EVIA European Venues & Intermediaries Association

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Dear Stephen

EVIA response to CP23/32: Improving transparency for bond & derivatives markets

The European Venues and Intermediaries Association [EVIA][1] welcomes the opportunity to respond to the FCA's CP23/32.

Summary Comments

Overall, we welcome the FCA proposals to introduce revisions to establish the original intent of MiFIR and adopt the lessons learned over the past six years. All the proposals add value, either in making markets more effective or by simplifying the requirements on venues, intermediaries and counterparties alike. Our main concern remains that the FCA has attempted to "retrofit" transparency rules to cater to designs for a consolidated tape. This is the wrong approach and may lead to the exodus of price forming liquidity from the market places in scope. The matching of risk should have primacy over the recording and publication of those actions rather than vice-versa and the FCA should bear in mind the causal impact of *TRACE* on liquidity transfer across to US Credit Default Swaps some two decades ago.

We concur with the FCA opinion that the measures throughout "RTS2" have not delivered any increase in transparency nor of "addressable liquidity" across market users over the last six years. Whilst this is the common European consensus we recall that in the workup to MiFID2, no European regulators could uncover any stated case for an absence of transparency from buyside and sellside alike. Rather, again and again, it was access to addressable and timely liquidity that was served up as the prime concern across all participants to their regulators and politicians. We therefore consider this to be an opportune moment to reassess and pivot towards that market use case which necessarily comprises the commitment of risk capital and balance sheet under imminent substantial prudential reforms to the trading book.

The basic concept for a two category framework approach ought to better serve market risk transfer by recognising that the hedge markets principally work by transforming instruments into component risk factors. It is appropriate therefore that the bespoke

[1] The European Venues and Intermediaries Association promotes and enhances the value and competitiveness of Wholesale Market Venues, Platforms and Arranging Intermediaries by providing members with co-ordination and a common voice to foster and promote liquid, transparent and fair markets.

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long-tail of everything else is not subject to disproportionate obligations to publish data of little value. The principle that multilateral liquidity pools are better facilities to apply and adjust transparency is valuable and therefore last year's mapping of these to trading venues was an important precursor. Delegation to these venue operators is inescapable given each: the contingency of liquidity provision across wholesale markets; the breadth and heterogeneity of traded contracts and trading protocols; and the constants variations of external trading conditions. For instance, Primary Dealer liquidity pools or Basis Risk markets are examples of the need for tailored rules and proportionality.

Our comments below are intended to apply in the vein of constructive criticisms and suggestions to a very valuable direction of travel, but overall the FCA should greatly simplify the proposals in CP 23/32 which retain too many of the current complexities and are not sufficiently bold.

As a high-level comment, we would strongly urge the FCA to apply these fundamental principles in a more effective method:

i. The objective of markets is to facilitate risk transfer. Everything else is subordinate and transparency per se should not be viewed as a kite-mark or a badge-of-honour for a trading venue. This is not currently the case in the proposals.
ii. The terms and rules proposed should be simple, straightforward, and provide for certainty. They need to easily understood both in respect of the UK common law, but also by participants in third countries who would be encouraged to join effective wholesale liquidity pools. Unfortunately, the proposed rules are far from simple and straightforward; moreover it appears that the transparency rules are consequent to the consolidated tape in some cases which is to introduce "*daisy chain*" or "*unintended*" risks and to place the cart before the horse.
iii. Market structures and organisation should encourage trading interests and balance sheet risk factors to match in multilateral environments. This promotes "work up" and enhances the valency of trading interests[2]. We remain concerned that the FCA proposes less transparent set of requirements both for trades made off-venue, or indeed for those arranged as exchange blocks and registered onto an exchange ["RM"] consequent to a purely bilateral arrangement and matching.
iv. Wholesale liquidity should be trading method agnostic. Trading interests across non-equities markets tend to be contingent on wider packages and subject to risk transposition. Both optimal liquidity and better outcomes are not predicated on the singular CLOB model because balance sheets are not usually latent. Rather markets should be orientated on diversity of methods which have constant interplay, they should encourage choice and competition; all facilitated

[2] EVIA White Paper on the Multilateral Trading Facilitation and the Venue Perimeter [July 2020].pdf

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by better standardisation and automation. Unfortunately, the proposed rules still retain a dependency on categorising and isolating trading mechanisms.

Our primary specific comments and concerns are:

i. **Only liquid sovereign bonds with over £1 Bn in issuance across the nominated sovereign countries should be Category 1 because this grouping and its mechanics should solely concern the trading of liquid instruments**. We understand that this was the initial proposal and are unclear how and why a set of approximately 50 issues as a superset of those currently ascribed as "liquid" could have been transposed into one of about 90,000.
    a. We would like to propose that the "public interest test" could be best defined as bonds denominated in the relevant five currencies with at least GBP 1 Bn in nominal issue size.
    b. There is no public interest case for the real time publication of bond trades other than liquid sovereign benchmark tenors. Simplicity, market efficacy and public use should be the principle drivers of this opportunity to revise the transparency framework and we do not observe any of these criteria being met in the current proposals.
    c. It appears that the FCA are proposing to place approximately twenty-thousand times the number of derivatives as bonds into Category 1. Previously the FCA had proposed a narrow base to commence the liquidity scope. This would make a substantial degree of processing through the adopted thresholds and deferrals, as well as a very unbalanced and distorted approach to the scope of bonds versus that applying to derivatives.
    d. It appears that bonds currently classified under MiFIR as "illiquid" tend to trade less frequently than the proposed post-trade transparency requirement diminishing any utility for being traded on venue.
    e. The same approach applies to 'broken dated swaps'. There is no rationale to include these as Category 1 instruments

ii. **Category 1 trades above a single LIS should simply and uniformly require price at T+3 and volume after 4 weeks.**
    a. Clearly no category 1 trades should be less transparent than category 2 trades.

