European Fund and Asset Management Association

POSITION PAPER

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EFAMA POSITION MiFIR REVIEW
A BUY-SIDE VIEW ON CONSOLIDATED TAPE AND MARKET STRUCTURE REFORMS

EXECUTIVE SUMMARY

The European Commission's proposal on MiFIR establishes the blueprint for a consolidated tape (CT) for Europe's capital markets. It also significantly alters the competitive market structure brought about by MiFID II by introducing greater transparency requirements. Finally, it addresses important issues around market data costs.

EFAMA fully supports most aspects of the CT proposal, including:

- As close to real-time delivery of data as possible (meaning millisecond range for equities, and minute speed for bonds)
- Mandatory contribution by trading venues, APAs and SIs
- Voluntary consumption of the CT
- A single CT provider model
- Consolidated tapes for multiple asset classes

At the same time, we voice important reservations about the proposed revenue model for the CT providers. Also, while data quality issues can be addressed through the proposed data expert group, there is a need for an explicitly defined market surveillance body to enforce data standards and deter/reduce the provision of poor quality data.

On market structure reform, the proposed transparency requirements are far-reaching, not always supported by evidence and will result in less diversity, choice and competition in Europe's capital markets.

On market data costs, we are fully aligned with the EC proposal, though we would like the proposal to go further and reflect ESMA's recent recommendations on this topic.

Finally, a common theme underpinning our position is a concern that the proposed reforms as they stand today would reduce Europe's attractiveness as a destination for global investors, that EU firms would be placed at a disadvantage compared to their non-EU peers, and that opportunities around increasing retail investor confidence and facilitating digital transformation would not be fully seized.

CONSOLIDATED TAPE

The MiFIR review proposal has at its centre provisions for the establishment of a consolidated tape. A European consolidated tape providing real-time trading data from across the EU27 from both primary markets (national exchanges) and alternative trading venues (MTFs and SIs) is long overdue. A single security can trade on multiple platforms across the EU. In order to make informed decisions and obtain the best prices (best execution), investors require access at a reasonable cost to real-time trading data, i.e., on prices and volumes.

What happens today In the absence of a consolidated tape, investors must build their own view on the liquidity and trading opportunities across the EU. The largest asset managers can do this at considerable cost aggregating in-house, different individual data feeds that they subscribe to. This is sub-optimal, costly and inefficient. Smaller asset managers and retails investors, with smaller or zero budget(s) for data feeds are quite simply operating with limited information. Clearly there is an uneven playing field for investors accessing critical market data. Another shortcoming of today's system concerns issuers of securities, and their inability to have their securities be 'seen' by investors. Consider the difference for the issuer of a share in a small market in the EU. The trading data currently will only be seen by investors who pro-actively opt-in and pay to receive data from that small stock exchange. With a European consolidated tape, that issuer would automatically appear on the tape, and be seen by the whole of Europe's investor base, large or small, institutional or retail.

The criticality of the flow of data from trading venues to investors is the reason why in the United States there has been a consolidated tape in place since the late 1970s, and why in the UK, one post-Brexit regulatory priority has been the creation of such a consolidated tape, especially on the fixed income data side where the UK has a large number of competing trading platforms.

The quest for a consolidated tape for Europe goes beyond fair and efficient markets as described above. A real-time consolidated tape will also help attract **global investment flows** into Europe. Currently an Asian or Latin American investor when deciding to invest overseas will value the US market above Europe due to the availability of real-time trading data for the whole of the market. This is especially true for ETF investors who for risk management purposes need to have full data on liquidity and prices before executing trading decisions.

The global competitiveness angle is an important one, and the longer we are without a consolidated tape, the more this will be reflected in our ability to compete in global capital markets. Similarly, a European real-time consolidated tape is a litmus test of Europe's ability to deliver on its **ambitious digital strategy**. More specifically, we cannot speak of a common European data space in financial services when there has been failure to deliver even a basic consolidated tape to investors. This becomes all the more important if we consider recent trends in **retail investment**: the rise of online brokerages and user-friendly digital platforms, and the overall increased direct participation by retail investors in equity markets[1]. These retail investors are generally younger and are accessing equity markets through online brokerages. A consolidated view on the prices available across venues is a must to ensure best price execution for these retail investors on par with more sophisticated, institutional investors.

