2nd Floor, 36-38 Botolph Lane
London EC3R 8DE
Tel +44 (0)20.7929.0081

8 March 2016

MiFID Coordination
Markets Policy and International Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

FIA Response to Consultation Paper FCA CP15/43 (Markets in Financial Instruments Directive II Implementation Consultation Paper).

Dear Sir, Madam

FIA welcomes the opportunity to comment on the Financial Conduct Authority (**FCA**) consultation paper entitled Markets in Financial Directive II Implementation – Consultation Paper I (December 2015 – CP 15/43).

Yours faithfully,

2nd Floor, 36-38 Botolph Lane
London EC3R 8DE
Tel +44 (0)20.7929.0081

Consultation response

Markets in Financial Instruments Directive II Implementation – Consultation Paper I (15/43)

FIA welcomes the opportunity to comment on **FCA CP 15/43 Markets in Financial Instruments Directive II Implementation – Consultation Paper I.**

We summarise below our high-level response to the consultation, which follows by answers to the individual questions raised.

Introduction

We have set out our response below which we would be grateful if the FCA would consider, as we believe the suggested changes would assist the UK market in understanding and implementing the requirements set out in MiFID II. We have set out some general comments below, before turning to answer some of the questions set out in the CP. Generally, we agree with many of the FCA's proposals but would like to take the opportunity to raise some high level points that we feel are important in the wider context:

(i) We recommend that the FCA's amendments to the Handbook not go beyond those requirements included in MiFID II and MiFIR to avoid detrimental 'gold-plating' of requirements contained therein and maintain the utility of exemptions included in MiFID II;

(ii) The REC Handbook should be amended to make clear that the proposed provision at REC 2.5.1(10)(a) does not apply in circumstances where a third country firm exclusively provides services to non-EU clients;

(iii) Any further guidance produced by EMSA should be incorporated into the relevant sections of the Handbook in as similar language as possible to avoid differing interpretations being given to national implementation measures.

(iv) The FCA should continue engaging with ESMA and trading venues in order to understand how to best set the relevant thresholds for pre- and post-trade transparency. In addition, it would be useful if the FCA could provide practical guidance related to the periodic assessments of transparency calculations in relation to existing deferrals.

FIA has not responded to the following FCA CP 15/43 questions: 4, 5, 6, 7, 11 and 27.

2nd Floor, 36-38 Botolph Lane
London EC3R 8DE
Tel +44 (0)20.7929.0081

General Observations

We are mindful of the very many issues with which the FCA have been presented during their implementation work and as such have sought to focus our response on those matters on which the FCA has raised specific questions and which relate to matters of relevance to FIA members.

i) Third Country Access and DEA provision

FIA raised issues regarding third country firms in a letter to the FCA in September 2015 outlining that the requirements should not apply to firms that are not established in the Union and that provide services to clients located exclusively outside Europe. This would include circumstances where the services being provided is direct electronic access (**DEA**). This is an outstanding issue that FIA raised with the European Commission in the past, we urge the FCA to do the same.

The third country provisions contained within MiFID II are complex and remain an area of uncertainty. We support the position proposed by HM Treasury in its consultation paper, whereby the UK retains its current regime in relation to third country firms and does not implement the obligations set out in Article 39 MiFID II.

We believe it is clear that authorisation and registration requirements set out in MiFID II and MiFIR do not apply to such firms for the following, cumulative reasons:

1) A third country firm is not an 'investment firm'

Article 4(1)(1) of MiFID II defines an investment firm as "any legal person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis". On its face, as is the case in MiFID, this definition is not restricted by any territorial application; it is therefore, by itself, not restricted to persons established in the EU.

However, other provisions in the directive make clear that the definition of investment firm is limited to firms within the Union. In particular, Article (4)(1)(57) defines a third country firm as "a firm that would be a credit institution providing investment services or performing investment activities *or an investment firm* ***if*** *its head office or registered office were located within the Union"* [Emphasis added]. This definition is mutually exclusive with the definition of investment firm. As such, a third country firm cannot be an investment firm within the meaning of the Directive.

