



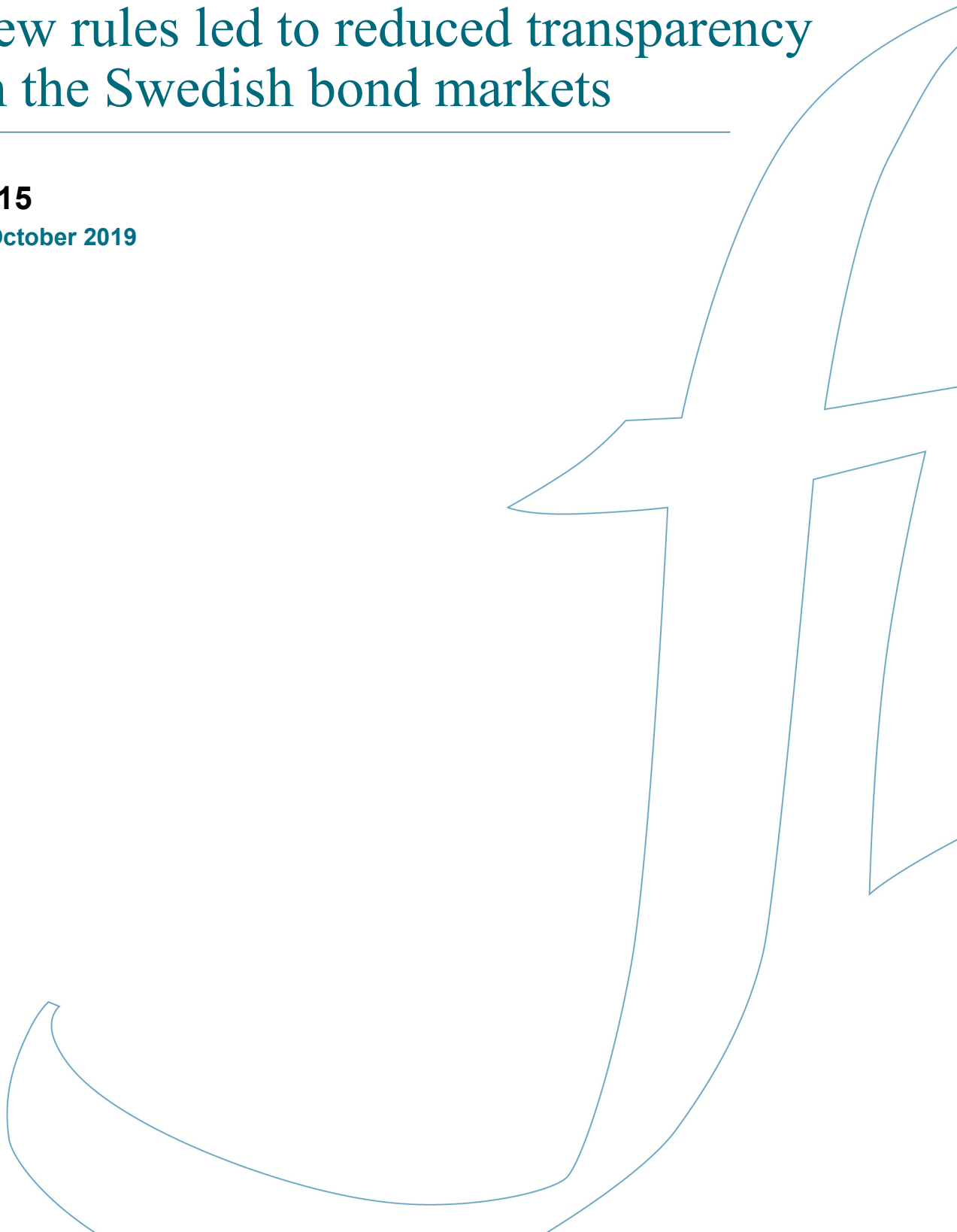
**FI Supervision**

# New rules led to reduced transparency on the Swedish bond markets

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### **FI Supervision**

Finansinspektionen publishes regular supervision reports in a numbered report series. The supervision reports are part of FI's communication. The reports describe the investigations and other supervision carried out by FI. Through these reports, FI presents its observations and assessments as well as its expectations in various matters. This information can support undertakings in their operations.

## Summary

Transparency on the Swedish bond markets has decreased since the introduction of MiFID II and MiFIR, even though their objective was to increase transparency. This is the conclusion Finansinspektionen (FI) draws from its analysis of the impact of the transparency rules that were introduced when the Directive and the Regulation on markets in financial instruments entered into force in 2018.

Sweden has had transparency requirements on trading in financial instruments for a long time. Since 2015, Swedish firms have published information about prices and volumes the day after the transaction in almost all Swedish bonds.

When the Directive and the Regulation for markets in financial instruments – MiFID II and MiFIR – entered into force, they introduced new requirements on transparency throughout the entire EU. Under the new requirements, information must be made public both pre- and post-trade as close to real-time as is technically possible. However, due to various waiver possibilities and deferred publication, the requirements do not always work this way in practice.

FI has analysed how the new transparency rules are applied. The analysis focuses on the Swedish bond markets and is based on a survey, data from FI's transaction reporting system, and information published through various arrangements. We investigated how the rules impacted transparency on the Swedish markets for government bonds, covered bonds and corporate bonds.

The analysis shows that all investment firms trading in Swedish bonds have the possibility of receiving a waiver and deferring the publication of information. Since this means there are no requirements on pre-trade publication of information, FI focuses its analysis on the publication of post-trade information.

The majority of the respondents to FI's survey consider transparency on the Swedish bond markets to have decreased since MiFID II and MiFIR were introduced. According to FI's analysis, this is primarily because the information is published in many different places and is difficult to access. Market participants executing transactions on a trading venue in another EU country are also able to defer the publication to a higher extent than the Swedish rules allow, which further decreases transparency.

FI believes it is important to once again increase transparency to improve the conditions for well-functioning markets. FI believes there is room for industry-led initiatives to improve transparency. FI will also advocate through the European supervisory cooperation improved access to published information and harmonisation of the rules decided by individual competent authorities. FI could also reassess the authorisations granted to market participants to defer the publication of post-trade information.