We describe elsewhere detailed use-cases for the consolidated tape covering liquidity risk management, market outages and continuous trading, and compliance requirements[2]. But the more urgent question that arises is:

[1] See French AMF study on retail investor behaviour during Covid 19 crisis, April 2020
[2] See EFAMA Buy-side use-cases for a real-time consolidated tape.

Will the EU's proposal actually deliver a real-time consolidated tape ?

This is a fair question given that under MiFID II, provisions had been made for providers of a consolidated tape, but none emerged. The new proposal, and the underlying impact assessment, correctly identify the necessary conditions for creating a consolidated tape and set out measures to get us there. We fully agree with many aspects of it, though we also see a critical design flaw which if unaddressed will almost certainly invalidate the entire project.

Sound Fundamentals:

- The proposal foresees a consolidated tape per asset class, namely one for equities, one for bonds, one for ETFs and one for derivatives.
- Trading venues will be required to provide data to the Consolidated Tape Provider (CTP). This **mandatory contribution** is critical to the success of the CT. Without it the market power of the large exchanges serves as a deterrent for potential CTPs who face having to negotiate individual agreements with each contributing venue.
- A single consolidator will emerge per asset class as a result of a competitive bid. The alternative involving competing consolidators, we believe would have led to a more costly and lesser quality offering by the CTPs. A single consolidator is better placed to interact with data contributors and monitor the level of data standards.
- The use of the consolidated tape will remain voluntary. **Voluntary consumption** makes sense. There will be a large demand for a high quality and affordable tape, but its consumption should remain voluntary.
- On the important point of the speed of delivery of data on the tape (latency), the EC proposal suggests delivery in as close to real time as possible, we fully support this. Any latency that is slower than real-time would deliver stale, meaningless data which would completely obviate the purpose of the tape[3].

  The issue of speed or latency calls for an important distinction to be made between asset classes. Equities markets are "order-driven", meaning that the matching of orders occurs on a fully transparent market where all the bids and offers by buyers and sellers are displayed. By contrast, bond trading tends to take place on a "price-driven" market. Here only the bids and offers of the market makers or dealers are seen, but not those of all the market participants. The advantage of the price-driven market is the liquidity that is on offer, and the guarantee that large trades can be executed at the quoted rates.

  Given the different characteristics of equities vs. bond markets, it makes sense to define 'real-time' for equities as delivery in the seconds range, while bonds' data can be delivered in the minutes range given that it is price-driven (see above) and also given the fact that there are applicable deferrals in the publication of trade data. Publication deferrals rules ensure that certain instruments, depending on size and liquidity can delay publication of trade data.

In the first phase, the CT will only deliver post-trade data. Post-trade data (on executed prices and volumes) is hugely relevant for investors, but so is the pre-trade data in order driven markets which provides data on the best bids and offers currently quoted on the market. The EC proposal suggests that ESMA carry out a study on the viability of a pre-trade tape some time after the launch of a post-trade tape. Ideally, the CT should deliver both pre- and post-trade equities data at launch. Failing that, we would like to see a firmer

[3] Delivery of data in real-time will mean different latencies depending on the asset class. For equities and ETFs, this will mean delivery in the second range (1000 millisecond). For fixed income the speed can be slower (in minutes) given the specific dynamics of price-driven markets which also need to take into account the applicable waivers and deferrals.

roadmap from a post-trade tape launch to when market participants can expect a consolidated pre-trade tape for the EU27.

And yet the EC proposal is designed to deliver a high-cost consolidated tape from the start!

It seemed a fair assumption that a consolidated tape, delivering raw data, should charge on the basis of reasonable cost (i.e with a reasonable margin to the provider of the tape). This is the model that would ensure the widest take-up of the tape from institutional and retail investors. Within that, we agree that institutional investors should pay fees linked to the reasonable commercial basis as presented by the CTPs, while retail investors should have access to the tape for only a very small (symbolic) fee.