Various scope provisions (under Article 1(1) and 1(2) of MiFID II and Article 1 of MiFIR) refer separately to "investment firms" and "third-country firms providing investment services or performing investment activities through the establishment of a branch in the Union," reinforcing the conclusion that a third-country firm is a different legal concept to an investment firm.

Therefore, MiFID II provisions applying to investment firms, without express reference to third-country firms, do not by definition apply to third-country firms.

2) The authorisation requirements under Article 5 MiFID II require authorisation to be granted by the "home Member State competent authority."

2nd Floor, 36-38 Botolph Lane
London EC3R 8DE
Tel +44 (0)20.7929.0081

Third-country firms do not have a home Member State and therefore cannot fall within the scope of the authorisation requirement set out in Article 5(1) of MiFID II.

Two aspects of third-country firm provision of services in the Union are expressly addressed in MiFID II / MiFIR but neither would apply where the third-country firm is solely providing services or performing investment activities outside the EU to clients outside the EU or is engaged in dealing exclusively on own account:

- Article 39 of MiFID II sets out certain conditions for a Member State's authorisation of a branch, which apply where a Member State chooses to require third-country firms to establish a local branch in order to "provide investment services or perform investment activities with or without any ancillary services" to retail and/or elective professional clients in its territory. [Emphasis added]

- Article 46(1) of MiFIR sets out a requirement for certain third-country firms to register with ESMA. Subject to an equivalence assessment being undertaken by the European Commission, Article 46(1) of MiFIR provides that a third-country firm may provide investment services or perform investment activities with or without any ancillary services to eligible counterparties and to professional clients within the meaning of Section I of Annex II to Recast MiFID (i.e. per se professional clients) established throughout the Union without the establishment of a branch where it is registered in the register of third-country firms kept by ESMA.

Both of these provisions apply only where services are provided to or activities are performed with or for a relevant client in the EU. In each case, there must therefore be a client in Europe to whom services are provided or for whom activities are performed.

Therefore, a third-country firm which is solely providing services or performing activities outside the EU to clients outside the EU would not fall within the scope of the registration requirements set out in MiFIR (as noted above, a third-country firm would never be subject to MiFID II authorisation requirements).

Likewise, where there is no obvious client established in the EU, as in the case of a third-country firm engaged in dealing exclusively on own account whose only nexus with the EU is the fact that it is a DEA user or direct participant / member of an EU trading venue, such a third-country firm would also fall outside scope of these provisions.

This issue is of particular relevance here in light of proposed REC 2.5.1(10)(a) UK. This currently states that "*Where the [UK RIE] permits direct electronic access to a trading venues it operates it must…ensure that members or participants…of that trading venue are only permitted to provide such services if they are investment firms authorised in accordance with MiFID or are credit institutions authorised in accordance with CRD".* We believe that in light of the conclusions set out above, the drafting should be clarified to reflect HMT's and the FCA's position on third country firms and the authorisation requirements that apply to them.

2nd Floor, 36-38 Botolph Lane
London EC3R 8DE
Tel +44 (0)20.7929.0081

ii) Number of Directorships for UK RIEs

We note that the proposed draft changes to REC include the restrictions on the number of Directorships that apply to persons on the management body of a UK RIE (at REC 2.4A.2 UK (1)). This restriction is the transposition of the requirements included at Level I and we therefore understand that this limitation is obligatory.

Our concern comes, however, in relation to those directorships which do not contribute to the deemed total held by an individual and in particular the treatment of directorships held for different companies within one corporate group.

Article 45 MiFID states that "*executive or non-executive directorships held within the same group or undertakings where the market operator owns a qualifying holding shall be considered to be one single directorship*" (our emphasis). We read this exemption to mean that where a director of a market operator also acts as a director for other companies within the same corporate group as that market operator, the total sum of his directorships for the purpose of this provision shall be deemed to be one. This is true irrespective of the position of the market operator within the group.