iii. **Several of the first model proposals consider an "end of day" publication transparency. However EOD is only defined in relation to the trading venue rules**[3]. This would currently be midnight GMT or CET for most venues, but we wonder if the FCA has an earlier time cut-off in mind.
    a. Clearly if any earlier EOD was considered, than most trading interests would likely migrate to any time subsequent to that EOD cut-off, since EOD would otherwise effectively make late day or US timezone trading close to "real time transparent".

[3] "EOD by the end of the daily trading hours of the relevant trading venue."

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b. Conversely with a midnight cut off, so trading interests earlier in the day would benefit from more protections.
c. These proposals are not helpful to liquidity and appear to be direct transpositions from equity markets. To avoid disrupting and rerouting trades either off-venue or outside the UK, all references to EOD transparency should be restated to T+3 as a common and simple early threshold.

iv. **Category 2 should capture all trading in illiquid instruments, and should simply and uniformly require price after 5 days and volume to be masked.** There should be no differentiation between any of ETD, on MiFIR venue, and bilateral SI transactions.

v. **Pre-trade requirements for all multilateral trading systems should be removed entirely rather than dependent upon an opaque and redundant process of defacto waivers.** Rather, the FCA should make use of the 2023 work done to establish the multilateral perimeter and the designation of a trading system.
a. Within such a designated "*multilateral system*", multiple arranging methodologies should coexist in the application of the regulation in the manner which they do in day-to-day market operations.
b. It follows that we would therefore not find any need for the Table 11.2.3 R [*Pre-trade transparency information to be published, by reference to type of system*], nor for the consequential amendments to Q24c such as to insert, "*the table in MAR 11.2.3R*,"
c. In rationale, such FCA rules that turn on definitions, delineations and perimeters of "voice and RFQ systems" would quickly become complex and ineffective. In practice these systems blend across methods and between transactions. Such rules would simply discourage trading interests from entering the multilateral perimeter
d. As required or preferred by the market, trading venue operators should be well able to provide these tools as a matter of choice and as commercially driven by wholesale market participants well able to shop around.
e. We reiterate the point made to HMT in our response to the WMR call for evidence that many, most or all of the periodic auctions operated by our members do not and could not provide for the pre-trade requirements still retained, because both price and size are outcomes of the matching rules.

vi. **Further disappointment that the FCA opts to continue with the prescriptive term "OTC Derivatives"** when these are ill defined in any one legislative file, let alone across third countries.
a. The terms ETD and OTC are hazy and pejorative[4]. They make for bad law and rules that are difficult to commonly understand or to apply.
b. Our members operate organised trading venues both in the UK and across the world. We remain as perplexed as we did in 2018 as to why the same instrument admitted and concluded on a UK MTF or OTF, or

[4] As recently as 01st March 2024 the FCA published further guidance on EMIR which added to the opacity as to whether MiFIR on venue trades are OTC derivatives or not.

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an EU exchange RM is an OTC derivative, when it is not when concluded on a US SEF, an Australian platform or indeed shortly even a Swiss MTF.

c. The proposals make some conflagration and blurring of the treatment of OTC Derivatives and ETDs. These confuse the matter, primarily because neither term are fit for purpose, moreover because the vast majority of trades "*on exchange*," are simply the registration of pre-negotiated bilateral market interests.
d. The FCA should remove these two terms and refocus on the terms around Category 1 and Category 2 instruments. This effectively implements the better division based upon the Standardisation implicit within the Clearing Obligation.

vii. Treatment of Package Trades.

a. Whereas the MiFIR approach to date has been to provide for post-trade transparency exemptions via waivers and deferrals for the component trade legs within a package. Again under these proposals Mar 11.4.2 (1) sets the approach for allocating prices to the relevant instruments, and MAR 11.5.1 R (3) confers the waiver of any component across to the remainder of the transaction set.
b. However, given our belief and counterproposal that the only bonds that should be allocated to Category 1 should be government benchmark issues, we would be concerned that almost the entirety of this transaction population occurs as some form of package. The deferrals available would therefore absent these from the real time segment of Category 1, leaving it essentially empty. The FCA may therefore consider either a removal of this aspect of the waiver or a further parallel division of such spread trades into "Complex Trades" such that the ordinary government bond spreads, funding or basis trades still generate immediate post-trade transparency for the benchmark bond leg. This would equally apply to derivatives where one leg is a category 1 trade, again without regard to the transparency treatment of the other trade legs.
c. The pre-trade transparency waivers under MAR 11.3 should be scrapped together with the entirety of MAR 11.2 and 11.3 in order to properly remove the inappropriate and irrelevant pre-trade transparency requirements in accordance with the WMR intent.
d. We note under 8.55 that the FCA states that, "*package transactions typically relates to transactions in derivative contracts, rather than bonds.*" This is demonstrably false. Indeed, it is the case that nearly all bond transactions in wholesale markets occur as packages.

viii. The FCA should clarify the meaning and location of where trade execution occurs or defer to the RAO and its trading venue perimeter approach to the entire matching and arranging.

