FIA EPTA
EUROPEAN PRINCIPAL TRADERS ASSOCIATION

Date: 23 September 2024

FIA EPTA response to the ESMA Third Consultation Package on MiFIR Level 2 measures

(deadline – 30 September/15 October 2024)

Introduction	The European Principal Traders Association (FIA EPTA) represents Europe's leading Principal Trading Firms. Our members are independent market makers and providers of liquidity and risk-transfer for markets and end-investors across Europe. FIA EPTA works constructively with policy-makers, regulators and other market stakeholders to ensure efficient, resilient and trusted financial markets in Europe.

ESMA Questions:

Question:	**Draft FIA EPTA Response:**
Q12: How could ESMA take into account international best practices and competitiveness for the determination of the threshold up to which SIs have to be pre-trade transparent? Please explain.	FIA EPTA members acknowledge that consistency between EU and UK requirements regarding SI quoting thresholds has some benefits from an operational efficiency perspective. We acknowledge that much of the detail in respect of EU SI pre-trade transparency is set in the MiFIR Level 1 text, leaving ESMA little discretion as to how it can adapt to international developments in relation to this topic in particular. Ideally, ESMA would be empowered to determine detailed requirements that are dependent on assessing changing traded volumes or other market evolution, rather than these being hard-wired in Level 1 text. Acknowledging the constraints in this case, we consider ESMA have taken a reasonable and pragmatic approach.

	We note that the UK has yet to take concrete action to adjust SI pre-trade transparency thresholds. Whilst it was noted in the HMT response to the UK Wholesale Markets Review (March 2022) that the UK government recognizes there is support for increasing the minimum quote size for equity SIs as a proportion of SMS, this was left to the FCA to take forward as part of the Future Regulatory Framework. Despite introducing other measures arising from the Wholesale Markets Review (including in its Improving Equity Secondary Markets Policy Statement), the FCA has not yet proposed changes to the SI quoting requirements.
Q13: Do you agree with the new AVT buckets and related SMS? Would you set a higher SMS for the AVT bucket [0-10000] (e.g. 10,000)? Please explain.	FIA EPTA members agree with the new AVT buckets and related SMS proposed by ESMA. We agree that it is pragmatic to have more granular AVT buckets at the lower end of the spectrum given the concentration of trading activity in this bracket. In addition, we acknowledge that ESMA's recalibration of AVT buckets has ameliorated the impact of the public quoting obligation as set in the Level 1 text at the lower AVT levels. We appreciate that ESMA has a narrow mandate to shape SI pre-trade transparency and that most of the detailed framework is set in the Level 1 text. The objective of the Level 1 changes is to reinforce the price formation process and to maintain a level playing field between trading venues and SIs, as indicated in Recital 13 of Regulation (EU) 2024/791. However, a large proportion of SI volume constitutes internalised client flow and does not arise from counterparties responding to streamed public quotes. The changes will, therefore, not introduce any additional transparency to this SI activity which largely originates from the SI operator's hedging activity in relation to synthetic equity trades entered into on behalf of clients. If there is a genuine desire to bring greater transparency to SI activity to aid price formation, FIA EPTA members believe this is best achieved through requiring that a trade report be made when a broker executes a trade to hedge exposure under a synthetic equity trade, thus resulting in the same post-trade transparency as if the broker had fulfilled the hedge from an external source, such as a Regulated Market/MTF or third-party SI. This solution is explained in detail in our Research Paper entitled "Mind the Transparency Gap", available here: FIA EPTA Insights - Mind Transparency Gap paper_FINAL.pdf. In contrast, the MiFIR Review changes will make it materially more difficult for SIs providing genuine bilateral risk facilitation to provide liquidity, including those operated by investment firms that are in the business of bilateral liquidity provision and don't have large client facilitation franchises. In relation to the lower AVT end of the scale, the changes result in a five-fold increase in the public quote size. At the upper end of the 0-20k

	AVT scale, it results in a nineteen-fold increase in public quote size. This makes it materially more challenging for an SI to function as there is less room to manage risk based on individual counterparty exposures. In addition, due to the now differing public quoting obligation in the EU and the UK, this may have a number of unintended consequences including that: • investment firms operating both UK and EU SIs will be able to offer more tailored liquidity through their UK SIs (as, with lower minimum quoting requirements, liquidity provision can be offered to a broader set of counterparties without the liquidity provider taking undue risk associated with large minimum quote sizes); • international investors who can choose whether to execute with a UK SI or an EU SI may favour UK SIs due to their ability to offer more tailored liquidity (calibrated to account for counterparty risk rather than being bound to execute at their public quote); • EU investors who are confined to trading with EU SIs due to the Share Trading Obligation will be disadvantaged by the reduced opportunities for engaging with bilateral risk liquidity because there are fewer EU SIs providing this at a range of sizes; and • overall, Europe will be less competitive with the rest of the world due to the limitations and increased cost related to genuine bilateral risk facilitation. Again, we acknowledge that the detailed recalibration of SI pre-trade transparency is established in the Level 1 text arising from the MiFIR Review and that ESMA's approach is reasonable and pragmatic given the constraints they are operating under with regard to the scope of their mandate and the requirements set at Level 1. However, this underscores the need for ESMA to be empowered to make detailed market structure regulation rather than have these matters embedded in Level 1 legislation where changes can only be made through the time-consuming and resource intensive EU law-making process.
Q14: Do you agree with ESMA's proposal of the new threshold#1 for shares? Please explain.	Given the constraints set at Level 1 and having regard to the revised AVT buckets, we believe ESMA has taken a pragmatic approach to setting threshold #1.
Q15: Do you agree with ESMA's proposal of the new	FIA EPTA members are supportive of ESMA's approach to setting threshold #2, given the constraints set at Level 1 and having regard to the approach proposed by UK HMT.