The FCA has set out this exemption in REC 2.4A.2 UK (2) and this text follows that proposed by HM Treasury in their consultation paper on the transposition of the Markets in Financial Instruments Directive II. The relevant rule states that "*executive or non-executive directorships held within the same group ~~or undertakings~~ where the [UK RIE] holds a qualifying holding…shall be counted as a single directorship*" (our emphasis).

We read this exemption to mean that where a director of a market operator which is based in the UK, also acts as a director for other companies within the same corporate group as that market operator, each directorship shall count towards his permitted total. The only directorships that would not contribute to the total are those held in subsidiaries of the market operator.

In changing the exemption, its potential utility has been materially reduced and it creates regulatory arbitrage between the regime in the UK and that in other European Member States. The pool of individuals who are sufficiently qualified and experienced to act as a director of a market operator is already relatively small. The inability of the UK to rely on the group exemption will mean that UK market operators will not only be at a competitive disadvantage when recruiting directors, they may also need to terminate the directorships of existing directors who act for several companies within the group.

We would strongly urge the FCA to engage with HMT in order to ensure that the exemption is amended in order to avoid adding unnecessary stringency and to reflect the Level I MiFID text.

2nd Floor, 36-38 Botolph Lane
London EC3R 8DE
Tel +44 (0)20.7929.0081

MiFID II Chapter 1: Overview

Q1: Do you find our proposed MiFID II Guide helpful? If not, how can we amend and improve the prototype?

Yes, FIA members find the proposed MiFID II Guide helpful.

It would be of benefit to have further clarity on the status of this guide and whether firms are permitted to rely on it in assessing their level of compliance with the relevant requirements. We note it is referred to as a "Guide" but it nonetheless remains unclear if it is intended to act as a Guidance (denoted by "G") or Evidential (denoted by "E").

EU MiFID II Chapter 2: Regulated Markets (RMs)

Q2: Do you agree with the FCAs approach outlined, to amend REC to take account of the MiFID II changes? If not, please give reasons why.

FIA members agree with the proposed approach to amend REC to include the obligations on regulated markets. We recommend, however, that the FCA's amendments should not go beyond those requirements included in MiFID or MiFIR and any "gold-plating" could be potentially detrimental.

For example, we note members' concerns over the implications of REC 2.4A.2 UK (b) which relates to the directorships that do not contribute to the overall limit imposed on directors of operators of UK RIEs. The original drafting is contained within the Level I text of MiFID II. This states at article 45 that "*executive or non-executive directorships held within the same group or undertakings where the market operator owns a qualifying holding shall be considered to be one single directorship*").

However REC 2.4A.2 UK (b) reflects the proposals put forward by HM Treasury which state that "*executive or non-executive directorships held within the same group ~~or undertakings~~ where the [UK RIE] holds a qualifying holding…shall be counted as a single directorship"* (our annotation).

This restricts the scope and utility of the exemption included in MiFID II and we do not believe that this is appropriate in this circumstance. The consultation paper does not include any explanation of the policy decisions behind the additional restriction. Therefore FIA does not agree with this proposed change.

Q3: Do you foresee any implementation issues with the approach above?

FIA members believe that there may be some implementation issues associated with REC 2.5.1(10)(a) UK which requires UK RIEs to ensure that any members or participants offering DEA are authorised under MiFID or CRD. It is currently unclear how third country firms can be authorised or regulated where they do not have a place of business in the EU. They have no "home Member State competent authority" and do not fall within the MiFID definition of "investment firm". We believe therefore that REC should be amended to make clear that this provision does not apply in circumstances where a third country firm exclusively provides services to non-EU clients.

We look forward to the publication of the second consultation paper in which the FCA will consult on the proposed changes to accommodate the rules governing position limits. Until we have had the benefit of reviewing these, we do not feel we can fully comment on the implementation issues associated with the changes to REC.