a. FSMA 2023 does not define trade execution.
b. Since the basis of CP23/32 is to analyze and treat proportionately each the pre-trade transparency and the post-trade transparency; it is

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necessary to establish a common basis to treat the point at which a trade occurs, and these terms become relevant to rule books.

c. Under the current proposals this may be the point where core economic terms to a bargain are agreed, or they may be at some later point of "Void ab Initio" or as the conclusion of initial margin exchange.

ix. **We would still urge the FCA to clarify and set out that "forwards" are not necessarily "derivatives".** Most forwards on cash products, such as an FX forward, entails a price that is set and fixed at the point of negotiating the bargain. Its price is not derived from any underlying and cash flows are predicable. These instruments should be excluded from rules pertaining to derivatives[5].

x. **Deferring certain post-trade requirements to trading venues is appropriate.** This enables more agile and diverse orientation of transparency rules towards the needs of market participants. This follows directly from the primacy of the objective for markets to facilitate risk transfer.

xi. **The FCA should introduce the UPI for all financial instruments and in alignment with, or as close to as possible, that transition in the United States**. For the avoidance of doubt that transition would remove any requirements for ISINs across the reporting cycle, including for transaction reporting.

xii. **The FCA proposals need to functionality embed technological change and other innovations**. Whilst a common refrain, current technological capabilities hold many routes reshape, relocate and reform the wholesale markets. Whilst 'future-proofing' is a blanket term, we would point to "smart contracts" and AI as perhaps currently the most significant of these.

Answers to Questions

Q1: Do you agree with maintaining the current scope of the transparency regime for bonds based on whether they are ToTV? If not, what do you recommend the scope should be?

No, we disagree.

We cannot find any use-case for the TOTV regime to continue. This is proven in practice from the period under MiFID2/ MiFIR where the scope has proven too broad as well as contravening the simplicity principle. Moreover, the detail of the TOTV regime started to impact the market structure

[5] FX Forwards and options should remain under MAR, although it remains perverse that multilateral FX platforms and facilities exclude FX Spot from the scope of market abuse rules.

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It's especially true for the money market, FX, commodity and now crypto instrument types, but when considering self-executing or "smart" swaps either the TOTV regime becomes much broader or disappears altogether.

Rather, the FCA should use the delineation of Category 1 as the functional replacement for TOTV. Clearly as proposed, Category 1 is far too broad and should be constrained to the scope of the initial FCA discussions which were based upon continuous and properly addressable liquidity.

We would like to propose that the "public interest test" could be best defined as bonds denominated in the relevant five currencies with at least GBP 1 Bn in nominal issue size.

There is no public interest case for the real time publication of bond trades other than liquid sovereign benchmark tenors. Simplicity, market efficacy and public use should be the principle drivers of this opportunity to revise the transparency framework and we do not observe any of these criteria being met in the current proposals.

It follows that the scope of the real time transparency regime for bonds should be restricted to the liquid "on the run" government bonds. We would prefer that these are commonly identified by usage rather than subject to qualifying metrics such as issuance size and trade count.

Q2: Do you agree that the transparency regime should focus on the classes of derivatives subject to the clearing obligation? If not, please explain why.

Yes. We agree in principle that the transparency regime should focus on certain classes of derivatives subject to the clearing obligation. This creates a baseline for bond inclusion. We agree with the restriction to only to transactions in derivatives between counterparties that are also subject to clearing obligation in the UK.

We disagree with the hypothetical extension to entities that, "*would be subject to the clearing obligation if established in the UK*." This fails the simplicity and predictability tests.

Clearly with the proposed confluence of the CO and the DTO there is no relevance to aligning with the derivatives trading obligation, especially given its particular current nexus post-LiBOR.

Q3: Is the current level of transparency in FX derivatives and single-name CDS adequate? If not, should a subset of them be included as Category 1 instruments?

Yes, we agree that FX derivatives and single-name CDS should not be included within the list of Category 1 instruments.

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Q4: Do you agree with excluding FRAs, basis swaps and OIS and Fixed-to-Float swaps with reference index other than EURIBOR, SONIA, €STR and FedFunds – from the list of Category 1 instruments? If not, please explain why.

Yes, we agree that these instruments should be excluded from Category 1.

We would like the rule to be simpler in referring to RFRs as the sole reference index, noting that *FedFunds* fall outside that scope.

Q5: Do you agree with including iTraxx Europe Main and iTraxx Europe Crossover as Category 1 instruments? If not, please explain why.

Yes, it follows from the CO that we would agree with the inclusion of iTraxx Europe Main and iTraxx Europe Crossover as Category 1 instruments, subject to the relevant tenor and solely to the on-the-run series.

We note that in 4.39 the FCA again makes confusing statements about executed on-venue or OTC. To reiterate that we suppose the FCA considers UK MTF and OTF transactions to be both on-venue and OTC, or if it seeks the EMIR definitions then these trades would be solely OTC despite being MiFIR 'on venue'. We read this as a *Schrödinger's Cat approach* to classification wherein the MTF/OTF trades are at once both on-venue and OTC.

Similarly, third country exchanges without deferential recognition would be OTC. It also remains unclear what the treatment of EU MiFIR venues would be, and whether that would subject to further political recognition developments.

Tenors

Q6: Do you agree with our proposal to bucket swaps by tenors? If not, please explain why.

Yes, we agree that swaps should be bucketed by tenors.

However, we suppose that there may be a case for establishing the buckets somewhat around the tenor points rather than bounding right on those benchmark dates.