# Transparency on the Swedish bond market

Sweden has had transparency requirements on trading in financial instruments for a long time. When the Directive and the Regulation for markets in financial instruments – MiFID II and MiFIR<sup>1</sup> – entered into force, new requirements on transparency for non-equity instruments were introduced within the entire EU as well. Finansinspektionen (FI) analysed how the new transparency rules are applied and their impact on transparency in the Swedish markets for government bonds, covered bonds and corporate bonds.

## BACKGROUND

One of FI's objectives is to promote well-functioning markets.<sup>2</sup> We consider an important step in achieving this goal is to advocate a high level of transparency on the securities market, which, for example, helps investors and issuers make well-founded decisions. FI has previously taken the position that a high level of transparency leads to a reduced information gap and hence better investor protection. Transactions costs fall when market participants can compare prices, which promotes competition. Transparency can also offer benefits in the form of lower barriers to enter the financial markets.<sup>3</sup>

When the first directive on markets in financial instruments (MiFID I)<sup>4</sup> was entered into force in 2007, it introduced common transparency rules in the European equity markets. The objective was to protect investors and create more beneficial conditions for the functioning of the markets.

Sweden already had national rules on the publication of pre- and post-trade information prior to MiFID I. Under the new common rules, it became possible for competent authorities to also apply transparency rules to non-equity financial instruments. Sweden therefore introduced rules that were similar to the ones previously in force. This meant that firms operating a regulated market or a multilateral trading facility (MTF) also had to publish information about non-equity instruments.

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1 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, and Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.

2 Finansinspektionen's letter of appropriation for the 2019 budget year.

3 For more information, see Förslag till anpassning av transparensregler enligt Mifid 2/Mifir, 2017-04-11, FI. In Swedish only.

4 Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.

For over-the-counter transactions (OTC), the investment firm was responsible for publishing the information. In terms of bond trading, the requirements on publishing information have applied to both government and covered bonds for a long time. Requirements on publishing information about transactions in corporate bonds have applied since 2015. Under these requirements, post-trade information about price and volume was to be made public no later than 9:00 AM of the day following the transaction (although exemption from the requirement was allowed for transactions in corporate bonds that exceeded SEK 50 million).<sup>5</sup>

#### MiFID II and MiFIR enter into force

During the financial crisis in 2007–2009, it became apparent that a lack of transparency could create uncertainty about an asset's fair value. This uncertainty had extensive negative economic consequences, which is why greater transparency has been one of the shared principles to strengthen the European financial system since the financial crisis.

A new European regulatory framework entered into force on 3 January 2018: the Markets in Financial Instruments Directive and the Markets in Financial Instruments Regulation (MiFID II and MiFIR, respectively). These rules expanded the EU's existing transparency rules to include basically all financial instruments traded on a trading venue, including non-equity instruments (i.e. bonds, derivatives, structured financial products, and emissions allowances). The rules distinguish between the publication of pre-trade (order data) and post-trade (transaction data) information.

#### Main rule: transparency both pre- and post-trade

The main rule set out in MiFIR for *pre-trade* transparency is that market operators and investment firms operating a trading venue must make public on a continuous basis current bid and offer prices and the depth of trading interests during normal trading hours. For investment firms trading exclusively bilaterally there are normally no requirements on pre-trade transparency. Exception apply to investment firms that are systematic internalisers (SI)<sup>6</sup> executing orders against their own trading books and thus are obligated to place bid and offer quotes.

The main rule for *post-trade* transparency is that trading venues and investments firms must make public the price, volume and time of the transactions as close to real-time as is technically possible.

#### Waivers and deferrals

Because full transparency in some situations could have a negative impact on the markets, for example through reduced liquidity, competent authorities may grant either a waiver from pre-trade publication and or a deferred publication post-trade. In terms of pre-trade transparency in non-equity instruments, FI decided to grant waivers in accordance with MiFIR when the conditions are met.<sup>7</sup> This

<sup>5</sup> For more information, see Förslag till anpassning av transparensregler enligt Mifid 2/Mifir, 2017-04-11, FI. In Swedish only.

<sup>6</sup> The definition is set out in point 20 of Article 4(1) in MiFID II. Also refer to the glossary.

<sup>7</sup> Waivers are granted in accordance with Articles 9 and 18(2) of MiFIR. See the appendix.

means that most instruments subject to the regulation can be granted a waiver.

In terms of post-trade transparency in non-equity instruments, there are three circumstances under which competent authorities may grant deferred publication.<sup>8</sup>

Deferred publication is possible in respect of transactions that are

- large in scale compared with the normal market size;
- related to non-equity instruments for which there is not a liquid market;
- above a size specific to that financial instrument.

If a competent authority grants deferred publication with reference to fulfilment of one of the above criteria, trading venues or investment firms must make public the information about the transaction no later than 7:00 PM on the second day following the transaction's execution. Competent authorities also have additional possibilities to, in some cases, authorise deferred publication and waivers.<sup>9</sup>

The transparency on the Swedish market was already higher than what was required at the European level when MiFID I entered into force. However, the Swedish rules were not as far-reaching as the main rule in MiFIR. If FI had not granted any deferrals, there would have been a relatively significant change in the way the markets function. A requirement of full transparency would have reduced market makers' willingness to quote prices. Market makers and other market participants could have opted out of a certain transaction if they were required to reveal the price and volume in real-time, which could expose them to a risk that other market participants could use this information. This in turn could have a negative impact on prices and liquidity.

Therefore, FI decided to authorise deferred publication of the details of transactions. FI also decided that deferred publication must be combined with the publication of limited details of several transactions in an aggregated form when at least five transactions in a single instrument are executed on the same day. The purpose of this decision was to maintain the transparency in Sweden. For government bonds, covered bonds, and derivatives using these bonds as underlying assets, FI decided to authorise the publication of volume of an individual transaction first after an extended period of four weeks.<sup>10</sup>

Market operators and investment firms operating a trading venue must make public information about the transactions executed in their systems. Investment firms executing transactions either on their own account or on behalf of a client must make public information through an approved publication arrangement (APA).