2nd Floor, 36-38 Botolph Lane
London EC3R 8DE
Tel +44 (0)20.7929.0081

EU MiFID II Chapter 3: Multilateral Trading Facilities (MTFs)

Q4: Do you agree with our approach to implementing MTF requirements in MAR 5? If not, please give reasons why

No comment.

EU MiFID II Chapter 4: Organised Trading Facilities (OTFs)

Q5: Do you agree with the FCAs proposals on how to implement OTF rules in MAR 5A? if not, please give reasons why

FIA members are supportive of the approach proposed by the FCA to implement OTF rules in MAR 5A. FIA points out that any further guidance produced by EMSA should be incorporated into the relevant sections of the Handbook in as similar language as possible to avoid differing interpretations being given to national implementation measures.

FIA members would also benefit from clear cross-referencing of national implementation rules with the corresponding European legislative instrument.

EU MiFID Chapter 5: Systematic Internalisers (SIs)

No comment.

EU MiFID II Chapter 6: Transparency

Q8: Do you agree that FCA should use their power to grant waivers from pre trade transparency in bonds, structured finance products, derivatives and emission allowances in relation to:

-orders that are large in scale

-orders held in an order management facility pending disclosure

-actionable indications of interest in request-for-quote and voice trading systems

-derivatives that are not subject to the trading obligation under article 28 of MiFIR, and other financial instruments for which there is a liquid market?

If not, please give your reasons why

Yes, FIA fully supports the FCA's proposal to use its power to grant waivers from pre-trade transparency in the circumstances detailed above. However, concerns remain that incorrect liquidity assessments will produce inappropriate Large in Scale and Size Specific to Instrument thresholds, and further calibrations should be made to account for specific trading strategies e.g. packages.

We refer to FIA's response to the ESMA Consultation Paper on non-equity Transparency.

2nd Floor, 36-38 Botolph Lane
London EC3R 8DE
Tel +44 (0)20.7929.0081

Q9: Do you agree the FCA sourcebook should provide more clarity in relation to the process of applying for a pre-trade transparency waiver, and the information that we deem necessary in order to evaluate an application? If not please give reasons why.

FIA fully supports the FCA making available details on the process for the application of a pre-trade transparency waiver. Including the information in the sourcebook would be a sensible proposal, permitting ease of access and providing the FCA the ability to update the rules should it be necessary.

We believe that the FCA should actively engage with trading venues during the application creation process in order to ensure that the process is clear, practical and workable both for venues and for the FCA. We believe that the FCA should also give sufficient and timely clarity around when it will be ready to accept waiver applications in advance of the MiFIR transparency regime coming into place such that waivers would be available from the start.

Q10: Should the sourcebooks include templates setting the minimum information content that trading venues should provide the FCA when applying for a waiver? If not please give reasons why

Yes we believe that they should. Trading venues should be equipped with as much information as possible when submitting an application for a waiver from the pre-trade transparency obligations. This information should sensibly be collated together in order to ensure that trading venues can access the information easily without having to consult a variety of sources. In addition, where the FCA needs to make changes to the required information it can do this efficiently and easily where the information is consolidated in a single location.

We believe that it would be helpful if trading venues could print template copies of the forms from the internet so that they can use these in order to prepare draft versions of the final application. In addition, if the FCA proposes permitting (or requiring) electronic applications then this should be made clear. The templates provided in the sourcebook should be identical to those used as part of the electronic submission process in order to ensure clarity and minimise confusion.

Q11: Do you agree that the FCA should be prepared to authorise operators of trading venues and investment firms to defer the publication of post-trade information in relation to large in scale transactions in shares, ETFs and depositary receipts executed by investment firms acting in a principal capacity?

No comment.

If yes, should FCA provide guidance in the handbook on the process for applying deferrals? if not, please give reasons why.