Q7: Do you agree with our proposal to include spot and forward starting swaps within the same tenor bucket? If not, please explain why.

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Yes, we agree that spot and forward starting swaps can be within the same tenor bucket, since no better solution which retains simplicity can be envisaged.

Q8: Do you agree with our proposed scope of Category 1 instruments for OTC derivatives? If not, please explain why.

No. We disagree because we do not think that the term, "*OTC derivative*" is either useful or effective for reasons, inter alia, including those set out in the introductory comments.

Whilst we agree with the concept of Category 1 instruments, the scope of inclusion is much too broad compared to the mission statement. We would propose that the FCA took a simple and straightforward approach which would be to apply the applicable scope as "[all] derivatives;" then to delineate those within that superset which trade continuously as Category 1. For the avoidance of doubt this includes exchange traded derivatives ["ETDs"] as well as those on multilateral MiFIR and recognised overseas trading venues ["VTDs"]. This approach would better future proof against innovation as well as to make the cross-border application and evaluation even feasible.

There is no functional or legal reason to draws a boundary between the same bonds or derivatives whether concluded on an RM or an MTF or OTF. This approach would also clarify and harmonise the treatment of the large amount of derivatives which are simply registered on exchanges subsequent to matching, noting the frequently quoted figure that some 95% of exchange listed contracts never trade on the orderbook. Better terminology as to how derivatives are traded would be to use a pejorative term such as "multilateral system" utilising the guidance made in 2023.

Clearly the subset of derivatives that actually trades continuously is very different to the FCA proposals. This is not only because of the absence of ETDs, which should form the largest component, but equally because of the inclusion of illiquid derivatives, most especially long-dated and broken-dated swaps. The approach to packages is at some points explicit, but generally unclear as likely subsumed via a waiver approach. The FCA must simply and clearly set out that all package flagged transactions are conjointly Category 2 instruments.

We note the learned experience of the LDI related volatility in Q4 of 2022 and suggest that the FCA consider this as empirical evidence in proposing that the scope of Category 1 instruments extends beyond 25 years. Clearly the underlying sovereign instruments as well as the swaps are generally illiquid, a matter significantly exacerbated by the FCA's removal of LiBOR. Any benefits from extending the transparency regime beyond 25Y appear tenuous, especially given the lack of market trust on the efficacy of RFR-OIS based swaps as hedging tools. Limiting the scope of Category 1 instruments to the DTO would de-scope ESTR, SOFR and Fed Funds.

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Pre-trade transparency

Q9: Do you agree with our proposals for, and waivers of, pre-trade transparency? If not, please explain why.

Whilst we agree with the FCA's objectives for reforming pre-trade transparency, we disagree with both the approach to deploy waivers and with the retention of prescriptive language prescribing trading methods. The price conditionality from the negotiated trade waiver should be deleted from the proposals.

The FCA approach should be simpler and more straightforward by excluding pre-trade transparency entirely and in being trading protocol agnostic. The retention of MiFID 1 attention and preference to CLOB is of no relevance to non-equities markets and this consultation offers the opportunity to correct for the mistakes in reading these across into MiFID 2. For the reasons set out below the framework approach to pre-trade transparency should be redrafted as a broad exclusion rather than via waivers.

Our principal concerns remains the treatment of excluding periodic auctions from the exemption or any waivers. As commented above, a great many auctions are operated by our members and these cover a wide variety of methodologies, but for many such, they do not and could not provide for the pre-trade requirements still retained, because both price and size are outcomes of the matching rules. We do not believe that the market gains anything by adding prescriptive regulations around matching sessions. Rather these should mandate effective and comprehensive disclosures by the operator of the system. From this basis, CLOB protocols could be introduced at the level of the operator where commercially appropriate or in conjunction with specific supervisory requests on a case-by-case basis.

We would refer to both the long-standing discussions between industry and authorities as to the complete absence of any evidenced use of the MiFIR mandated pre-trade transparency, both because trading venues (and indeed SIs) carry out this function commercially and because of the identifiers and presentation formats as thoroughly demonstrated across the numerous ClarusFT blogs on MiFID2.

We note that the FCA's intent is to remove the non-relevant pre-trade transparency requirements via with the commencement of the new non-equity transparency regime in MAR 11, Article 18 of UK MiFIR as amended by FSMA 2023. If follows from our comments above regarding auction systems, that the FCA approach to identify and "carve-out" such voice and RFQ systems may not be the simple and straightforward way to achieve this because trading venues host and interoperate a number of approaches to matching interests and these may be conjointly apply across contingent and related transactions.

Further, the FCA approach begs the question as to what exactly are "*voice and RFQ systems*" amongst the panoply of methods; and indeed, whether recast risks apply. We refer to the discussions at the recent round table regarding "Request for Stream" as well

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as wider discussions around the minimum number of participants that constitute a multilateral RFQ. We would therefore suggest that the FCA approach would be better if reversed and only specific CLOB systems were "carved-in".