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<sup>8</sup> Authorisation to defer publication may be granted in accordance with Articles 11 and 21(4) of MiFIR. See the appendix.

<sup>9</sup> Articles 11(3) and 21(4) of MiFIR. See the appendix.

<sup>10</sup> For more information, see Förslag till anpassning av transparensregler enligt Mifid 2/Mifir, 2017-04-11, FI, and Överväganden och remissvar om anpassning av transparensregler enligt Mifid 2/Mifir, 2017-06-16, FI. In Swedish only.

Competent authorities in each EU country have chosen to adapt the rules on deferred publication in different ways. This means there are some differences in when transaction information must be made public. Trading venues are subject to the rules that apply in the country where they are located. This means that Swedish firms trading on trading venues in other EU countries are subject to the application in those countries. However, Swedish firms trading outside of a trading venue must use the Swedish application of the transparency rules.

## OBJECTIVE OF THE ANALYSIS

The objective of this analysis is to assess the effects of the transparency rules that were introduced on the Swedish bond markets when MiFID and MiFIR entered into force on 3 January 2018. FI has chosen to focus on non-equity instruments since the new rules issued in 2018 pertained to this group. We also limited the sample of non-equity instruments to Swedish government bonds, covered bonds and corporate bonds.

FI intends to describe how transparency on the Swedish bond markets changed since the introduction of the new transparency rules, with national adaptations, and the reason behind the changes.

Since participants on the Swedish market have been granted waivers, pre-trade transparency for Swedish bonds is very limited. This was also the case prior to the introduction of MiFIR. In this report, we are therefore only studying the post-trade transparency rules.

Before the new transparency rules entered into force, several market participants expressed a concern that the rules would distort competition to the disadvantage of Swedish participants if FI opted to apply fewer deferrals than other EU countries. FI therefore also intended to investigate how many Swedish and foreign participants are executing transactions in Swedish bonds and whether this relationship has changed since the rules were introduced.

## METHOD

To find out what Swedish market participants think about transparency since the introduction of MiFIR, FI conducted a survey in June 2019. The survey included 21 market participants, including issuers, investors or intermediaries.<sup>11</sup> They answered questions related to Swedish government bonds, covered bonds and corporate bonds.

To investigate if trading patterns had changed since the introduction of the new rules, we studied data from FI's transaction reporting system,<sup>12</sup> more specifically transactions in Swedish government bonds, covered bonds and corporate bonds.

FI also studied the percentage of Swedish and foreign participants trading in Swedish bonds. We first identified transactions executed by Swedish participants, i.e. when the transaction was executed by a Swedish buyer or a Swedish seller. Transactions with two Swedish

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<sup>11</sup> The survey was sent to 33 market participants.

<sup>12</sup> Article 26 of MiFIR states that investment firms which execute transactions in financial instruments must report complete and accurate details of such transactions to the competent authority as quickly as possible, and no later than the close of the following working day.

counterparties and transactions where a non-Swedish counterparty executed a transaction with a Swedish counterparty were grouped together. FI then compared the trading volume of these participants to the total trading volume. We studied this over time to follow the data before and after the introduction of MiFIR.

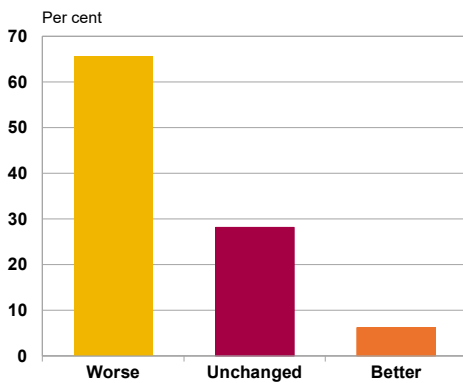
FI then investigated where and how the information about transactions was made public by analysing information published on the websites of trading venues and approved publication arrangements.



# Impact of the new transparency rules

FI's analysis shows that transparency on the Swedish bond market has decreased since MiFID II and MiFIR entered into force. One reason for this is that it is possible to defer publication of information for all transactions in Swedish bonds. This means that the information can be published at different times depending on where the transaction was executed and by whom. There are also several publication arrangements where the information may be made public.

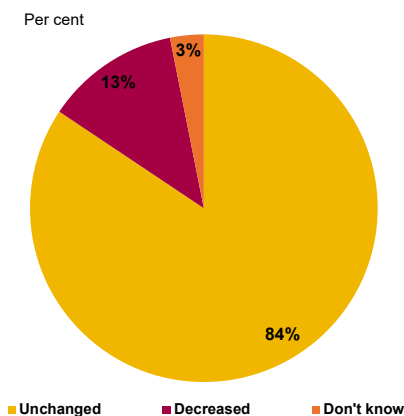
Diagram 1. Transparency has decreased



Source: FI's survey.

Note: A total of 21 respondents answered the question, "How has transparency on the Swedish market for corporate, government and covered bonds changed since MiFID II/MiFIR was introduced on 3 January 2018?"

Diagram 2. Trading volumes remain the same



Source: FI's survey.

Note: A total of 21 respondents answered the question, "How have the new transparency rules affected your trading volumes?"

## PUBLICATION OF TRANSACTIONS

The main rule for post-trade publication is that the transaction information must be made public in real-time. However, only some bonds with Swedish ISIN numbers are considered liquid under MiFIR.<sup>13</sup> This means that deferred publication can be applied to almost all transactions. Therefore, transactions in the majority of Swedish bonds must be made public in an aggregated form when minimum of five transactions are executed on the same day in a single instrument. Publication in an aggregated form must occur before 9:00 AM on the day after the transactions were executed. Details about a transaction are to be published two days after a transaction is executed or later depending on how long the publication can be deferred. The information are made public either through the trading venue where the transaction was executed or through one of the 23 approved publication arrangement established within the European Economic Area (EEA).