Q12: Do you agree that the FCA should authorise operators of trading venues and investment firms to provide for deferred publication in relation to transactions that are:

-large in scale

-in financial instruments for which there is not a liquid market

- above the size specific to the instrument, and

-packages

if yes, do you agree the FCA should set up the process for the use of guidance in the Handbook, for the application of deferrals? if not, please give reasons why.

2nd Floor, 36-38 Botolph Lane
London EC3R 8DE
Tel +44 (0)20.7929.0081

FIA agrees that the FCA should authorise operators of trading venues and investment firms to provide for deferred publication in the specified circumstances.

In relation to financial instruments in which there is a liquid market, we agree that the FCA should permit deferral for such instruments. In order for the benefit of this deferred regime to be directed correctly, it is critical that the liquidity (or otherwise) of a financial instrument is calibrated correctly and at the appropriate level of granularity. In order to ensure that this can be achieved it would be appropriate for the FCA to continue engaging with ESMA and trading venues in order to understand how to best set the relevant thresholds.

In addition, it would be useful if the FCA could provide further guidance with regards to the periodic assessment of transparency calculations and to confirm that such periodic assessments will not require firms to re-apply for deferrals which have previously been granted by the FCA.

Q13: Should the FCA:

- use their powers under article 11(3) of MiFIR further to calibrate post-trade deferrals in accordance with the above options

-require additional information to be made public during the deferral period?

and/or should the FCA:

-permit the omission of the volume, or the aggregation of information, for an extended time period of four weeks?

if not, please give reasons why.

FIA believes that where a deferral is permitted, the default position should be that a blanket deferral applies to all aspects of the transparency requirements.

Where calibrated deferral can be reasonably and objectively justified by the FCA or by the trading venue (for example where a calibrated deferral would be beneficial to the market or not to provide such a deferral would be detrimental to the market) then we believe it would be appropriate for the FCA to exercise its powers under article 11(3) of MiFIR.

EU MiFID II - Chapter 7: Market Data

Q14: Do you agree with FCAs approach to DRSPs in MAR 9? If not, please give reasons why.

FIA supports AFME in seeking further clarity on the requirement to register as an ARM if submitting reports for another legal entity:

- We assume that this does not have an impact in the scenario where multiple firms within a group route transaction data to a registered ARM through any co-owned or group-owned infrastructure. In either situation each firm would be submitting its own data to the ARM.
- We assume that this provision does not apply in the scenario where firms report on behalf of other firms within the same group
- We assume that this provision does not apply to reports submitted by a firm to a registered ARM containing data supplied by a client of that firm under the Receipt and Transmission of Order (RTO) framework as described in RTS 22

2nd Floor, 36-38 Botolph Lane
London EC3R 8DE
Tel +44 (0)20.7929.0081

- Does this provision apply to 3rd party service providers sitting between a firm and a registered ARM?

Additionally, can you please advise if the answer to any of the above would be different if the firm were connecting directly to the FCA?

Q15: Do you agree with FCAs proposal not to apply the transaction reporting obligation to managers of collective investment undertakings and pension funds? If not, please give reasons why

FIA members support the pragmatic approach taken by the FCA not to extend the MiFID II reporting requirement to managers of collective investment undertakings and pension funds. We consider that the reports of MiFID II investment firms and trading venues will already supply the information required for the FCA to fulfil its regulatory oversight mandate.

Q16: Do you agree with FCAs proposals to require connectivity with our systems for certain entities sending transaction reports and reference data to us? If not please give reasons why

FIA members agree with the proposals for systematic internalisers and non-RIE trading venues to maintain connectivity with FCA systems. Oversight of reference data is key to ensuring that regulators maintain a complete picture of markets and what is being traded. This requirement will enable regulators to ensure that this is maintained adequately.

EU MiFID II – Chapter 8: Algorithmic and High Frequency Trading (HFT) Requirements

Q17: Do you agree with FCAs proposal to add in the rules outlined above to their handbook? If not, please give reasons why.