We would add the specific comments:

i. The requirement to ensure prices are within the volume-weighted spread on the order book could only apply when the trading venue operator itself operates a CLOB alongside other trade protocols. This appears functionally similar to early rules for SEFs which were a read across from DCM market structure, but which have never eventuated and been removed. Any notion that a large volume and fluid market should take reference from a smaller, inflexible or an artificial one creates a poor architecture and scope for manipulation. As well as trade size and volatility, the FCA proposed approach fails to recognise the importance of non-latent liquidity, the risk lay-off market using core economic terms, the prevalence of packages and the use of other closely related instruments.
ii. As SEF operators, and noting the migration of European derivatives flows into the US, that it is important and correct] to state that, "*SEFs operating RFQ systems do not need public pre-trade disclosure, is that in most circumstances the public disclosure of quotes or actionable indications of interest is not necessary in the best interest of efficient price discovery and the support of the provision of liquidity*."
iii. It is incorrect and at odds with the FCA work on defining multilateral systems to state [Para 5.3] that many-to-many or all-to-all systems are either limit order book, periodic auctions or quote driven. Clearly the scope is far wider than that, and the FCA should fully incorporate PS23/11: Guidance on the trading venue perimeter into this framework analysis. Importantly, that guidance turns on trading interests rather than purely on "orders," based as it is on RAO 27. Given that [Paras 5.6 & 5.7] the FCA approach is solely predicated on orders, we question whether these proposals continue to embed the prior uncertainty as to when and how the matching of interests needs to be recast to suppose a momentary creation of a virtual order as a further *Schrödinger's Cat approach.*
iv. Currently trading venue operators will seek to operate many trading protocols side-by-side under the same segment MIC as well as the same Operating MIC or the same LEI. They naturally seek to offer counterparties the choice and combination of all trading method and protocols from a range of liquidity sources and matching logics as appropriate to form the optimum liquidity pool. Some liquidity sets may be broad as in all-to-all whilst others would be restricted to certain sub-sets of market participant such as Sovereign Bond Primary Dealers or those with relevant CSAs and netting agreements.

It follows that the price conditionality from the negotiated trade waiver should be deleted from the proposals. Rather, we firmly concur with leaving it up to relevant venues to decide on a case-by-case basis, whether pre-trade reporting is warranted, and, if so, what "adequate information" should be disclosed. This is the core commercial

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competency of any trading venue and would always be difficult to juxtapose to rules in a plural wholesale market context.

Q10: Do you support our objective of enhancing price formation by prioritising the prompt dissemination of price information? If not, please explain why.

Yes. We support the FCA holding the explicit objective of enhancing price information by prioritising the prompt dissemination of price information where appropriate. Evidentially, we would point to the success of the SEF regime in this regard because it has been essentially very narrow.

Products such as equity baskets or corporate bonds should not be included in this regime, not only on high level considerations, but in practical terms trading venues underscore that establishing attaining the correct trade details from the core economic terms is far from immediate after the point of trade. Rather, the experience of operating markets across the different trading protocols over the last 6 years has underscored that it is not always straightforward to implement and disseminate the transparency of trade details even for more liquid bonds within 15 minutes currently.

Q11: Do you agree with our approach based on the dissemination of trade-by-trade information as opposed to aggregation of trades? If not, please explain why.

Yes. We support the approach based on the dissemination of trade-by-trade information as this another other aggregated approach could quickly add unnecessary complexity.

Q12: Should package trades be granted a minimum of a 15-minute reporting deferral to allow for the complexity of booking such trades?

No, we disagree because a minimum of a 15-minute reporting deferral would likely be too short.

Acknowledging that the *modus operandi* is to report as soon as possible, and adding that this is a commercial imperative for trading venue operators looking to build liquidity; we underscore that 15 minutes has proven a difficult time limit even for firms to report exchange blocks back to any one RM/DCM. For package trades where legs are concluded across multiple venues and none, and across global markets any hard rule would simply result in the commencement or matching point being deferred.

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We would prefer and suggest that a 24 hour limit be combined with a "best practice" standard to adequately recognise the complexity of booking the trade components of a packaged transaction.

Q13: Are there types of transactions other than packages that should benefit from a deferral irrespective of their sizes?

In the main this deferral would be relevant for package, portfolio or similarly contingent and complex trades. Including where financing legs are required or equity baskets, especially where traded as Total Return Swaps. Per question 12 above. Corporate bond trades also require these deferrals.

In most cases the trading venue would simply defer to point of completion until all work-up and other relevant trade terms are agreed, such that deferrals would not be necessary, However venues do indeed process a lot of complex products, often at the same time when markets are active and so recourse to exceptions [*comply or explain approach*] where some instruments would take longer to book than others is appropriate. Therefore, some transactions will take a period of time to book by virtue of their complexity.

Q14: Which of the two models do you think can give better calibration of deferrals for bonds and derivatives?

We agree with the FCA that the two models may deliver similar outcomes. It's likely that Model 2 is preferred because it more closely aligns with the approach applicable to SEFs and holds the volume cap as an additional safeguard..

Real-time transparency and calibration of deferrals

Bonds

Q15: Do you agree with the factors used in grouping bonds?

Yes we agree.

This concurs with the parallel discussions held in the EU and tends to the simplest grouping sets whilst remaining meaningful.

Q16: Do you agree with the list of issuers used to group Sovereign and Other public bonds?

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We would prefer the FCA use the G10, or other generic grouping as adopted by the major bond index providers rather than a subset of individual nation issuers.

Q17: Should we consider having a separate group for certain types of sovereign bonds, e.g. inflation-linked Sovereign bonds?

No. This is unnecessary.

Q18: Do you agree with the list of currencies used to group Corporate, Covered, Convertible & Other bonds?

Yes. The approach suggested is appropriate and straightforward.

Q19: Do you agree with the levels indicated as thresholds for issue size and setting the three maturity groups for Sovereign and Other Public Bonds?

Yes. The approach suggested is appropriate and straightforward.