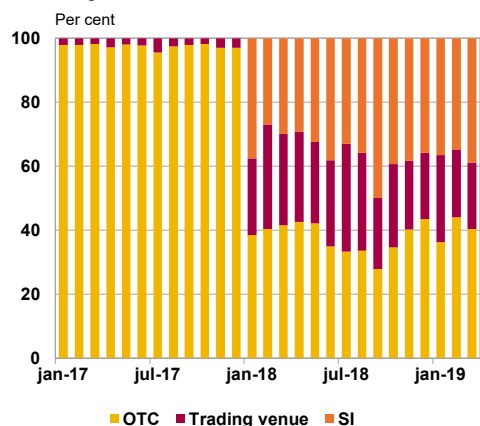
## TRANSPARENCY AS PERCEIVED BY MARKET PARTICIPANTS

The majority of the respondents in FI's survey consider transparency on the Swedish bond markets to have decreased since the introduction of MiFID II and MiFIR (Diagram 1). Most attribute the decrease to current difficulties in finding information about, for example, turnover. Several comment that turnover data was previously available in a single location. Because there is no consolidated tape provider (CTP), i.e. an entity who compiles all published information about transactions, the information is not being consolidated. Within the group that acts as intermediaries for trading in government and covered bonds, 80 per cent say that transparency has worsened. Two participants on the corporate bond market say that transparency has improved but did not provide any explanation.

A majority of respondents say that the new transparency rules have not had an impact on their trading volumes (Diagram 2). Trading patterns are relatively the same regardless of the type of bond. According to the respondents in the survey, transactions are executed primarily OTC, on a multilateral trading facility (MTF) or on an organised trading facility (OTF). A majority of the respondents say

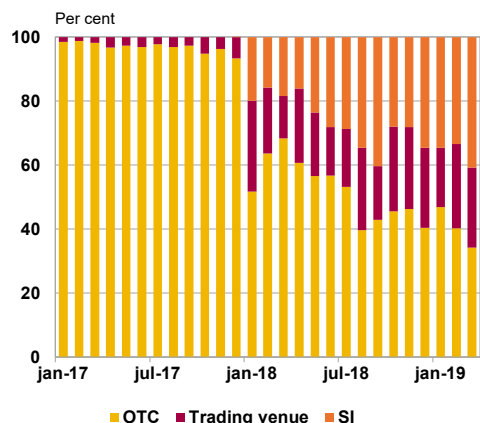
<sup>13</sup> Article 11(1)(b) MiFIR. The calculations are made once a quarter, and the information is updated in ESMA's Financial Instruments Transparency System (FITRS). According to the information available on 1 August 2019, there was one liquid bond with a Swedish ISIN code.

Diagram 3. Increased trade on trading venues for government and covered bonds



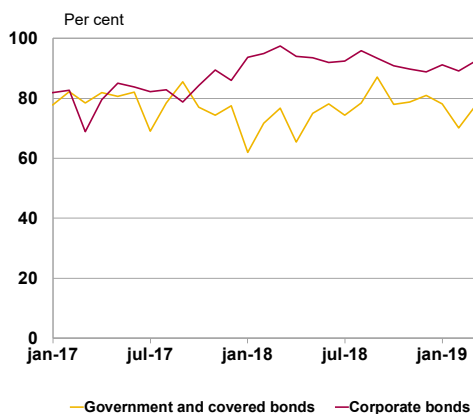
Source: FI's transaction reporting system.  
Note: Percentage of the transaction volume for government and covered bonds that are traded in different ways.

Diagram 4. Trade in corporate bonds with an SI slowly increasing



Source: FI's transaction reporting system.  
Note: Percentage of the transaction volume for corporate bonds that are traded in different ways.

Diagram 5. Percentage of Swedish participants has not changed



Source: FI's transaction reporting system.  
Note: The diagram shows the percentage of the transaction volume attributable to Swedish market participants.

that their transaction costs have not been affected by the introduction of MiFID II and MiFIR.

Only two respondents say that the obligation to publish information is a factor that they take into consideration when choosing where to execute their transactions. Most do not take this into consideration. However, many respondents say that they are not sure who is publishing information about their transactions. Two respondents also say that they are not sure if all transactions are published, in part because they are published at different times following the transaction. The information that is published is also not currently used to any considerable extent by the market participants. The parties that mainly use the information are intermediaries active on the corporate bond market, and they use the information to find out about turnover and pricing on the market.

### ANALYSIS OF REPORTED TRANSACTIONS

One of the objectives of MiFIR was for trading in financial instruments was carried out as far as possible on organised venues and for all such venues to be appropriately regulated.<sup>14</sup> According to FI's analysis, the volumes traded on a trading venue<sup>15</sup> have increased since MiFIR entered into force, which is in line with the expressed objective. Trading with systematic internalisers also increased. The requirements placed on systematic internalisers are higher than those placed on investment firms, which only trade an instrument OTC, even if it is approximately the same in.

Prior to 2018, before the introduction of MiFIR, almost all Swedish bonds were traded OTC. Starting in January 2018, the transaction volume traded on a trading venue or with a systematic internaliser increased sharply. Since then, approximately 60 per cent of the trading in both government and covered bonds is now carried out on a trading venue or with a systematic internaliser (Diagram 3). With regard to Swedish corporate bonds, the percentage of the transaction volume traded with a systematic internaliser has increased steadily since January 2018. At the same time, the percentage of the transaction volume traded OTC has gradually decreased.<sup>16</sup> In Q1 2019, just over 60 per cent of the transaction volumes were traded on a trading venue or with a systematic internaliser (Diagram 4).