FIA broadly supports the FCA proposed approach in applying the provisions of Articles 17 and 48 MiFID 2. While applicable to multilateral trading facilities (MTFs) and organised trading facilities (OTFs), we consider the draft MAR 5.3A and 5A to be relevant for our members that are member/participants/clients of MTFs and prospective OTFs.

We support the FCA's proposed approach in prescribing rules proportionate to the nature, scale and complexity of trading venue operations. However, we caution that all trading venues that must have *sufficient* systems and controls to comply with or manage the requirements and risks listed in MAR 5.3A.2 and 5A.5.2. Those trading venues that permit algorithmic trading must have a trading system that meets minimum performance criteria, must have procedures for rejecting erroneous orders and must have safeguards to prevent disorderly trading conditions.

We support the proposed rules at MAR 5.3A.3(2) and 5A.5.3(2), which we consider to accurately reflect the obligation on trading venues set out in Article 5 of draft RTS 7 . We do not consider the Article 48(2)(b) MiFID 2 requirement to be optional or applicable only to larger trading venues. Rather we consider the requirement applicable to any MTF or OTF operating a "continuous auction" order book for trading in liquid equities, ETFs, futures and options relating to these financial instruments and liquid equity index futures and options.

Q18: Do you agree with our proposal to add new section to MAR for Algorithmic and HFTF firms, DEA providers and general clearing members? If not, please give reasons why.

2nd Floor, 36-38 Botolph Lane
London EC3R 8DE
Tel +44 (0)20.7929.0081

Yes. However, we remind the FCA that the Article 17(1)-(6) MiFID 2 requirements apply variously to:

1. Investment firms that engage in algorithmic trading (including applying a so-called "high frequency algorithmic trading technique");
2. Credit institutions that engage in algorithmic trading; and

Persons that are members or participants of regulated markets and MTFs that engage in algorithmic trading and that avail of an exemption to authorisation under Article 2(1)(a), (e), (i) or (j) MiFID 2.

Q19: Do you foresee any implementation issues with the content of MAR 7A? If so, please provide examples

Generally, we consider that the proposed MAR 7A rules to be consistent with the requirements of Article 17 MiFID 2 and draft RTS 6. However, we offer the following observations and suggested amendments for MAR 7A.3.2 and 3:

1. MAR 7A.3.2(4) systems and controls

We caution the FCA on application of the Article 17(1) MiFID 2 requirements in respect of preventing market abuse. It is impossible to ensure that a trading system could *never* be used to submit orders in breach of the general prohibitions in Regulation 596/2014 on market abuse. We appreciate that that such a strict requirement may not reflect the intention of the co-legislators and is not detailed in Article 13 RTS 6. We suggest amending the rule to state: "cannot *ordinarily* be used for any purpose that is contrary to:"

We also wish to highlight to the FCA the ambiguity in Article 13(5) RTS 6, to which the proposed Handbook rules pertain. We consider that the requirement to "replay" order and transaction data may be interpreted as a requirement on firms subject to the legislation to record market data. We do not believe this to be the intention of either the co-legislators or ESMA and we encourage the FCA to seek amendment to this provision.

2. MAR 7A.3.3(1) business continuity arrangements

We do not believe that this draft rule properly reflects the proportionality conditions in Article 14(1) RTS 6. We suggest amending the rule to state: "have in place ~~effective~~ *appropriate* business continuity arrangements to deal with any failure of its trading systems;".

Q20: Are you in favour of the reports under MAR 7A.3.7 and MAR 7A.4.5 being submitted to us regularly, as opposed to an ad hoc basis?

No. We support the proposed approach of reporting at the request of the FCA.

Q21: If you are in favour, what will be the advantages of regular reporting as opposed to ad hoc reporting?

N/A

Q22: If we were to require regular reporting, what would be the cost to your firms?

N/A

2nd Floor, 36-38 Botolph Lane
London EC3R 8DE
Tel +44 (0)20.7929.0081

EU MiFID II – Chapter 9: Passporting and branches of non-European Economic Area (EEA) firms

Q23: Do you agree with the FCAs proposed Handbook changes on passporting? If not, please give reasons why.