Q20: Do you agree with our proposed definition of IG bonds?

Yes. The proposal for defining a bond as IG if its issuer has a credit rating falling in CQS 3 or above appears to provide for appropriate standardisation and durability.

Calibration of large in scale (LIS) thresholds and deferrals

Q21: Do you agree with our proposed thresholds for bonds transparency in Option 1?

Yes. The FCA calibration is broadly similar to that under TRACE in the US. The capping is important, but adequately dealt with.

(We assume that the FCA uses the terms Option 1 and Model 1 interchangeably.)

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Q22: Do you prefer the Option 2 approach, wherein for trades between the thresholds both price and size are published at EOD rather than after 15 minutes and 3 days respectively?

Yes we prefer the Model 2 approach.

Q23: Do you prefer the Option 2 approach, wherein for trades above the upper threshold prices only are published at EOD rather than our proposal to publish both price and size after four weeks?

No. Prefer the longer deferrals. Most users are wholesale.

Q24: If all prices are to be published by EOD then when, if at all, do you think the size of trades larger than the upper threshold should be published?

We see no public need for the volume masked trade sizes to be published at all.

OTC derivatives

Q25: Do you agree with the approach and methodology used to set the thresholds and the length of deferrals?

As per prior, we do not agree with the specification of an approach for "*OTC derivatives*" not only because the term is confusing but more fundamentally because standardised and venue traded derivatives should all come under the same treatment. Why the FCA would not follow the basic principle of, "same activity, same rules" is not set out in the proposals. This term should be dropped for a categorisation approach based upon standardisation and realised by the clearing obligation.

Overall and notwithstanding these scope and definitional concerns, we agree with the approach and the objectives sought by the FCA, although when the market supplied transparency is taken into account we see a danger that the approaches are over prescribed and over detailed rather than setting a regulatory minimum. Its apparent if the FCA are trying to "boil-the-ocean" here, cross-border and off-venue migration of activity would continue.

We would remind that users of these derivatives are wholesale counterparties who do not consider that there is a transparency deficit. Consequently the FCA should seek the simplest and most straightforward option, and leave it to the market to develop more complex services. There is no value for transparency in the illiquid cases, including broken dated swaps, that apparently may come into scope under the FCA suggestions.

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Nevertheless it remains entirely unclear how the concept of models 1 and 2 are anchored where clearly there is a spectrum of outcomes along each of the product/ time and size axes; yet only two fixed points across these three continuities.

In essence it should simply set as price above LIS at T+3 and volume at 4 weeks.

Q26: Do you agree with the proposed deferrals and associated thresholds in the 2 models?

No. Overall the thresholds and matrices are overly complex and appear to seek "best outcomes" rather than set a regulatory de minimus. They may not be moving away from the prior MiFIR granularity sufficiently to encourage liquidity provision and its transformation for standardisation and risk hedging.

The three day deferral in option/model 1 for instance seems both random and serving to add complexity without purpose.

For choice, clearly option/model 2 is better than the first one, but this is still too granular it's difficult to understand the genesis.

In essence it should simply set as price above LIS at T+3 and volume at 4 weeks.

Broken tenors

Q27: Do you agree with the approach and methodology used to set the thresholds and the length of deferrals?

Per prior comments, we are not sure that delimiting the tenor buckets on fixed terms is the best approach. Rather the transition from one transparency regime to another should occur away from the tenor dates. In this way perhaps half a year should be added to the 5 and 10 year thresholds and proportionately elsewhere such that a single day or two around the tenor term doesn't make a significant impact to the transparency treatment.

Overall we query the extent of the FCA proposals regarding broken tenors, which may often be unwinding risk or otherwise associated to a specific use case. The FCA states, "*The information on transactions in broken tenors can provide value to market participants in terms of the pricing of swaps between benchmarks dates and in understanding overall market liquidity,*" without explaining why.

There is no public benefit to the market by making these instruments transparent, whilst their inclusion is noted by ISDA to impact the overall statistical outcomes, and their

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pricing will likely be idiosyncratic to related trades, credit and liquidity. In line with setting a regulatory de minimus rather than a best practice, all broken dated swaps should be Category 2.

Q28: Do you agree with the proposed deferrals and associated thresholds?

No. All broken dated swaps should be Category 2. The regulator should not set practice standards as requirements.

Q29: Do you agree that the same thresholds shall apply to benchmark tenors and broken dates?

No. All broken dated swaps should be Category 2. The regulator should not set practice standards as requirements.

<u>Credit default swaps</u>

Q30: Which model do you think better calibrates transparency and the protection of liquidity for large trades? Please explain

Model 2 is both preferable and simpler for index CDS

Q31: Do you agree with our proposed LIS thresholds and length of deferrals for index CDS? If not, please explain why

Model 1 still seems overly complex in adding three categories when two would suffice and again introducing a T+3 deferral that does not seem to be grounded in empirical evidence.

Clearly for both model options, the thresholds deployed deliver the sought-for outcome of capturing the bulk of trading, as defined by approximately 1 Standard Deviation of the trade population, to immediate reporting. However the trade population is not as large as suggested by the FCA [para 6.53] and the trade location as well as the clearing location may be generally outside the UK, especially following the closure of Ice Clear Europe and porting of the open interest to either ICE US [Atlanta] or LCH SA [Paris]. It's likely that the index instruments would not qualify as liquid as the FCA also notes [para 6.54].