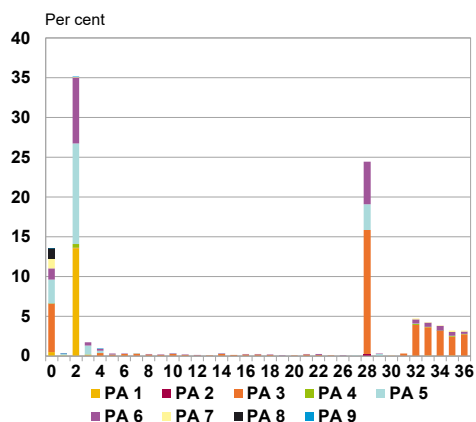
Because FI has opted to only allow deferred publication in certain cases, the application of the rules is more restrictive in Sweden than in other EU countries. As previously mentioned, some market participants felt that competition would be distorted to the disadvantage of Swedish market participants if FI opted to apply fewer deferrals than other countries. However, according to our analysis, the percentage of the transaction volume traded by Swedish market participants did not change after the introduction of MiFIR (Diagram 5). The results do not indicate that the market shares of Swedish participants decreased on the Swedish bond market.

<sup>14</sup> Whereas Point 6 in MiFIR.

<sup>15</sup> Includes regulated markets, MTFs and OTFs.

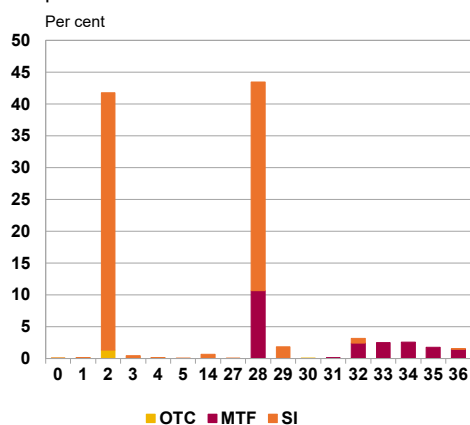
<sup>16</sup> The trajectory is less obvious for government and covered bonds since the distribution between systematic internalisers and OTC has been stable since 2018.

Diagram 6. Many different sources of information



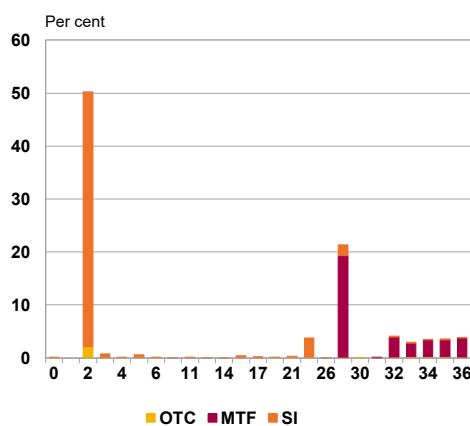
Source: Bloomberg.  
 Note: Number of days from the date of the transaction on which the transaction information is published and by which publication arrangement (PA in this case can be an APA or a trading venue). Per cent refers to the percentage of the total number of published transactions. Data for Q4 2019.

Diagram 7. Equal distribution between publication T+2 and four weeks



Source: Bloomberg.  
 Note: Number of days from the transaction date that information about transactions in government and covered bonds is made public, broken down by type of trading venue. Publication of aggregate transactions are excluded. Per cent refers to the percentage of the total number of published transaction volume. Data for Q4 2019.

Diagram 8. Publication occurs primarily on T+2



Source: Bloomberg.  
 Note: Number of days from the transaction date that information about transactions in corporate bonds is made public, broken down by type of trading venue. Publication of aggregate transactions are excluded. Per cent refers to the percentage of the total number of published transaction volume. Data for Q4 2019.

### PUBLISHED TRANSACTION INFORMATION

According to both market participants in Sweden and FI’s own analysis, transparency on the Swedish market has decreased since the introduction of MiFIR. The published information is now fragmented and difficult to find at the various publication arrangements. According to our analysis, there were at least nine different trading venues or publication arrangements that published transactions in Swedish bonds in Q1 2019 (Diagram 6). Different rules regarding deferred publication also resulted in publication at different points in time over a longer period depending on where the transaction was executed and by whom.

The large number of publication arrangements means that published information is not as accessible as it was before. It is also difficult to know what is being published where. Many publication arrangements also add password protection to the information they publish, which makes it even more difficult to access. In the absence of a CTP, private companies are instead consolidating published transaction information. However, these companies do not offer a comprehensive overview of what has been traded. Neither are there any requirements on how long information must be available after it has been published. This means that historical data is not always available to the public.

According to FI’s analysis, the publication of transaction information for both government and covered bonds are equally split between two points in time following the transaction date: either two days or four weeks after the transaction’s execution (Diagram 7). All systematic internalisers under FI’s supervision have been given the opportunity to defer publication of their transaction volumes for both government and covered bonds for four weeks. Corporate bond transactions executed by systematic internalisers are published two days after close, according to FI’s analysis (Diagram 8).

When market participants choose to execute transactions on an MTF in Sweden or within the EU, the information is made public four weeks or more after the close date. This applies to transactions in all types of bonds (Diagrams 7 and 8). According to the rules that apply in Sweden, however, the four-week deferral only applies to transaction information about government and covered bonds. However, Swedish participants that are trading Swedish bonds on trading venues primarily execute transactions on MTFs under the supervision of authorities in other EU countries. These authorities may have granted deferrals that are different than those granted by FI.

According to the rules applied in Sweden, deferred publication must be combined with the publication of details of several transactions in aggregated form. Since these rules are not necessarily applied by supervisory authorities in other countries, this often means that no information is published in conjunction with the actual transactions. Where the transaction is executed thus plays a large role in when information must be published. According to FI’s analysis, only a small percentage of the total transaction volume is published in aggregate form. Information about a transaction is therefore generally available at the earliest two days after the transaction has been executed.

A larger percentage of the volume of OTC transactions is reported to FI than is published and made available. The distribution between the publication of OTC trading and trading on trading venues or with a systematic internaliser shows that a majority of the information made public reflects transactions executed on a trading venue or with a systematic internaliser. This stands in contrast to both the transaction reporting and the survey responses, which indicate that a majority of the transactions are executed OTC. This indicates that there are transactions that either cannot be found or are not published. Consequently, the published information about trading on the Swedish bond markets provides only a partial overview.

