

# Reply form

**For the Consultation Paper (CP) on ESMA's Opinion on the trading venue perimeter**



## Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions. 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 **29 April 2022**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Your input - Consultations'.

### 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 publicly 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](http://www.esma.europa.eu) under the heading [Legal Notice](#).

### Who should read this paper

This document will be of interest to all stakeholders involved in the securities markets. It is primarily of interest to competent authorities, investment firms and market operators that are subject to MiFID II and MiFIR. This paper is also important for trade associations and industry bodies, institutional and retail investors, their advisers, consumer groups, as well as any market participants because the MiFID II and MiFIR requirements concern the market structure of the EU and the perimeter of trading that should be considered as multilateral and regulated as such.

## Q1 Do you agree with the interpretation of the definition of multilateral systems?

<ESMA\_QUESTION\_TVPM\_1>

State Street Digital, part of State Street Corporation, (“State Street”), appreciates the opportunity to comment on the draft Opinion issued by the European Securities and Markets Authority (“ESMA”) on the trading venue perimeter, which seeks to clarify the definition of multilateral systems. State Street Digital’s GlobalLink suite of products include a foreign exchange multilateral trading facility.

From that perspective, we agree with ESMA’s interpretation of the definition of a multilateral system, including the four core aspects for making such a determination.<sup>1</sup>

We note, however, that the trading venue perimeters should be determined in accordance with the existing definitions in Articles 4(21)-(24) of MiFID II, being “*regulated market*”, “*multilateral trading facility*” or “*organised trading facility*” (collectively, “*trading venues*”). All of these definitions of a trading venue require that the trading venue is a multilateral system, but each sets further conditions to be met in order to qualify, including in each case that the users of the system “interact in the system in a way that results in a contract”.

These definitions therefore establish a requirement for a meaningful interaction and the conclusion of a contract, which is, in our view, appropriate to define what a trading venue is as opposed to the definition of “*multilateral systems*”.

<ESMA\_QUESTION\_TVPM\_1>

## Q2 Are there any other relevant characteristics to a multilateral system that should be taken into consideration when assessing the trading venue authorisation perimeter?

<ESMA\_QUESTION\_TVPM\_2>

Building on question 1, we agree that all qualifying trading venues should be subject to equivalent regulatory obligations (subject to existing exemptions, including general purpose communication systems).

As ESMA highlights, supervisory convergence is necessary to ensure a level playing field between similar multilateral systems, irrespective of what member state the trading venue is established in, whether the financial instruments on the system they support are subject to the

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<sup>1</sup> Paragraph 18 – describes the four core aspects as being: (1) It is a system or facility; (2) there are multiple third party buying and selling interests; (3) those trading interests need to be able to interact; and (4) trading interests need to be in financial instrument; which reflect the definition of “multilateral systems” as defined in Article 4(19) of the Markets in Financial Instruments Directive 2014/65/EU (“**MI FID II**”).

trading mandate, or the users of the multilateral system are themselves subject to the MiFID framework.

<ESMA\_QUESTION\_TVPM\_2>

**Q3 In your experience, is there any communication tool service that goes beyond providing information and allows trading to take place? If so, please describe the systems' characteristics.**

<ESMA\_QUESTION\_TVPM\_3>

We agree that there needs to be genuine interaction between trading parties in the system prior to conclusion of a trade to qualify as a multilateral system<sup>2</sup>.

While some communication tool services go beyond merely providing information, in our view, in most cases, a genuine communication tool should be classified as a reception and transmission of orders ("RTO") system, rather than a trading venue. This is especially the case where there is no price formation (a core aspect of a multilateral trading facility under MiFID Article 18(7)) or conclusion/execution of a trade in the system.

Examples of this type of activity include:

- a money market fund supermarket – where potential investors are able to view fund documentation (e.g., KIID, Prospectus etc) and send orders to transfer agents of the relevant fund. In this circumstance the order can only be for volume of shares or total value of order, as the price formation per share and acceptance (execution) or rejection of the order is performed in the sole determination of the transfer agent in accordance with the eligibility requirements in the fund prospectus and any specific direction of the fund to its transfer agent (e.g. relating to investor concentration). The money market fund supermarket is here only an RTO as it cannot set rules for efficient execution of orders (these are determined by the fund) and no price formation is available in the system, even if it provides those investors with trade status updates/confirmations.
- a system that enables clients, who are, for example, subject to a clearing mandate, to send a trade to a clearing house. Similarly, the system is only an RTO as it cannot set rules for efficient execution of orders (these are set by the clearing house) and no price formation is available in the system (as the details of the trade are all pre-set) even if it provides those investors with trade status updates/confirmations.

<ESMA\_QUESTION\_TVPM\_3>

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<sup>2</sup> Paragraph 44.

**Q4 Are you aware of any EMS or OMS that, considering their functioning, should be subject to trading venue authorisation? If yes, please provide a description.**

<ESMA\_QUESTION\_TVPM\_4>

We do not have specific comments.

<ESMA\_QUESTION\_TVPM\_4>

**Q5 Do you agree that Figure 4 as described illustrates the operation of a bilateral system operated by an investment firm that should not require authorisation as a trading venue?**

<ESMA\_QUESTION\_TVPM\_5>

We do not have specific comments.

<ESMA\_QUESTION\_TVPM\_5>

**Q6 Do you agree that a “single-dealer” system operator by a third party, as described in Figure 5, should be considered as a multilateral system? If not, please explain.**

<ESMA\_QUESTION\_TVPM\_6>

We do not have specific comments.

<ESMA\_QUESTION\_TVPM\_6>

**Q7 Do you agree that systems pre-arranging transactions that are formalised on a trading venue, even when arranged in a multilateral way, should not be required to be authorised as trading venues? Do you agree with the justification for such approach?**

<ESMA\_QUESTION\_TVPM\_7>

We do not have specific comments.

<ESMA\_QUESTION\_TVPM\_7>

**Q8 Are there any other conditions that should apply to these pre-arranged systems?**

<ESMA\_QUESTION\_TVPM\_8>

We do not have specific comments.

<ESMA\_QUESTION\_TVPM\_8>

**Q9 Are there in your views any circumstances where it would not be possible for an executing trading venue to sign contractual arrangements with the pre-arranging platforms? If yes, please elaborate**

<ESMA\_QUESTION\_TVPM\_9>

We do not have specific comments.

<ESMA\_QUESTION\_TVPM\_9>