

MiFIR Review: Priority issues for the trilogue process

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- **Reforms to the EU deferral regime for bonds should aim for a more ambitious level of post-trade transparency in fixed income markets**, as this results in more reliable and accurate pricing, lower transaction costs and increased aggregate liquidity. Shorter deferral periods will also improve the quality and usefulness of the CT.
- **Co-legislators should ensure a level playing field across the EU to ensure that best execution and open competition are at the core of EU financial markets. PFOF should either be completely banned or subject to rigorous best execution standards and a competitive market structure.** PFOF has taken on outsized significance given the underlying structural anomaly – the Single Market Maker Model – supported by the current regulatory approach allowing PFOF at Member State discretion. The Single Market Maker problem requires urgent resolving. To this end, the definition of Multilateral System should be modified to ensure meaningful interaction of multiple buying and selling interests to address the Single Market Maker Model (see **Annex** for suggested draft amendments).
- **FIA EPTA strongly supports the creation of a single comprehensive, low cost, real-time Consolidated Tape (CT) for each of equities and ETFs; bonds; and OTC derivatives developed as three separate but parallel CT products.** A comprehensive CT, including a pre-trade CT for equities and ETFs, is essential for creating cohesion within the EU single market and improving the international competitiveness and accessibility of the EU single market. We, therefore, support the Parliament’s proposal on the CT.

Bond Transparency

- **European bond markets have historically been bilateral, opaque and difficult for new entrants to access** as they are dominated by a limited number of very large trading firms. This leads to market illiquidity, information asymmetries, less accurate prices and most importantly higher cost for the end investor.
- **Reforms to the EU deferral regime for bonds should aim for a more ambitious level of post-trade transparency in fixed income markets, as this results in better, more reliable pricing, lower transaction costs and better liquidity.** This has been consistently demonstrated in academic research to be the case in jurisdictions (e.g. the US) with genuine post-trade transparency including real-time price publication and limited volume masking for very large trades.
- **Shorter deferral periods will improve the quality and usefulness of the Consolidated Tape for bonds**, making it easier for all end-investors to access information about ongoing trading activity by levelling the playing field, reducing information asymmetries and increasing investor confidence. Deferral proposals should by no means result in less transparency for listed derivatives.
- **A more simplified deferral regime will bring the EU in line with global best-practice.** We are concerned that a bucketing approach spread out over five subcategories will create unnecessary complexity. We remain convinced that a better alternative will be to apply generic volume masking for large trades (for a period of two weeks) in conjunction with a short, 15-minute deferral period and certainly not later than end of day. The dissemination of the reported notional amount of large-

size trades should hereby be capped at specified thresholds in order to reduce information leakage.

- **It is critical that ESMA be given broad discretion** to establish appropriate deferral categories and periods, with these being reassessed and recalibrated over time with a view to ambitiously only reducing deferral periods. Further, maximum deferral periods should be harmonised across Member States to prevent unduly long deferrals under national regimes.
- **Deferrals should be calibrated to time required by a dealer to hedge, not to unwind.** Deferral periods should be determined by reference to the length of time required by a liquidity provider to hedge a position in the interests of risk management, rather than the time taken to completely economically unwind a position. This results in increased transparency and therefore lower costs for investors whilst also giving dealers adequate time to manage risk.
- **The illiquid deferral should be removed** as deferrals inhibit natural growth and interest in illiquid instruments thereby reinforcing illiquidity.

Payment for Order Flow

- **Current PFOF practices in one Member State are a symptom of EU market structure deficiencies but PFOF is not per-se at the core of the problem:** The debate on PFOF has taken on outsized significance given the underlying structural anomaly supported by the current regulatory approach allowing PFOF at Member State discretion. At the heart of this anomaly is the Single Market Maker model prevalent on regional exchanges in one Member State, which we address further below.
- **A level playing field across the EU is essential to protect the Single Market and the level playing field between Member States.** MiFID/MiFIR should ensure a harmonised approach regarding PFOF practices in the EU. We see two routes to ensure a level playing field: either via an all-encompassing ban of PFOF practices in the EU, or alternatively, via a harmonised EU regime that ensures a coherent, responsible, competitive and transparent regime for PFOF. However, given the inherent risks for the integrity of the Single Market and to investor protection, allowing Member State discretion on PFOF practices would be highly inappropriate.
- **ESMA needs to be empowered to ensure a harmonised outcome regarding PFOF:** To ensure a level playing field between both firms and Member States, a common supervisory approach across Member States will be critical, which requires a strong mandate for ESMA to drive supervisory convergence in regard to PFOF with an active role played by ESMA
- **Best execution and open competition should be at the core of any PFOF practices if they were to be allowed:** A responsible PFOF regime in Europe (as a possible alternative to a full PFOF ban) will need to have strict harmonised requirements for brokers to manage the inherent conflicts of interest and to ensure that they seek the best possible outcome for clients in a competitive market structure and against an objective, transparent, and appropriately disclosed EU-wide benchmark (i.e., the EBBO). Being able to objectively benchmark against the EBBO will require a well-designed and well-functioning Consolidated Tape (see below).

Single Market Maker Models (SMM Models)

- **The definition of Multilateral System should be enhanced to ensure meaningful interaction of multiple buying and selling interests,** precluding systems that rely on a single participant on one side of each trade, leaving them absent of healthy competition and leading to worse prices for end-investors, such as is the currently the case with the Single Market Maker Models in one Member State.
- **SMM Models undermine multilateral public markets and the level playing field across firms and Member State in the Single Market:** Trading venues should be prohibited from operating single market maker trading models/segments that do not allow for the entrance of and/or meaningful competition by additional liquidity providers in the same market segment.