## Conclusions

Transparency on the Swedish bond markets has decreased. This is primarily because information is published in many different places and is difficult to access. This decrease is also due to market participants executing transactions at trading venues in other EU countries, where they are able to defer publication to a higher extent than the Swedish rules allow.

### TRANSPARENCY HAS DECREASED

During the financial crisis in 2007–2009, the lack of transparency had harmful consequences. One of the objectives of MiFIR, therefore, was to increase transparency to strengthen the financial system. The intent was also to create harmonised rules for greater transparency within the EU. However, according to FI's analysis, transparency on the Swedish bond markets has instead decreased since the new rules entered into force. The regulatory framework has also made it possible for each EU country to apply the rules differently.

### Exemption option creates different rules in different countries

According to the current provisions in MiFIR, Swedish firms trading outside of a trading venue must follow the Swedish application of the transparency rules, regardless of where the instrument is admitted for trading and where the trading takes place. This means that if Swedish firms are trading OTC, they must apply the Swedish rules on deferred publication. However, because a growing share of market participants' trading is taking place on MTFs outside of Sweden, a greater portion of the publication is also occurring in accordance with the rules in effect in other countries.

When FI has authorised deferred publication the aim has been to maintain the transparency in Sweden. Since FI's analysis now shows that the transparency has decreased it could be justified to reassess the conditions that apply for granting deferred publication. A unilateral tightening of the rules on deferred publication by FI could be circumvented by market participants. Those executing transactions on an MTF in another EU country would still be able to defer the publication more to a higher extent than what Swedish rules allow. FI thus considers the fact that the time of publication can largely be determined by each competent authority to reduce harmonisation and counteract the objective of the regulation.

### Information is fragmented

Even if all market participants would apply the same rules on deferred publication, there is still the problem of fragmented information. The information is published either on a trading venue or a publication arrangement within the EEA. This means that information is published in different places depending on where the transaction is executed and by whom. The participants publishing the information then make it available in different ways. Sometimes it is difficult to find the information, and sometimes a password is required to gain access. Therefore, the information is not always available for everyone.

A CTP provides a platform where all information about executed transactions is to be consolidated, but there is currently no CTP within

the EEA. Some market participants are gathering published information about transactions from multiple sources, but their consolidation do not include all executed transactions. FI sees opportunities to improve transparency with the establishment of a CTP that is either privately or publicly owned.<sup>17</sup>

#### Uncertainty about if all information is being published

According to the responses from the survey, there seems to be some uncertainty regarding who publishes information about executed transactions. Some respondents also say that they are uncertain if all information is being published. Information about the OTC transaction volumes differs between what is in FI's transaction reporting system and the published transactions found by FI. According to FI's analysis, information is sometimes so difficult to find that it becomes uncertain if this is due to it never being published or just being very difficult to find. This also contributes to low transparency. FI believes that it is important for all market participants to contribute to compliance with the regulatory framework.

#### PROPOSED MEASURES

FI considers transparency to be an important means for markets to function well. Market participants agree that transparency on the Swedish bond market has decreased. FI shares this assessment and thus considers the development to have gone in the wrong direction. To improve the conditions for well-functioning markets, it is important to once again increase transparency.

In Denmark, the industry has reached an agreement for how to ensure good transparency. According to the agreement, market participants apply self-regulation by publishing information about transactions as soon as possible after the trade is concluded. Market participants are also able to defer publication of information until the end of the trading day for transactions in corporate bonds and mortgage bonds if the volume exceeds certain thresholds.<sup>18</sup> This self-regulation means that market participants apply the same rules that were applicable in Denmark before MiFIR.

Industry-led initiatives could also be used in Sweden to regain the high transparency that was present in Sweden before MiFIR. FI therefore takes a positive stance towards industry-led initiatives and would be happy to participate in further discussions about such initiatives.

In order for the rules on deferred publication and waivers to be harmonised within the EU, FI will advocate, within the European supervisory cooperation, that published information should be made available in a better way. However, this will take time and will not necessarily lead to transparency that Swedish market participants and authorities consider to be sufficient.

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<sup>17</sup> The European Securities and Markets Authority (ESMA) recently had a consultation on available price information before and after trade in shares and the presence of a CTP. A report will then be published on this topic. A similar consultation and report regarding non-equity instruments will probably be held within the next few years.

<sup>18</sup> The thresholds are DKK 20 million for corporate bonds and DKK 100 for real credit bonds.

Even if a unilateral tightening of the rules on deferred publication by FI could be circumvented by market participants we could still act on our own to increase transparency on the Swedish bond markets. That could be done by FI reassessing its position and the conditions that apply for granting deferred publication.

# Appendix

## APPLICABLE PROVISIONS

This appendix presents some of the transparency rules that apply to non-equity instruments.

### MiFIR

*Pre-trade transparency rules in MiFIR, non-equity instruments (MiFIR Articles 8, 9 and 18).*

#### Article 8

Pre-trade transparency requirements for trading venues in respect of bonds, structured finance products, emission allowances and derivatives.

1. Market operators and investment firms operating a trading venue shall make public current bid and offer prices and the depth of trading interests at those prices which are advertised through their systems for bonds, and structured finance products, emission allowances and derivatives traded on a trading venue. That requirement shall also apply to actionable indication of interests. Market operators and investment firms operating a trading venue shall make that information available to the public on a continuous basis during normal trading hours. That publication obligation does not apply to those derivative transactions of non-financial counterparties which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group.

2. The transparency requirements referred to in paragraph 1 shall be calibrated for different types of trading systems, including order-book, quote-driven, hybrid, periodic auction trading and voice trading systems.

3. Market operators and investment firms operating a trading venue shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information referred to in paragraph 1 to investment firms which are obliged to publish their quotes in bonds, structured finance products, emission allowances and derivatives pursuant to Article 18.

4. Market operators and investment firms operating a trading venue shall, where a waiver is granted in accordance with Article 9(1)(b), make public at least indicative pre-trade bid and offer prices which are close to the price of the trading interests advertised through their systems in bonds, structured finance products, emission allowances and derivatives traded on a trading venue. Market operators and investment firms operating a trading venue shall make that information available to the public through appropriate electronic means on a continuous basis during normal trading hours. Those arrangements shall ensure that information is provided on reasonable commercial terms and on a non-discriminatory basis.

