European Parliamentary Financial Services Forum

EPFSF Briefing on

Review of the Markets in Financial Instruments Regulation (MiFIR): Promoting a true and efficient single market for trading

16 March 2022, from 13:00-14:30

Introduction

On 25 November 2021, the European Commission (EC) adopted a package of measures with the objective of ensuring that investors have better access to company and trading data. The proposals deliver on several key commitments in the 2020 capital markets union (CMU) action plan. The various proposals aim to connect EU companies with investors, improving their access to funding, to broaden investment opportunities for retail investors and better integrate capital markets.

The package covers four legislative proposals including a targeted review of MIFID II (MIFID and MIFIR) almost 4 years after its entry into application (January 2018). The other main topic covered in MIFID II - investor protection rules - will be reviewed in the context of the Retail Investor Strategy, to be proposed later in 2022.

The purpose of the EC proposal is to empower investors by enabling them to 1) access market data necessary to invest in shares, bonds, ETFs (wholesale and smaller and retail investors) and derivatives (wholesale market participants) more easily and 2) by making EU market infrastructures more transparent and robust.

In order to deliver on its objective of fostering a true and efficient single market for trading, the EC has identified three priority areas for the MiFIR review: improving transparency and availability of market data, improving the level-playing field between execution venues and ensuring that EU market infrastructures can remain competitive at international level.

I - Consolidated Tape proposals

Following an initial unsuccessful attempt in MIFID II to set up a consolidated tape provider, the EC proposal to reform MiFIR aims to address the reasons why no CTP has emerged in 2018. The proposal, supported by an impact assessment, amends the CT provisions in MiFIR to facilitate the emergence of one CTP for each asset class (shares, ETFs, bonds and derivatives).

The EC says that the proposal intends to tackle liquidity and trade execution risk resulting from a lack of correct and timely information on prices and available trading volumes for traded securities and derivatives, as well as the risk that insufficient transparency affects the share trading landscape and the competitiveness of the EU as a financial hub.

At technical level, the proposal to set up a consolidated tape aims to improve the quality of existing data and to further harmonise data, including the synchronisation of business clocks, not only at trading venues level but also for systematic internalisers, Approved Publication Arrangements and consolidated tape providers.

Specifically for the equity tape, the proposal establishes:

- A stakeholder group to define data reporting standards (so-called trade flags)
- For the first selection procedure, a consolidated tape containing post-trade data only
- A revenue-sharing scheme by the CTP to regulated markets, with a preferential allocation to smaller regulated markets

Chair Steering Committee - Othmar Karas
Vice-President of the European Parliament
Rue Wiertz 60 B-1047 Brussels
Mobile +32 2 284 56 27
othmar.karas@ep.europa.eu

Chair Administrative Committee - Wim Mijs
EBF CEO
Avenue des Arts 56 B-1000 Brussels
Mobile +32 2 508 37 11
w.mijs@ebf.eu

Secretariat - David Reed
Director
Rond-Point Schuman 2-4 B-1040 Brussels
Mobile +32 2 737 69 02
secretariat@epfsf.org

Prior to subsequent selection procedures, ESMA will assess market demand and revenue impacts on regulated markets and, based on that assessment, will report to the Commission on the opportunity to establish an equities pre-trade data tape.

ESMA will be heavily involved in the selection of the consolidated tape provider (CTP), organizing the competitive procedure to appoint the provider per asset class for a 5-year term. ESMA will assess applicants on the basis of various criteria including *inter alia*:

- the governance structure of the applicants;
- the speed at which the applicants can disseminate core market data;
- the capacity of the applicants to disseminate good quality data;

The selection of the CTP for shares will also consider the revenue participation scheme, and in particular the formula applicable to regulated markets that are market data contributors. ESMA will select the CTP for shares that offers the highest amount of revenue for distribution to regulated markets (in particular smaller regulated markets) after deduction of operating costs and a reasonable margin.
The proposal also mandates a CT in bonds and derivatives. The proposed scope of the derivatives CT is derivatives that are subject to the EMIR clearing obligation (certain liquid, standardized interest rate and credit derivatives).