threshold#2 for shares? Please explain	
Q16: Do you agree with the new AVT buckets and related SMS? Would you set a lower SMS for the AVT bucket [0-10000) (e.g. 5,000)? Please explain.	No comment
Q17: Do you agree with ESMA's proposal of the new threshold#1 for DRs? Please explain.	No comment
Q18: Do you agree with ESMA's proposal of the new threshold#2 for DRs? Please explain.	No comment
Q19: Do you agree with the new AVT buckets and related SMS? Please explain. [p63]	Yes, FIA EPTA members agree with the new AVT buckets and associated SMS. Whilst the higher public quoting threshold may expose SIs to greater risk exposure, this is largely a function of the parameters set in the Level 1 text.
Q20: Do you agree with ESMA's proposal of the new threshold#1 for ETFs? Please explain.	FIA EPTA agree with ESMA's proposals for new threshold #1
Q21: Do you agree with ESMA's proposal of the new threshold#2 for ETFs? Please explain.	FIA EPTA agree with ESMA's proposals for new threshold #2
Q22: Do you agree with the proposed amendments to Article 11 of RTS 1? Please explain.	We note the proposed amendments presented in the consultation paper appear to be confined to the insertion of articles 11a and 11b. ESMA has said in paragraph 94 of the Consultation Paper that since no changes were made to relevant related provision it does not consider it necessary to amend Article 10. However, we consider this an

	appropriate opportunity to incorporate a minor amendment to ensure SIs are able to price ETFs in a manner consistent with broader market circumstances. By way of explanation, for ETFs the level of liquidity provided on the Regulated Markets is limited, with the majority being provided on MTFs, SI and OTC as detailed in Figure 11. That said, there is the potential there may not be quotes up to the equivalent size (SMS) on the most relevant market at a particular point in time. We would like, therefore, to request that the wording of Article 10 be amended to the following so that SIs are not restricted to being close in price to quotes that are less than the equivalent size i.e. [amendment highlighted]: "The prices published by a systematic internaliser shall reflect prevailing market conditions where they are close in price, at the time of publication, to quotes of equivalent size, ***where available,*** for the same financial instrument on the most relevant market in terms of liquidity as determined in accordance with Article 4 for that financial instrument."
Q23: Do you agree with the proposed new Article 11a of RTS 1? Please explain.	We agree that the proposed new article 11a is sufficient to give effect to ESMA's proposals.
Q24: Do you agree with the proposed new Article 11b of RTS 1? Please explain.	We agree that the proposed new article 11a is sufficient to give effect to ESMA's proposals. We also note that as a result of the changes to the public quoting obligation in Regulation (EU) 2024/791, paragraph (4) of article 15 of MiFIR (Regulation (EU) 600/2014) is now redundant. This is because an SI's public quote size can no longer be lower than SMS. We suggest this be raised with the European Commission to action, to ensure the consolidated text of MiFIR accurately reflects the consequences of the MiFIR Review amendments.
Q25: Do you agree with the proposed amendments to Article 12 of RTS 1? Please explain.	No comment
Q26: Do you agree with the proposed amendments to Table 3 of Annex I of RTS 1? Please explain.	No comment

Q27: Do you agree with the proposed amendments to Table 4 of Annex I of RTS 1? Please explain.	No comment
Q28: Would you consider that the SIZE, ILQD, RPRI flags could be removed? Please, explain.	No comment
Q29: Would you consider that the ACTX flag could be removed? Please, explain.	FIA EPTA members are supportive of ESMA's proposals to streamline post-trade flags. We understand the ACTX flag is not widely used as ad hoc crossing activity is typically reported as SI trades.
Q30: Would you further reduce the maximum time for disclosing pre-trade transparency "as close to real-time as technically possible"? If so, what maximum limit would you suggest? Please explain.	No comment
Q31: Do you agree with the proposed amendments to Article 15 of RTS 1? If not, please explain.	No comment