#### Article 9

Waivers for non-equity instruments



1. Competent authorities shall be able to waive the obligation for market operators and investment firms operating a trading venue to make public the information referred to in Article 8(1) for:

a) orders that are large in scale compared with normal market size and orders held in an order management facility of the trading venue pending disclosure;

b) actionable indications of interest in request-for-quote and voice trading systems that are above a size specific to the financial instrument, which would expose liquidity providers to undue risk and takes into account whether the relevant market participants are retail or wholesale investors;

c) derivatives which are not subject to the trading obligation specified in Article 28 and other financial instruments for which there is not a liquid market.

2. Before granting a waiver in accordance with paragraph 1, competent authorities shall notify ESMA and other competent authorities of the intended use of each individual waiver and provide an explanation regarding their functioning. Notification of the intention to grant a waiver shall be made not less than four months before the waiver is intended to take effect. Within two months following receipt of the notification, ESMA shall issue an opinion to the competent authority in question assessing the compatibility of the waiver with the requirements established in paragraph 1 and specified in the regulatory technical standards adopted pursuant to paragraph 5. Where that competent authority grants a waiver and a competent authority of another Member State disagrees, that competent authority may refer the matter back to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010. ESMA shall monitor the application of the waivers and submit an annual report to the Commission on how they are applied in practice.

3. Competent authorities, may, either on their own initiative or upon request by other competent authorities, withdraw a waiver granted under paragraph 1 if they observe that the waiver is being used in a way that deviates from its original purpose or if they consider that the waiver is being used to circumvent the requirements established in this Article.

Competent authorities shall notify ESMA and other competent authorities of such withdrawal without delay and before it takes effect, providing full reasons for their decision.

4. The competent authority responsible for supervising one or more trading venues on which a class of bond, structured finance product, emission allowance or derivative is traded may, where the liquidity of that class of financial instrument falls below a specified threshold, temporarily suspend the obligations referred to in Article 8. The specified threshold shall be defined on the basis of objective criteria specific to the market for the financial instrument concerned. Notification of such temporary suspension shall be published on the website of the relevant competent authority.

The temporary suspension shall be valid for an initial period not exceeding three months from the date of its publication on the website

of the relevant competent authority. Such a suspension may be renewed for further periods not exceeding three months at a time if the grounds for the temporary suspension continue to be applicable. Where the temporary suspension is not renewed after that three-month period, it shall automatically lapse.

Before suspending or renewing the temporary suspension under this paragraph of the obligations referred to in Article 8, the relevant competent authority shall notify ESMA of its intention and provide an explanation. ESMA shall issue an opinion to the competent authority as soon as practicable on whether in its view the suspension or the renewal of the temporary suspension is justified in accordance with the first and second subparagraphs.

#### Article 18

Obligation for systematic internalisers to make public firm quotes in respect of bonds, structured finance products, emission allowances and derivatives

1. Investment firms shall make public firm quotes in respect of bonds, structured finance products, emission allowances and derivatives traded on a trading venue for which they are systematic internalisers and for which there is a liquid market when the following conditions are fulfilled:

- a) they are prompted for a quote by a client of the systematic internaliser;
- b) they agree to provide a quote.

2. In relation to bonds, structured finance products, emission allowances and derivatives traded on a trading venue for which there is not a liquid market, systematic internalisers shall disclose quotes to their clients on request if they agree to provide a quote. That obligation may be waived where the conditions specified in Article 9(1) are met.

3. Systematic internalisers may update their quotes at any time. They may withdraw their quotes under exceptional market conditions.

4. Member States shall require that firms that meet the definition of systematic internaliser notify their competent authority. Such notification shall be transmitted to ESMA. ESMA shall establish a list of all systematic internalisers in the Union.

5. Systematic internalisers shall make the firm quotes published in accordance with paragraph 1 available to their other clients. Notwithstanding, they shall be allowed to decide, on the basis of their commercial policy and in an objective non-discriminatory way, the clients to whom they give access to their quotes. To that end, systematic internalisers shall have in place clear standards for governing access to their quotes. Systematic internalisers may refuse to enter into or discontinue business relationships with clients on the basis of commercial considerations such as the client credit status, the counterparty risk and the final settlement of the transaction.

6. Systematic internalisers shall undertake to enter into transactions under the published conditions with any other client to whom the

quote is made available in accordance with paragraph 5 when the quoted size is at or below the size specific to the financial instrument determined in accordance with Article 9(5)(d).

Systematic internalisers shall not be subject to the obligation to publish a firm quote pursuant to paragraph 1 for financial instruments that fall below the threshold of liquidity determined in accordance with Article 9(4).

7. Systematic internalisers shall be allowed to establish non-discriminatory and transparent limits on the number of transactions they undertake to enter into with clients pursuant to any given quote.

8. The quotes published pursuant to paragraph 1 and 5 and those at or below the size referred to in paragraph 6 shall be made public in a manner which is easily accessible to other market participants on a reasonable commercial basis.

9. The quoted price or prices shall be such as to ensure that the systematic internaliser complies with its obligations under Article 27 of Directive 2014/65/EU, where applicable, and shall reflect prevailing market conditions in relation to prices at which transactions are concluded for the same or similar financial instruments on a trading venue.

However, in justified cases, they may execute orders at a better price provided that the price falls within a public range close to market conditions.

10. Systematic internalisers shall not be subject to this Article when they deal in sizes above the size specific to the financial instrument determined in accordance with Article 9(5)(d).

*Post-trade transparency rules in MiFIR, non-equity instruments (MiFIR Articles 10, 11 and 21).*

Post-trade transparency requirements for trading venues in respect of bonds, structured finance products, emission allowances and derivatives

1. Market operators and investment firms operating a trading venue shall make public the price, volume and time of the transactions executed in respect of bonds, structured finance products, emission allowances and derivatives traded on a trading venue. Market operators and investment firms operating a trading venue shall make details of all such transactions public as close to real-time as is technically possible.