- **Trading venues should be held to promote as much competition in their order book as possible.** Multiple liquidity providers deliver competition resulting in tighter spreads and better pricing as each liquidity provider competes against another to win each trade. This inherent price quality and consistency arising from liquidity provision is what investors seek when they opt to route their orders to a multilateral trading venue as it provides better opportunities for price improvement. We support the Parliament's efforts to incorporate the concept of competing liquidity providers in article 47(1) of MiFID II and provide suggested drafting amendments in the **Annex** to ensure the effectiveness of this concept.

The Consolidated Tape

- **A single comprehensive, low cost, real-time, pre-trade Consolidated Tape (CT) for each of equities and ETFs; bonds; and OTC derivatives developed as three separate but parallel CT products** and delivered as soon as possible, will ameliorate fragmentation and complexity and will support liquidity and investor confidence, strengthening EU financial markets. Given the development of the CT for bonds is relatively straightforward, this should not be delayed due to complexities associated with CTs for other financial instruments.
- **A comprehensive CT is essential for improving the international competitiveness and accessibility of EU markets to international investors** many of whom currently find EU markets too complex and opaque. A comprehensive low cost, real-time, pre-trade CT will support transparency, including in respect of SI trading.
- **We support the proposal put forward by the European Parliament** which provides a pragmatic and workable solution.
 - We would strongly caution against any artificial (operationally induced) delays, as these will significantly reduce the ability of the CT to support the key objective of reducing EU fragmentation and providing easier access to financial markets for asset managers and retail investors.
- **Instrument scope should be as wide as possible**, covering all financial instruments/ISINs traded in the EU. It should include **all types of fixed income products** (corporate, sovereign, and municipal), irrespective of maturity, credit rating, liquidity profile or transaction method or applicable deferral. We believe the equity and ETF CT should be one and the same and should be delivered as soon as possible.
- **Mandatory contribution of post-trade data to the CT by market operators and firms is essential.** This needs to include **all forms of bilateral and multilateral trading**, irrespective of whether this is conducted on a Trading Venue or not, and should include all SIs and pure OTC. Smaller markets or concentrated instruments should not be scoped out.
- **The CTP should be subject to strong independent governance structure safeguarding the interests of all relevant stakeholders:** the CTP should be selected by ESMA under a clear and transparent procurement process with ongoing monitoring and accountability for efficient delivery of the CT Products meeting quality and utility standards made available at low cost under non-complex fee and user policies, under ESMA's supervision to ensure the CTP is acting in the best interests of users.
- **Appropriate checks and balances** should be built into the governance structure to ensure no group of stakeholders has exclusive rights and to safeguard against anti-competitiveness and conflicts of interest.

Equity Market Structure

- **EU equity market structure has mostly operated well under the existing MiFID II regime. Reforms should aim for simplification while safeguarding market transparency.** Pre-trade transparency is

essential for ensuring effective liquidity aggregation that enables best execution. For market quality in the EU, it remains critical to apply appropriate limits to dark trading.

- **We support the introduction of a Single Volume Cap:** In the interests of reducing complexity and supporting efficiency, we support proposals to simplify the Double Volume Cap regime.
- **The usage of the Reference Price (RPW) and Negotiated Trade (NTW) Waivers should continue to be capped at an appropriate level:** The application of pre-trade transparency waivers should be limited in order to promote maximum transparency to support efficient price formation, particularly below wholesale trade sizes. On that basis, the scope of waiver activity subject to the new Single Volume Cap mechanism should not be limited compared to the current approach.
- **In the interests of maintaining the international competitiveness of EU markets and not introducing further complexity,** we support the Council position on use of the Reference Price Waiver not being subject to a minimum threshold.
- **Proposals to increase the Minimum Quote Size for Systematic Internalisers (“SIs”) will not address concerns regarding non-risk taking activity by some SIs.** We therefore support maintaining current minimum quote sizes which provide SIs with flexibility to decide to which counterparties they allocate risk.
- **Current restrictions on off-tick mid-point execution by SIs to trades above the Large In Scale thresholds establish a more level playing field between SIs and multilateral trading venues.** We, therefore, support maintaining the current regime.

Market Data

- **Trading venues should be accountable and transparent in how they price trading data to ensure a fair market.** We support the Parliament proposal which empowers ESMA to specify criteria for pricing on a Reasonable Commercial Basis and identify cost criteria in producing and disseminating market data and to specify what constitutes a reasonable margin.

About FIA EPTA: The European Principal Traders Association (FIA EPTA) represents Europe’s leading Principal Trading Firms. Our members are independent market makers and providers of liquidity and risk transfer for markets and end-investors across Europe, providing liquidity in all centrally cleared asset classes including shares, bonds, listed derivatives and ETFs. FIA EPTA works constructively with policymakers, regulators and other market stakeholders to ensure efficient, resilient and trusted financial markets in Europe. More information about FIA EPTA and independent market makers is available on: www.fia.org/epta and www.wearemarketmakers.com

Annex – Suggested drafting amendments to address Single Market Maker Models

A: Proposed amendment (in MiFIR) to Article 4(1)(19) of Directive 2014/65/EU (highlighted in blue)

(19) ‘multilateral system’ means any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system, and excludes a system or facility where, by design or implementation, one investment firm, credit institution or third country equivalent, using its proprietary capital or on a riskless principal basis, is a party to all trades in an instrument on that system or facility (or a specifically designated trading segment therein) in a systematic manner or has the specific right to do so.

B: Proposed amendment (in MiFID) to article 47(1) (adjustment to Parliament proposal)

(ga) to **accept** requests from and **permit** the participation of all market participants, interested in providing liquidity on that market, on a non-discriminatory and transparent basis, who should be treated equally (in terms of incentives, rules etc).