European Fund and Asset Management Association

EFAMA's REPLY TO ESMA CONSULTATION PAPER ON MiFID II / MiFIR REVIEW ON THE FUNCTIONING OF ORGANISED TRADING FACILITIES (OTF)

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QUESTIONS

Q3: Do you concur with ESMA's clarifications above regarding the application of Article 1(7) and Article 4(19) of MiFID II? If yes, do you agree with the ESMA proposed amendment of Level 1? Which other amendment of the Level 1 text would you consider to be necessary?

EFAMA has some concerns with ESMA's clarifications. In the consultation paper (CP), ESMA seems to have a very broad interpretation of the 'multilateral systems' definition under MiFID II and states that 'systems where trading interests can interact but where the execution of transactions is formally undertaken outside the system still qualify as a multilateral system and should be required to seek authorisation' (paragraph 36). Such an interpretation is too expansive and could capture a number of non-multilateral systems such as EMS, OMS, instant chats services, which allow for bilateral interactions. In particular, it could also capture buy-side proprietary systems that have been developed to connect to sell-side firms directly. These software providers allow for a more efficient information flow which help buy-side and sell-side firms to communicate with each other.

Such an approach would require all these software providers to either change their operating models to fit the definition of trading venues (as stated in ESMA's paragraph 41 in the CP) or would simply create a barrier to entry which will either force them out of business, or lead to a significant increase in costs for the users of these platforms and ultimately to end-investors. This could have unintended consequences for the EU market, such as:

- Reduce competition in the market;
- Reduce choice and increase costs to end-investors;
- Stifle innovation in the space.

It is therefore important to spend more time looking at this issue in detail and we would welcome further discussions with ESMA.

Q4: Do you agree with ESMA's two-step approach? If not, which alternative should ESMA consider?

No, we do not agree with ESMA's two-step approach for the reason provided above in question 3.

Q10: What are the main characteristics of software providers and how to categorise them? Amongst these business models of software providers, which are those that in your view constitute a multilateral system and should be authorised as such?

EFAMA members consider that a number of characteristics should be taken into account.

- o ESMA should make sure it makes a difference between 'multilateral systems' and trading venues that bring together multiple third party together (covering non-existing relationships) and infrastructures used by market participants to carry on their day to day activity more efficiently;

1. Multilateral systems are characterised by ‘many-to-many’ interactions at any given point in time, bringing together multiple 3rd party interest and facilitating an execution within the venue;

2. software provider where there is no genuine trade execution taking place in the system and which do not have any involvement on how and where the trade might take place, should not be required to become a trading venue;

3. Buy-side systems should be explicitly excluded from the definitions of MTFs and OTFs as they do not provide trade execution facilities, but simply utilize technology in order to communicate with one another in an efficient and timely manner - activity which is already subject to internal oversight and controls.

It is our members’ views that only ‘multilateral systems’ that allow <u>multiple</u> third parties’ trading interests to interact in a system and, where genuine trade execution takes place, should be required to become trading venues.

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About EFAMA

EFAMA, the voice of the European investment management industry, represents 28 Member Associations, 60 Corporate Members and 24 Associate Members. At end Q2 2020, total net assets of European investment funds reached EUR 17.1 trillion. These assets were managed by more than 34,200 UCITS (Undertakings for Collective Investments in Transferable Securities) and 29,100 AIFs (Alternative Investment Funds). Including discretionary mandates, third-party regulated asset managers managed EUR 24.9 trillion in Europe at end Q2 2020

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