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Therefore the rationale for increasing the LIS thresholds from Eur 10mm to £50mm and £15mm appear tenuous and the prudent approach, at least at commencement pending review, would be to allocate all CDS Index trades to Category 2.

Review of the new transparency regime

Q32: Do you agree with our proposed approach of implementation followed by review and potential revision?

Yes. Given that the approach should be generally simpler, the FCA proposal to give firms an implementation period of one year after the finalisation of the rules seems appropriate. We note however the coincident impact of the Bond CCP implementation and for the application of derivative identifiers. Therefore the FCA should not set binding legal deadlines, but encompass some scope for agility.

From the experiences with MiFIR and MiFID2, formal review should follow after two years rather than 6 months.

Transition to the new transparency regime

Q33: Do you agree with how we intend to supervise the change from the current regime to the new one? If not, please explain why.

Yes. Clearly there will need to be appropriate arrangements for trades that span the transition, even with a singular date.

The FCA proposals appear to be proportionate in this regard, rather than any phasing-in or back-reporting approach.

Q34: Are there other issues that we should have regard to in relation to the change to the new transparency regime?

In respect of Category 2 derivatives ("*all other OTC derivatives, SFPs and emission allowances traded on trading venues not falling within category 1*"), we note that trading venues will be expected to provide adequate pre- and post-trade transparency in relation to all transactions executed under their systems via the capability to self-calibrate the level of transparency.

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Where changes are purely permissive and do not impose new obligations, in particular the introduction of the new negotiated trade waiver, they should apply immediately the new rules are made rather than being subject to the one-year implementation period.

Specifically page 148 (in Annex 6) and 11.5.2 R (3) states that a trading venue operator must establish, implement and maintain an internal process or rules for determining the applicable deferral size thresholds, durations and type of post-trade transparency information, the publication of which it will defer, under MAR 11.5.2R(1), in respect of category 2 instruments; and 11.5.2 R (4) sets out that a trading venue operator must publish in its rulebook the rule or processes it adopts to fulfil MAR 11.5.2R(3) before it implements them.

Given the scope and diversity across these instruments, we consider this discretion over the calibration of the transparency as essential and should also provide for more agile and proportionate flexibility to external impacts and secular developments. This is likely the single major benefit within the CP23/32 set of proposals, especially as global product standards, common process models, innovation and automation progresses.

<u>Exemptions from post-trade transparency</u>

Q35: Do you agree with maintaining the exemption for inter-funds transfers in Article 12?

EVIA will not answer this question.

Q36: Do you agree with the new definition of inter-funds transfers?

EVIA will not answer this question.

Q37: Do you agree with our proposed amendment of the exemption from post-trade reporting for give-ups and give-ins?

EVIA will not answer this question.

Q38: 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, and, if so, what issues do you think it should cover?

EVIA will not answer this question.

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Central counterparties

Q39: Do you agree with the deletion of point d) from Article 12 of MiFID RTS 2? If not, please explain why.

Yes. We agree with the deletion of point (d) from Article 12 of MiFID RTS 2 which provides for an exemption for 'transfers of financial instruments such as collateral in bilateral transactions or in the context of a central counterparty (CCP) margin or collateral requirements or as part of the default management process of a CCP' on the basis that this is already addressed by Article 2(5)(b) of RTS 22 (which provides for an exemption for 'a contract arising exclusively for clearing or settlement purposes').

Inter-affiliate trades

Q40: Do you agree with introducing an exemption for inter-affiliate trades?

EVIA will not answer this question.

Q41: Do you agree with our proposed definition of inter-affiliate trades?

EVIA will not answer this question.

Content of post-trade information: fields and flags

Q42: Do you prefer to remove the trade reporting field 'Instrument identification code type' and to include a requirement for trade reports to report on the field 'Instrument identification code' using only an ISIN code format, or retain the reporting on this field? Please explain your preferred approach.

We support retaining this field as this helps to future proof the reporting structure should subsequent changes be made to product identifiers. Even if it were removed from the regulation, the FIX protocol still requires it to be provided. If the Instrument identification code type [IICT] is removed, we would suggest that the Instrument Identification code name be changed to "ISIN" to remove any potential ambiguity.

Q43: Do you agree with our proposal to introduce the new field "Unique product identifier"? If not, please explain why and set out your preferred approach to the identification of derivative instruments.

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We believe that the introduction of the UPI will provide enhanced transparency and, via the mapping to the standardised common data elements, more utility for the market.

We note that this is already supported as a separate field within the FIX Protocol.

Q44: Do you agree with our proposal to set the scope of the use of UPI to OTC derivatives? If not, please describe the scope of instruments to which you would prefer for it to apply.

No. UPIs should apply to all financial instruments, including ETDs.

Whilst we note that the scope of ISO 4914 (Unique Product Identifier) currently only covers "OTC derivative products," this language needs adapting for wholesale markets traded on MiFIR venues that are not RM.

Noting again the inherent definitional complications to the term "OTC" whereas all derivatives whether traded on an exchange, on MiFIR Trading Venues or on an SI should be in scope of UPI assignment in the UK. We refer to our comments above as to why the term "OTC derivative" should be discontinued.

Q45: Do you agree with our proposal to introduce the additional data fields enhancing the UPI to identify an instrument? If so, please detail what data fields additional to the UPI should be included under the trade reporting requirement.

Yes, we agree and defer to ISDA concerning the "UPI-plus" definition.

We have no objection to the addition of the fields outlined in 8.23, but it does depend on the context in which they are to be used.

Q46: Would the introduction of UPI have an impact upon the costs incurred by your firm? If so, please explain how and try to estimate the impact.

