag for trades with no applicable price.

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Chapter 3: Post-Trade Policy
Designated reporter regime

Q19: Do you agree with our proposal to create a regime where firms will be able to opt in as designated reporters at an entity level?

Agree

Please explain your answer.

Whilst we support this proposal, we would not currently foresee EVIA member opting to become designated reporters; however, should they do so, it may well be at permission level or even MIC level rather than at Entity [LEI] level.

Q20: Do you agree that the FCA should maintain the register of designated reporters for firms to determine who reports OTC trades?

Strongly agree

Please explain your answer.

Recalling that EVIA member firms function as both trading venues and as arrangers for trades which are finalized either bilaterally, on an exchange or in a third country; any such formulation and ordinary understanding of roles and responsibilities would be a benefit to our members. Further, in anticipation of OTFs arranging cash equity transactions, especially where parts of packages, the delineation between reportable legs and whether they are OTC or registered on an exchange would equally benefit from the proposed register and associated disclosure of roles and responsibilities.

A register could facilitate or enhance, amongst other things, a clear identification of roles and responsibilities, an assignment of instruments to asset classes or sub-asset classes where applicable, the designation of data sources and timings, and the opportunity to build any required logic for chains of transactions to avoid duplicate reporting. We note the ongoing industry commitment to common domain models under broader Reg Tech initiatives in this regard.

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Chapter 3: Post-Trade Policy

Implementation of changes to post-trade transparency

Q21: Do you agree with the proposed implementation timetable? If not please explain your answer.

Neutral

If you disagree, please explain your answer.

This question denotes a complex answer depending on the actual proposals, the scope of the implementation, the designation of “finalizing FCA rules,” and whether the segmental actuality requires incremental phasing-in or a market-wide “big-bang” (e.g., DRR).

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Chapter 4: Waivers from pre-trade transparency

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Chapter 4: Waivers from pre-trade transparency
The reference price waiver

Q22: Do you agree with the proposal to change the definition of the MRMTL to allow trading venues to derive the price form a non-UK venue provided that the price is transparent, robust and offers the best execution result?

Strongly agree

Any comments / remarks on your response to Q22.

EVIA does not consider that there is any practical alternative and recalls that for the wholesale markets its members operate, seamless cross-border arrangements and execution is the normal mode of operation and indications and prices do not recognise national boundaries where transactions may have multiple contingent trade legs. We note that the third country venues with the highest liquidity and turnover for any financial instrument would always be more relevant for members’ activities that than that of first admission of any instrument.

Q23: Do you agree with the proposal to change the definition of the MRMTL for the purpose of the tick size regime?
Neutral

Any comments / remarks on your response to Q23.

In the context of OTFs newly entering the arrangement and execution of cash equities, there will clearly be the considerations around MRMTL, however given that the current prime use-case would be for LIS packages, any prescriptive rules around tick-sizes may add unnecessarily hurdles when working up liquidity and spread pricing within contingent legs.

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Chapter 4: Waivers from pre-trade transparency
The order management facility (OMF) waiver

Q24: Do you agree with the proposal to delegate the decision to set a minimum size threshold for reserve and other orders to trading venues using the OMF waivers?
Strongly agree

Please explain your response to Q24.

It follows from EVIA answers above that wholesale market packages and contingent arrangements and orders on an OTF should require specific use case protocols as demonstrated by the trading venue when constructing its rulebook together with its terms and conditions. We note that within the authorisations and supervision framework, both the venue rulebook and the resultant data requirements should be simple and unambiguous.

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Chapter 5: Tick size

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Chapter 5: Tick size

Q25: Do you agree with the proposal to allow trading venues to adopt the minimum tick size of the primary market located overseas when that tick size is smaller than the one determined based on calculations using data from UK venues?

Agree

Please explain your views to Q25.

We consider matters such as tick size to be relevant when considering investor protection matters, but much less for a trading venue which only admits wholesale clients. This is redolent of the ‘best execution’ topic. Where large-in-scale packages, spreads and contingent orders are being arranged and executed for such PC/ECP counterparties, so clearly the degree of flexibility around tick size or its relevance at all, should be set by the trading venue in accordance with its operational service levels and requirements.

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Chapter 6: Improving market-wide resilience during outages

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Chapter 6: Improving market-wide resilience during outages

Q26: Do you agree with the proposals to be included in the FCA/industry guidance for trading venues?

Strongly agree

If you disagree, please explain why.

Q27: Are there other areas we need to consider for the guidance?
Yes

Any comments / remarks on your response to Q27.
Given the broad approval for the FCA proposals in respect of outages, together with the recent publication of best practice by the FMSB, it is important that a clear definition of, and the parameters for any 'outage' be straightforward, commonly adopted, publicly disclosed and widely understood. These parameters should include the impairment of any aspect of the functionality, performance, availability or resilience of infrastructure involved in any part of the arranging, matching, execution, or affirmations processes.