2. Market operators and investment firms operating a trading venue shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information under paragraph 1 to investment firms which are obliged to publish the details of their transactions in bonds, structured finance products, emission allowances and derivatives pursuant to Article 21.

Article 11

#### Authorisation of deferred publication

1. Competent authorities shall be able to authorise market operators and investment firms operating a trading venue to provide for deferred publication of the details of transactions based on the size or type of the transaction.

In particular, the competent authorities may authorise the deferred publication in respect of transactions that:

- a) are large in scale compared with the normal market size for that bond, structured finance product, emission allowance or derivative traded on a trading venue, or for that class of bond, structured finance product, emission allowance or derivative traded on a trading venue; or
- b) are related to a bond, structured finance product, emission allowance or derivative traded on a trading venue, or a class of bond, structured finance product, emission allowance or derivative traded on a trading venue for which there is not a liquid market;
- c) are above a size specific to that bond, structured finance product, emission allowance or derivative traded on a trading venue, or that class of bond, structured finance product, emission allowance or derivative traded on a trading venue, which would expose liquidity providers to undue risk and takes into account whether the relevant market participants are retail or wholesale investors.

Market operators and investment firms operating a trading venue shall obtain the competent authority's prior approval of proposed arrangements for deferred trade-publication, and shall clearly disclose those arrangements to market participants and the public. ESMA shall monitor the application of those arrangements for deferred trade-publication and shall submit an annual report to the Commission on how they are used in practice.

2. The competent authority responsible for supervising one or more trading venues on which a class of bond, structured finance product, emission allowance or derivative is traded may, where the liquidity of that class of financial instrument falls below the threshold determined in accordance with the methodology as referred to in Article 9(5)(a), temporarily suspend the obligations referred to in Article 10. That threshold shall be defined based on objective criteria specific to the market for the financial instrument concerned. Such temporary suspension shall be published on the website of the relevant competent authority.

The temporary suspension shall be valid for an initial period not exceeding three months from the date of its publication on the website of the relevant competent authority. Such a suspension may be renewed for further periods not exceeding three months at a time if the grounds for the temporary suspension continue to be applicable. Where the temporary suspension is not renewed after that three-month period, it shall automatically lapse.

Before suspending or renewing the temporary suspension of the obligations referred to in Article 10, the relevant competent authority shall notify ESMA of its intention and provide an explanation. ESMA shall issue an opinion to the competent authority as soon as

practicable on whether in its view the suspension or the renewal of the temporary suspension is justified in accordance with the first and second subparagraphs.

3. Competent authorities may, in conjunction with an authorisation of deferred publication:

- a) request the publication of limited details of a transaction or details of several transactions in an aggregated form, or a combination thereof, during the time period of deferral;
- b) allow the omission of the publication of the volume of an individual transaction during an extended time period of deferral;
- c) regarding non-equity instruments that are not sovereign debt, allow the publication of several transactions in an aggregated form during an extended time period of deferral;
- d) regarding sovereign debt instruments, allow the publication of several transactions in an aggregated form for an indefinite period of time.

In relation to sovereign debt instruments, points (b) and (d) may be used either separately or consecutively whereby once the volume omission extended period lapses, the volumes could then be published in aggregated form.

In relation to all other financial instruments, when the deferral time period lapses, the outstanding details of the transaction and all the details of the transactions on an individual basis shall be published.

## Article 21

Post-trade disclosure by investment firms, including systematic internalisers, in respect of bonds, structured finance products, emission allowances and derivatives

1. Investment firms which, either on own account or on behalf of clients, conclude transactions in bonds, structured finance products, emission allowances and derivatives traded on a trading venue shall make public the volume and price of those transactions and the time at which they were concluded. That information shall be made public through an APA.
2. Each individual transaction shall be made public once through a single APA.
3. The information which is made public in accordance with paragraph 1 and the time-limits within which it is published shall comply with the requirements adopted pursuant to Article 10, including the regulatory technical standards adopted in accordance with Article 11(4)(a) and (b).
4. Competent authorities shall be able to authorise investment firms to provide for deferred publication, or may request the publication of limited details of a transaction or details of several transactions in an aggregated form, or a combination thereof, during the time period of the deferral or may allow the omission of the publication of the volume for individual transactions during an extended time period of deferral, or in the case of non-equity financial instruments that are not

sovereign debt, may allow the publication of several transactions in an aggregated form during an extended time period of deferral, or in the case of sovereign debt instruments may allow the publication of several transactions in an aggregated form for an indefinite period of time, and may temporarily suspend the obligations referred to in paragraph 1 on the same conditions as laid down in Article 11.

Where the measures adopted pursuant to Article 11 provide for deferred publication and publication of limited details or details in an aggregated form, or a combination thereof, or for omission of the publication of the volume for certain categories of transactions in bonds, structured finance products, emission allowances and derivatives traded on a trading venue, that possibility shall also apply to those transactions when undertaken outside trading venues.

## Glossary

**Approved publication arrangement (APA):** A person authorised under MiFID II to provide the service of publishing trade reports on behalf of investment firms pursuant to Articles 20 and 21 of MiFIR.

**Consolidated tape provider (CTP):** A person authorised under MiFID to provide the service of collecting trade reports for financial instruments from regulated markets, MTFs, OTFs and approved publication arrangements (APA). The participant is also authorised to consolidate the reports into a continuous electronic live data stream providing price and volume data per financial instrument.

**MiFID II and MiFIR:** EU's Directive and Regulation on markets in financial instruments aim to improve transparency, improve investor protection and strengthen confidence in the European securities markets. The rules apply to all firms providing investment services or activities.

**Multilateral trading facility (MTF):** A multilateral operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with MiFID II.

**Organised trading facility (OTF):** A multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with MiFID II.

**Systematic internalisers (SI):** An investment firm which, on an organised, frequent systematic and substantial basis, deals on own account when executing client orders outside a regulated market, an MTF or an OTF without operating a multilateral system.



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