Yes. For trading venues, the existing costs for the creation of ISINs as "Power Users" are very high.

The UPI would be far cheaper than the costs of sourcing ISINs from the AnnaDSB[6]. Clearly this would be contingent upon the replacement of ISINs across all the relevant

[6] UPI Fee Model Consultation 2021 - DSB (anna-dsb.com)

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reporting requirements alongside those relating to transparency. That is, it should exactly become an 'either or' choice[7].

Q47: Do you agree with the proposed changes to the 'price' field and related reporting fields? If not, please explain why.

We agree with the conclusions of the non-equity working group of the FIX Trading Community[8] that "Price" should be expressed in the percentage format[9] in all cases where it is possible to calculate a percentage value regardless of any market convention. Where it is not possible to price bonds or calculate the conversion of traded price into the percentage format, then the market convention should continue be used together with appropriate disclosures.

Both institutional and retail should utilise the same price data because of increasing disintermediation:

1. This removes any ambiguity as to how the bulk of the prices should be expressed, even if market convention may suggest otherwise.
2. 'Market Convention' is not consistent across investment management firms.
3. Any need to interpret prices back to a "local" or "market" convention can be conducted by expert Market Data or Trading systems if required.

For Quantity only the 'notional amount' field should be populated, which would be consistent with recommendations currently under consideration by ESMA.

Q48: What are your views about the introduction of a 'price conditions' field?

We support the separate 'price conditions' field because text values should be separated from numeric values in the schema protocol.

We note also that this separation is already supported by the FIX Protocol & MMT implementation today.

[7] The UPI-ISIN: It's not an 'either or' choice - DSB (anna-dsb.com)
[8] FIX Trading Community - Fixed Income Pricing Rules.pdf
[9] FIX Trading Community - CT for Fixed Income - ESMA Response

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Q49: Do you agree with our proposal that we should work with industry to develop guidance on the reporting of prices under post-trade transparency? If not, please explain why.

We agree with the development of industry guidance and templates for the reporting of prices under post-trade transparency. This is in line with the processes adopted by the FCA in respect of EMIR reporting, which have been well received across the market participants.

Q50: Do you agree with our proposal to amend Table 4 of Annex II of RTS 2? If not, please explain why and set out your preferred approach to refer to the measure of volume.

Yes, we agree with this approach.

Q51: Do you agree with our proposal to introduce the new field "LEI of clearing house"? If not, please explain why and set out your preferred approach to reporting the clearing status of trades.

Yes, we agree with this approach.

Q52: Do you agree with our proposal to delete the field 'Transaction to be cleared'? If not, please explain why.

Yes, we agree with this approach.

Q53: What are your views about the introduction of a portfolio trade transactions flag 'PORT'?

Yes, we agree with the introduction of the PORT flag which demarcates where the price that a bond in a portfolio trade is traded at may not reflect the market price had it been traded individually. This has long been a facet of packages or other complex trades where most contingent trade legs are agreed at a mid-market price.

Per our answer to Question 49 above in respect of the development of industry guidance, we suppose that the comments in 8.62 regarding the default interplay between the PORT and TPAC flags should be written up as guidance.

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In respect of other complex trades, we refer to comments on Packages versus Complex trades in the introduction:

- Whereas the approach to date has been to provide for post-trade transparency exemptions via waivers and deferrals for the component trade legs within a package. Again under these proposals Mar 11.4.2 (1) sets the approach for allocating prices to the relevant instruments, and MAR 11.5.1 R (3) confers the waiver of any component across to the remainder of the transaction set.
- However, given our proposal that the only bonds that should be allocated to Category 1 should be government benchmark issues, we are concerned that almost the entirety of this transaction population occurs as a package. Therefore leaving the real time segment of Category 1 somewhat empty.
- The FCA may therefore consider either a removal of this aspect of the waiver or a further parallel division of such spread trades into "Complex Trades" such that the ordinary government bond spreads, funding or basis trades still generate immediate post-trade transparency for the benchmark bond leg. This would equally apply to derivatives where one leg is a category 1 trade, again without regard to the transparency treatment of the other trade legs.

Q54: Do you agree with our proposal to delete the agency cross 'ACTX', non-price forming transaction flag 'NPFT', illiquid instrument transaction 'ILQD' and post-trade size specific to the instrument transaction 'SIZE' flags? If not, please explain why and the uses of each flag.

Yes, we agree with this approach.

Q55: Do you agree with our proposal to delete all of the supplementary deferral flags for post-trade transparency with the exception of the volume omission 'VOLO' and full details 'FULV' flags? If not, please explain why and describe your preferred approach.

Yes, we agree with this approach.

Q56: Are there any other flags that we should consider introducing, removing or amending?

We do not currently foresee a need for further flags at this stage. Referring again back to our answer to Question 49 above in respect of the development of ongoing industry guidance.

Refer to comments on Packages versus Complex trades in the introduction.

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Q57: Do you agree with our proposal to amend Table 1 of Annex II of RTS 2? If not, please explain why and set out your preferred approach to the symbol table for the format to be populated for post-trade transparency trade reporting.

Yes, we agree with this approach for specifying the exact format of industry standard data fields as the final format of the output of any reporting activity. This format is defined in the ISO formats and therefore supported by the FIX Protocol.

Q58: Do you agree with our proposal to delete Annex IV of RTS 2 in its entirety? If not, please explain why.

Yes, we agree with this approach.

Ends.

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