The EC proposal turns this logic on its head. The tender process will be set up so that the winning bidder for CTP, is the one who can ***guarantee the highest revenue amounts back to data contributors***. Furthermore, only regulated markets are to be compensated for their data, but not MTFs or SIs.

To reiterate, the urgency behind the CT, and the business case for it is to create **a complete and accurate data feed on a single tape for European and global investors**. Why is the issue of remuneration of contributing exchanges even a policy objective? Stock exchanges already enjoy healthy revenue streams from listing and trading activities. What is more, the emergence of a CT will not eat into exchanges data revenues, as users will continue to subscribe to exchanges' proprietary data feeds which are delivered at a much a faster speed (micro and nano seconds), vs the much slower tape (delivering on a millisecond basis)[4].

The minimum revenue targets as defined in the EC proposal should be removed, in favour of a revenue participation scheme based on cost of production, with the proviso that the preferential treatment extended to smaller markets, with less liquid shares, should stand. We believe that smaller markets will see a net benefit from the additional visibility that the CT provides, but at the same time we understand that preferential treatment under the revenue scheme for smaller markets is required to sustain existing business models that have lower listing and trading volumes. Therefore, with the exception of smaller markets, all data contributors should be compensated for their data on a cost of production basis. That means the regulated markets (exchanges) as well as MTFs and OTFs. This will establish a level playing-field between trading venues, and provide a sound revenue model for the tape, unlike the current proposal where tape revenues are to be maximized to inexplicably subsidize the core activities of stock exchanges.

Data Quality

A consolidated tape in any asset class is only as good as the quality of the data it reports. There is today, especially in the fixed-income space, difficulty in aggregating quality data due to a number of reasons. i) differences in codes, formats and reporting conventions; ii) consistency of reporting: data fields are not completed in the same way by different venues and APAs, requiring intermediation/intervention by the CT provider; and iii) errors in data reporting, leading to incorrect or incoherent outputs[5]. The EC proposal targets the first issue through the creation of an expert group that will suggest necessary changes to format and substance of reporting. But this leaves unaddressed the inconsistent approaches to filling data fields and errors in reporting. These can only be remedied through the presence of a central arbiter, a body empowered to monitor data in real time, levy fines and penalties and overall ensure the provision of high quality data by data contributors. We would expect an enhanced role for ESMA and the NCAs in this regard.

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[4] See Annex I, EFAMA Buy-side use-cases for a real-time consolidated tape

[5] See series of white papers by Finbourne: CTP Whitepaper Series #2 Identifying issues around consistency (finbourne.com)

MARKET STRUCTURE & TRANSPARENCY REFORMS

Thanks to the reforms brought about by MiFID II, investors today enjoy a choice of trading venues in which to execute trades. The decision on where to trade will be driven by a range of factors: fees, taxes, exchanges' own fees, and the market impact of routing a trade onto a certain venue (i.e., is the trade so large that it will alert the market of trading intentions on a large position and thereby negatively impact other sub-orders of the same trade that have yet to execute?).

The current trading ecosystem is competitive and efficient, and offers a diversity of trading options for investors. The EC proposal is decidedly one-directional, eliminating the flexibility in determining trading venues for best execution. Trading under the Reference Price Waiver, and on SIs is a necessary feature of the EU trading system where asset managers need to unwind large positions with little market impact (i.e., no pre-trade transparency). The same large orders executed on a lit market (regulated market) would result in a major price impact as the orders went through, ultimately costing the underlying fund clients.

Moreover, other jurisdictions like the UK and US, offer and will continue to offer a diversified trading ecosystem, meaning that i) non-EU firms trading in Europe today will redirect flows to these jurisdictions to take advantage of more competitive trading conditions and ii) EU asset managers will be less competitive than their counterparts in the rest of the world, delivering worse outcomes on best execution.

Transparency reform, where is the evidence?

The EC proposal suggests reform of the bond transparency regime to harmonise publication deferrals and shorten them where relevant. We can support these changes for corporate bonds, only requesting i) an alignment on a 2-week deferral on both price and volume for large blocs or for illiquid bonds, as defined recently by an ICMA paper[6], and (ii) the deletion of any special treatment granted by NCAs to sovereign debt issues under their respective jurisdictions. Given that the direction of the proposed reforms is towards greater transparency, it makes very little sense to continue to allow sovereign debt instruments (highly liquid) to continue to benefit from waivers.