FIA agrees with the FCA's proposed Handbook changes as set out in the consultation paper. A harmonised template can only be helpful and is able to provide an appropriate degree of protection for consumers.

Q24: Do you agree with the drafting of the FCAs proposed rule to apply obligations in directly applicable regulations to UK branches of non-EEA firms? If not, please give reasons why.

FIA agrees with the FCA's proposed drafting as it creates a level playing field by creating directly applicable regulations and requirements for UK branches of non-EEA firms.

Q27: Do you agree with our proposal to continue to offer perimeter guidance in relation to the scope of EU legislation by updating PERG 13? If not, please give reasons why

No comment.

Q28: Do you agree with our interpretation of the definition of a multilateral system? If not, please give reasons why

We support ISDA in its response to Q28 and welcome the FCA's proposed guidance on what constitutes a "multilateral system", as set out in the proposed PERG 13.3 Q24B guidance. As the FCA highlights, this term forms a fundamental part of the definitions of both an organised trading facility and a multilateral trading facility, and is the trigger for the requirement in Article 1(7) MiFID2 to operate as a regulated market, an MTF or an OTF. In order to limit any uncertainty in the scope of these provisions and on the applicability of MTF and OTF requirements to trading activity in general, it is therefore critical to clearly delineate the extension of this term.

In particular, the proposed guidance does not clearly distinguish between (i) systems which are designed with the purpose of matching third-party trading interests, and (ii) trading activity which incidentally involves ad hoc matching of such interests. In our view the latter should not constitute the operation of a multilateral system, as it does not involve the operation of a system designed to allow for interaction between third-party interests. In contrast, it may simply involve alignment of particular third-party interests in the context of a particular transaction and incidental to the investment firm's business model.

For example, in a non-equities context a bond trader may receive an order relating to a large position from one client, which the trader may unwind by engaging in matched trades with one or more clients taking opposing positions. Such activity may involve matched principal trading, in part or in whole, if this would follow client instructions or would be advantageous to the quality of execution provided to the client, but is unlikely to be the way in which a dealer would structure its business as a whole. In our view, this activity should be permissible for a systematic internaliser, provided that it does not result from the design of the trading system of the systematic internaliser's business model. FCA perimeter guidance would therefore be welcome on this point, however the proposed drafting does not provider certainty on the extent to which such activity may occur.

2nd Floor, 36-38 Botolph Lane
London EC3R 8DE
Tel +44 (0)20.7929.0081

We would therefore propose the following amendment to paragraph six of the proposed PERG 13.3 Q24B guidance, in order to clarify that activity will only constitute the operation of a multilateral system where it involves a system whose purpose is to facilitate interaction of third-party trading interests:

In particular, a platform will be considered a multilateral system (and hence be required to operate as a regulated market, MTF or an OTF in accordance with article 1(7) of MiFID) if the system is designed with the purpose of ~~provides the ability for trading interests to interact by~~:

- **allowing multiple participants to see such information about trading interest in financial instruments, or to submit such information about trading interest in financial instruments for matching; and**
- **enabling them, through technical systems or other facilities, to take steps to initiate a transaction, or be informed of a match.**

We would also propose deleting the last sentence of the proposed PERG 13.3 Q24B guidance, as this appears to be inconsistent with the rest of Q24B and with Article 1(7) of MiFID2. If all systems which qualify as multilateral systems are required to be authorised as regulated markets, MTFs or OTFs, the definition of "multilateral system" should not go beyond the definition of an OTF, MTF or of the systems operated by regulated markets. We would propose the following amendment to address this point:

~~The definition of a multilateral system goes beyond the definitions of an OTF and MTF and of the systems operated by regulated markets.~~

2nd Floor, 36-38 Botolph Lane
London EC3R 8DE
Tel +44 (0)20.7929.0081