Quoted Companies Alliance proposals regarding ESMA Consultation Paper on MiFID II / MiFIR (ESMA/2014/1570):

- Make it **proportionally easier to receive a delay for less liquid shares** as opposed to liquid;
- **Increase the maximum delay to at least T+2** to facilitate block trading and volatility management in less liquid securities;
- Ensure that the **analysis of Average Daily Turnover (ADT) bands includes data from SME Growth Markets** and not just Regulated Markets;
- **Clarify the parameters of the < €50,000 ADT band;**
- Consider introducing a **standard percentage of ADT to get each delay**.

Justification

1. What is the Deferred Publication Regime (DPR)?

Delayed trade reporting for abnormally large trades of shares is a feature of trading which has existed for many years and facilitates the execution of large client trades without creating undue market impact and price volatility. The management of this volatility and the assurance that the DPR facility is available allows an investor to enter into a holding with confidence that they can have an expectation of divesting of it at a reasonable price. Therefore, it mitigates the liquidity risk associated with material investment, particularly for small and mid-size quoted companies' securities.

2. How does DTR work?

The mechanism is available to an investment firm when they trade report an execution that has been dealt on own account (i.e. on risk) which exceeds certain minimum trade size parameters. The size of trade varies depending on the Average Daily Turnover (ADT) of the stock in question.

Under MiFID I, the delays available are: 1hr, 3hr, End of Day (EOD), T+1, T+2, T+3.

While the trade is submitted to the venue immediately, it is retained by the venue and released automatically at the end of the deferral period (or sooner, if requested by the reporting firm).

By delaying the reports' publication, the investment firm can flatten their risk position into the market through a series of much smaller trades, thus managing the market impact of the trade and reducing volatility. This means that the investment firm is assuming a much lower market risk than if the report were published immediately and hence can provide a more beneficial price to the investor, reducing the inherent market risk associated with significant investments.

Institutional investors often make significant investments in small and mid-size quoted companies – sometimes taking stakes as large as 10%. Therefore, changes to the DPR could have a profound effect on small and mid-size quoted companies' ability to attract investment, raise finance and grow.

For example, let us compare an ordinary sized trade to a pebble and a block trade to a brick. Throwing a pebble into a pond will cause limited disruption to the water's surface. If we were to throw a brick in to the same pond, it will have a much more disruptive effect. If, however, the brick is broken down it pebble sized pieces, then it is possible to throw each piece of the brick into the pond in turn. Thus, the entire brick enters the pond without making any greater disturbance to the water than a single pebble.

In practice, therefore, an investor is able to sell or buy the block without unduly unsettling the market. The investment firm has provided the service of risk transfer and utilises its market access to work the position carefully into the market during the deferral period. Once the information is released, the market will act rationally without undue volatility as the information does not reflect the current market.

3. Why are a range of delays required?

A range of delays are required to ensure that a trade receives only the most appropriate length of delay to balance the needs of the market for information with the needs of the individual investor wishing to deal in a block. If the delay is too short, then larger blocks will not have been worked into the market fully and so the investment firm will face increased market risk exposure on the rump of stock that they have to buy/sell. The investment firm will thus price this risk into its original trade with the client and thus the client will receives a worse price reflecting the inability of the DPR to properly protect their order and manage volatility.

In effect all the costs of an insufficient DPR regime are borne by large investors such as institutions. An insufficient DPR regime will harm the primary and secondary fundraising ability of small and mid-size quoted companies, as investors will not have sufficient protection to all them to exit such investments in an orderly manner. This will be a significant disincentive to participation in such markets for institutional funds.

4. Are there no other means of managing market impact?

Algorithmic trading strategies have developed extensively since the implementation of MiFID I. Often the investors position will be traded on an agency basis with the order being broken into smaller child orders, which are individually executed over time in the market – much like the brick and pebble analogy. As such, the small orders do not unsettle to market and manage market volatility. There are a number of flaws in this model though:

- It is only available for securities with liquid markets (i.e., the pond must be of sufficient depth to allow the pebbles to enter without the pond overflowing);
- It is only available for securities traded on order books; and
- The client maintains market risk until the order is completed.

As such, the use of algorithmic trading does not work for quote driven trading models and less liquid securities. It is, therefore, of no use for small and mid-size quoted companies' securities.

The restrictions proposed by MiFID II are unduly penal on less liquid securities, such as those of small and mid-size quoted companies.

We fear that the MiFID II changes to the DPR assume liquid markets universally exist for all types of securities. This is not the case – especially for small and mid-size quoted companies, which are the engines of growth for the European economy.

5. What is MiFID II proposing?

MiFID II proposes to exchange the current delays for a shorter range of 1hr, 2 hr and End of Day (EOD). The EOD delay may extend to the start of the following trading day if the trade is executed late in the afternoon. As the market is closed during this period, this offers little benefit to the market.

These delays are clearly significantly shorter than those currently in place and insufficient with regard to balancing the interests of individual investors with the rest of the market. Again, this is specifically an issue for small and mid-size quoted companies, where the DPR remains the only means of managing block trading.

In addition, the delay table proposed in ESMA's most recent consultation on its draft Technical Advice on MiFID II contains some flaws that are worth understanding in terms of the ease with which a delay may be obtained. The most telling example is that for the most liquid shares, shares with an ADT >€100m, a trade would need to be 35% of the ADT to receive and EOD delay. For the least liquid shares ADT<€100k, the same delay requires 50% of the ADT. Thus, the proposed ADT bands and delays are skewed disproportionately against small and mid-size quoted companies, as your trade must be a larger proportion of the daily traded volume of a share to get the same delay.

6. How do the MiFID II proposals need to change?

The proposals need to:

- Make it proportionally easier to receive a delay for less liquid shares as opposed to liquid, or at the least no harder;
- Increase the maximum delay to at least T+2 to facilitate block trading and volatility management in less liquid securities;
- Ensure the analysis of ADT bands used in the proposed table for the DPR includes data from SME Growth Markets and not just Regulated Markets.
- Clarify what parameters of the €50k ADT band are, which is described in the text of ESMA's most recent consultation on its draft Technical Advice on MiFID II, but the detail of which does not appear in the DPR table or anywhere else in the paper.
- Consider utilising a standard percentage of ADT to get each delay:
    - For example, if the ADT for a small and mid-size quoted company were €15,000 under the proposals, a participant would have to trade 100% of the ADT to get a 1hr delay. If the 1hr delay were a fixed 15% of ADT regardless of liquidity, this would require just a €2,250 trade. This would negate the need for such a complex table and prevent any bias between and within categories.

Shares and depositary receipts		
Class of shares and depositary receipts in terms of the average daily turnover (ADT) in EUR	**Minimum qualifying size of transaction for permitted delay**	**Permitted delay for publication**
> 100m	10,000,000	60 minutes
	20,000,000	120 minutes
	35,000,000	End of trading day
50m – 100m	7,000,000	60 minutes
	15,000,000	120 minutes
	25,000,000	End of trading day
25m – 50m	5,000,000	60 minutes
	10,000,000	120 minutes
	12,000,000	End of trading day
5m – 25m	2,500,000	60 minutes
	4,000,000	120 minutes
	5,000,000	End of trading day
1m – 5m	450,000	60 minutes
	750,000	120 minutes
	1,000,000	End of trading day
500,000 – 1m	75,000	60 minutes
	150,000	120 minutes
	225,000	End of trading day
100,000 – 500,000	30,000	60 minutes
	80,000	120 minutes
	120,000	End of trading day
< 100k	15,000	60 minutes
	30,000	120 minutes
	50,000	End of trading day