For the remainder of the proposals, whether on the RPW (limiting order size to above 2XSMS), and limiting SI-activity to above Large-in-Scale, there is a strong consensus that these changes are not grounded in any compelling evidence that capital markets are in any way inefficient, unfair or detrimental to investor outcomes. Quite the contrary, a less competitive trading landscape would result in more monopolistic pricing by the incumbent exchanges.

A better calibrated approach would involve building the different consolidated tapes per asset class, analysing the full market picture which so far has been elusive, and only then determining if greater transparency is required either from a price formation perspective, or from a fair pricing standpoint. The proposed changes as they stand today appear quite arbitrary and needlessly unpick a complex and functioning trading ecosystem.

MARKET DATA COSTS

On the broader topic of market data costs, data vendors should also be in scope for providing market data on a Reasonable Commercial Basis (RCB), but Article 13 of MiFID has to date not been sufficiently developed in secondary legislation to deter poor market vendor behaviour.

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[6] ICMA position paper: proposal for a new post-trade transparency regime for the EU corporate bond market

As such, we welcome the proposed move to convert ESMA's Market Data Guidelines into legal obligations. Similarly, the requirement for ESMA to develop RTS specifying the content, format and terminology of RCB that venues need to make available, is welcome.

Other recommendations from the same ESMA report from which the above are extracted are unaddressed. The provision to provide market data on the basis of costs should be reflected in the Level 1 text and articles of the delegated regulations that allow data providers to charge for market data proportionately to the value it represents to the users, should be deleted. These articles completely undermine the principle of providing data based on the cost of producing and disseminating the data. [7]

PAYMENTS FOR ORDER FLOW

Payments for order flow do not support best execution for retail investors. A ban as suggested, would address the inherent conflict of interest that SIs currently face. They pay for the routing of orders to their platform, and yet have every interest to execute at a higher price. This is at odds with the best execution principle, not leaving the retail investor in a better position even once the lower or zero commission has been taken into account. EFAMA supports the banning of PFOF and believes that this will lead to increased execution quality.

BEST EXECUTION REPORTS

We strongly applaud the decision by the EC to repeal the RTS 27 "Best Execution" Reports.

However, and as already regularly requested since the implementation of MiFID several years ago, we think that this repeal of RTS 27 "Best Execution" Reports should be accompanied by the repeal of RTS 28 "Best Execution" Reports.

We have stressed and continue to stress the significant costs of producing these reports for which there appears to be very little demand. Professional end-investors already have access to proprietary tools and data for assessing best execution. A multiple asset class consolidated tape will, in turn, provide valuable data toward retails investors for their best execution needs.

Finally, it seems unfair and punitive to require EU firms to maintain publication of RTS28 reports when other jurisdictions have removed such requirements[8].
We therefore request the removal of the RTS 28 'Best Execution' Report obligation.

[7] ESMA MiFIDII/Mifir Review Report No. 1, p 27 Specifically, we are asking for:

- moving the provision to provide market data on the basis of costs (Article 85 of CDR 2017/565 and Article 7 of CDR 2017/567) to the Level 1 text
- deleting Article 86(2) of CDR 2017/565 and Article 8(2) of CDR 2017/567 allowing trading venues, APAs, CTPs and SIs to charge for market data proportionate to the value the data represents to users.
- adding a requirement in the Level 1 text for trading venues, APAs, SIs and CTPs to share information on the actual costs of producing and disseminating market data as well as on the margins with CAs and ESMA together with an empowerment to develop Level 2 measures specifying the frequency, content and format of such information.

8 https://www.fca.org.uk/publications/policy-statements/ps21-20-changes-uk-mifids-conduct-and-organisational-requirements

ABOUT EFAMA

EFAMA is the voice of the European investment management industry, which manages over EUR 30 trillion of assets on behalf of its clients in Europe and around the world. We advocate for a regulatory environment that supports our industry's crucial role in steering capital towards investments for a sustainable future and providing long-term value for investors. More information available at www.efama.org.

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