II - Market structure and transparency proposals

The EC also proposes some adjustments to market structure and transparency requirements in MIFIR (though a detailed impact assessment was not provided in this area of the proposal):

a) Equity markets

It is proposed to:

- amend pre-trade transparency waivers by introducing a minimum threshold, at twice the standard market size, for the use of the reference price waiver in order to make small trading more pre-trade transparent.
- streamline the complex interplay between transparency waivers and the double volume cap by replacing the double volume cap by a single 7% cap.
- require systematic Internalisers (SIs) to make public firm quotes in respect of shares and similar financial instruments to a minimum of twice the standard market size (SMS)
- modify the scope of the share trading obligation (STO) by codifying ESMA's current practice in the regulation, while simultaneously removing the exemption for trades in shares which are non-systematic, ad-hoc or irregular and infrequent

b) Non-equity markets

Accepting ESMA's recommendation, the EC proposes to remove the 'size specific to the instrument' (SSTI) waiver on the basis of ESMA's conclusion that the existing waiver and deferrals regime is 'too complicated and not always effective in ensuring transparency'. Waivers and deferrals would remain for illiquid instruments and Large In Scale (LIS) instruments.

The EC also proposes to streamline the deferral regime with "a simplified system" based on price deferral until the end of the day, and volume masking for up to two weeks (where full publication will happen), as well as removing the supplementary deferral options left to National Competent Authorities (NCAs) under the current MiFIR text.
The streamlining of the deferrals regime would apply to the trading of corporate bonds and derivatives. For the trading of sovereign debt, national competent authorities will continue to have discretion to allow for an extended time deferral for the publication of the volume of each transaction, or to allow for the publication of several sovereign debt transactions in an aggregated form for an indefinite period of time.
Finally, it is proposed to align the counterparty scope of the Derivatives Trading Obligation (DTO) with the counterparty scope of the clearing obligation following amendments adopted under EMIR Refit in 2018. EMIR Refit had introduced a new category of Small Financial Counterparties (SFCs) that were exempt from the clearing obligation and reduced the impact of the clearing obligation for Non-Financial Counterparties (NFCs) such that they only had to clear contracts in the derivatives asset classes in which they exceeded the clearing threshold.

c) Payment for order flow

Despite providing no impact assessment, the EC proposes to ban payment for order flow: a market practice according to which Brokers may receive payments for forwarding their order flows to third parties for execution. Payment for order flow is not a widespread practice in the EU, although it is a factor in some EU jurisdictions. The proposal, in the Commission view, aims to strengthen the price formation process on public markets and to increase investor protection. Other market participants may perceive PFOF as an indicator for healthy competition between different market places, particularly online brokers that offer highly competitive offers for retail investors.

Conclusion
The MIFID framework is a key component for the completion of the CMU, as capital markets are pivotal to financing the green transition and the digital transformation of the EU economy. It remains to be seen how quickly and effectively EU financial markets will adapt to meet these challenges.
In a post-Brexit environment, policy makers and the co-Legislators should ensure the competitiveness, openness, and resilience of EU financial markets.

Proposed questions for FIC members
1. The key challenge in the CMU context has been to attract more investors on financial markets. How do you see this legislative proposal in this context?
2. What has prevented the emergence of a consolidated tape so far? Does this proposal provide sufficient incentives for the emergence of a consolidated tape to make EU markets less fragmented?
3. Following Brexit and considering the need for attractive, competitive EU financial markets, how does this proposal help to achieve this objective?

Chair Steering Committee - Othmar Karas
Vice-President of the European Parliament
Rue Wiertz 60 B-1047 Brussels
Mobile +32 2 284 56 27
othmar.karas@ep.europa.eu

Chair Administrative Committee - Wim Mijs
EBF CEO
Avenue des Arts 56 B-1000 Brussels
Mobile +32 2 508 37 11
w.mijs@ebf.eu

Secretariat - David Reed
Director
Rond-Point Schuman 2-4 B-1040 Brussels
Mobile +32 2 737 69 02
secretariat@epfsf.org