Should any outage be communicated, the assessed scope of impact should be clearly stated, which simple opportunity for enrichment or refinement that does not dissuade any early and prompt communications that may be incomplete when viewed from a subsequent point in time. Given that outages may only become apparent after an incident has happened, the framework should not offer any punitive or conflicting guidance which would delay or compromise all "best endeavors." Nor, clearly, should there be requirements to resume services within fixed time parameters. This should also include the case, for instance, where an outage is so severe as to inhibit the capability of the venue operator to disseminate details of the outage by the usual means.

We endorse the FIX Org proposals for the minimum requirements for outage communication in terms of:

- The trigger for communication
- The communication mechanism
- The content of messages
- Timing and frequency of non-event driven updates
- Target audience
- ▪ Triggers for communications would include:
- The identification that the venue is aware of a problem but is not able to provide specific details
- The venue has identified the scope and nature of the outage and is able to provide this information to its participants
- The venue has identified the cause and defined a remediation plan
- The venue is communicating how the market will be brought back into a regular trading state (e.g., restarting order book trading with an auction, whether open orders will be purged or not).
- Periodic and regular status updates
- The outage is over and normal business has resumed.

Methods of communication should refer to a playbook within the trading venue rulebook which is based upon a common template and include:

- Machine-readable messaging, using free and open standards (noting that the FIX Protocol contains some capabilities in this regard, and we are willing to work on producing these standards).

- Human-readable emails, based on similar free and open standards.
- Human-readable content on venue websites, also based on free and open standards.

Content should include:

- The identifier for the venue (the more granular of operator or segment MIC as appropriate, noting that venues may operate different market segments on separate technology platforms).
- Status (in line with the 'communication triggers' above).
- Severity (to distinguish between a total failure of the impacted service vs. a detrimental capability).
- Impacted capability (e.g., trading, market data, connectivity, post-trade).
- Scope (in terms of specific instruments, instrument ranges, participants, specific venue features), noting that this must be provided in a manner that does not require access to additional reference data to decode (e.g., 'Instruments on partition 3').
- For market resumption communication, the time at which the market is planned to restart.
- A textual description to provide additional detail, noting this should supplement, not replace, the codified attributes described here. For market resumption communication, this should include supplementary details (e.g., if the market is to restart with an auction, this fact plus the duration of the auction).

The Recipients should include:

- Outage communications should be made available to anybody (including the public), not just venue participants (it is assumed that this comment refers to mechanisms such as venue websites, and not a requirement that venues provide electronic messaging connectivity to the public).
- It is expected that venue participants may wish to forward electronic outage communication messages to their clients.
- It was noted that venues might need to send messages to each other, particularly where there is some dependency between them (e.g., on market data for reference prices).

Q28: Is the current arrangement for an alternative closing price on the primary market appropriate?

Neutral

Any comments / remarks on your response to Q28.

EVIA would advocate a broader term other than "closing price" to facilitate wholesale trading facilities that do not close in the manner of a classic exchange and for cross border markets where the local times are quite different to GMT. We would therefore suggest "specified price” to encompass a market reference point, or one drawn from an index taking longer periods and methodologies into account (e.g., VWAP, TWAP, auctions). We would also like to see the term primary market be replaced or caveated with more consideration of the cross-border and plural nature of wholesale markets where shopping around is normal, or a retail limitation to the provision.

Q29: Is an alternative closing auction needed?
Yes

Any comments / remarks on your response to Q29.

We would again consider the plural and cross-border nature of wholesale markets as being somewhat at odds with the appropriateness for a singular domestic solution, and therefore we would again refer to the comments in answer to Q.28 and the relevance of retail considerations for institutional liquidity. It maybe that a reserved backstop or minimum outcome should be considered rather than any prescriptive waterfall.

Q30: Do you agree with the above proposals to be included in the FCA/industry guidance for market participants?
Strongly agree

Any comments / remarks on your response to Q30.

Q31: Are there other areas we need to consider for the guidance?
No

Any comments / remarks on your response to Q31.

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Chapter 7: The UK market for retail orders

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Chapter 7: The UK market for retail orders

Q32: Do you think the RSP system works well for retail clients?

Neutral

Please explain your views to Q32.

EVIA members only offer wholesale markets.

Q33: Do you have any suggestions for changing the regulatory regime as it applies to the execution of orders by retail clients?
Neutral

Any comments / remarks on your response to Q33.

EVIA members only offer wholesale markets.

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Please provide any comments on our draft Handbook text

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Please provide any comments on our cost benefit analysis

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Please provide any other feedback you wish to provide on this Consultation Paper

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End of consultation questions

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