NORDIC SECURITIES ASSOCIATION

NSA Position Paper: MiFIDII/MiFIR Review

Memo

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The NSA[1] welcomes the opportunity to provide comments to the European Commission's "*Review of the regulatory framework for investment firms and market operators*" with a deadline on 22 March 2022.

The NSA recognises the European Commission's ("Commission") ambitions to further develop the EU legislative framework to support well-functioning and competitive capital markets in Europe. We agree that a CT and certain amendments to the rules on market structure in MiFIR could help achieving this goal, if based on fundamental principles such as proportionality, market efficiency and free competition.

Complex and far-reaching proposal

The NSA is of the opinion that the Commission's MiFIR Review proposal is very far-reaching and complex and in several places is dependent on future Level 2 legislation, which is unknown at the time of writing. This makes it difficult to analyze the scope of the proposal and its consequences. We want to emphasize the need for the Level 2 process to be transparent for both co-legislators and stakeholders.

Attractiveness of EU markets should be a key objective

An important policy objective of MiFIR Review should be to ensure that EU capital markets remain attractive for investors from EU as well as outside the EU. In this context it should be recalled that MiFID II requires investment firms to obtain best execution for their clients and, that professional investors, such as investment funds, are themselves subject to best execution requirements. It is therefore very important for the co-legislators to consider the impact of the proposals in the UK Wholesale Review and, in particular, to remove from the EU-rulebook rules that are complex, do not deliver on the policy objectives or make it difficult for EU investment firms to compete with UK market.

Competition must be encouraged – not distorted

It is concerning that liberalization and competition introduced with MiFID I is being compromised with the proposal for revised MiFID II/MiFIR. It seems as if there is a wish to channel as much securities trading as possible to the Regulated Markets (RM) at the expense of other execution venues such as SIs and MTFs. Thereby, the securities markets are reintroducing a kind of a concentration rule. There is, however, a significant difference: In the "old days", the RMs (the exchanges) were member owned/public utilities and not-for-profit entities. Today, the RMs are "for-profit", increasingly global anchored and are consolidating both horizontally and vertically, having critical infrastructure within trading, clearing, settlement and information within the same entity. On top of this, the RMs are not competing with each other. These factors are indeed very worrying for competition as a whole and should give rise to concerns within the Commission. Within market data, there is an actual monopoly situation. This is not just a problem for the market, leaving investors and companies behind, also potential new players within Fintech are having difficulties chal-

[1]NSA is composed by the Danish Securities Dealers Association (Børsmæglerforeningen), the Finance Finland (Finanssiala ry), the Norwegian Securities Dealers Association (Verdipapirforetakenes Forbund) and the Swedish Securities Markets Association (Föreningen Svensk Värdepappersmarknad). NSA has the transparency number 622921012417-15

lenging the existing market players within securities markets as market data is indispensable.

Clients need access to both bilateral and multilateral trading

Access to multilateral (regulated market, MTF and OTF) and bilateral (SIs and investment firms) trading serve an important function for EU clients. Clients need to be able to execute orders in their own best interest and where they get the best outcome. It is therefore crucial that MiFIR allows both types of execution venues to co-exist and compete on fair terms whilst still acknowledging the differences of business models. Unlike trading venues, SIs and other liquidity providers take on market risk when executing client orders against own account and must be able to handle that risk in order to provide services to clients.

Solving the market data problems first will clear the way for well-functioning Consolidated Tape(s) (CTs)

As a general comment, the NSA considers that the process for establishing a CT has started in the wrong end; first the problems with data quality and increased market data costs should be solved (as ESMA has proposed[2] and then the basis for consolidation is created. Moreover, it is important to underline that even after the establishment of a CT, investment firms will still need to purchase access to proprietary data for trading and best execution purposes, directly from each trading venue as trading venues' proprietary data is indispensable for investment firms and cannot be replaced by CT data. It is therefore extremely important to avoid that a CT is structured in a way so that it in fact adds to the existing problem with increasing market data costs in EU. Ideally, the CT-data should be free of charge and There should be no mandatory consumption. Moreover, we support mandatory contribution (venues, APAs, SIs and investment firms) and consider that all contributors should be treated equally e.g., as regards revenue sharing. A model where only regulated markets will share the revenues cannot be accepted, as RMs will continue to earn revenues from their selling proprietary data even after the establishment of a CT.

Transparency – non equity

The NSA welcomes a simplified, streamlined, and harmonised regime across the EU. However, increased full harmonisation also implies that the EU-rules must be able to accommodate the needs of different market segments. There are big differences between how sovereign bond, corporate bonds, standardized derivatives, OTC derivatives, emission allowance etc. are traded in EU and what are the needs of end-clients.

In our view, the regime proposed by the EC is very far-reaching and will have a negative impact on liquidity as it will expose market makers (SIs) to undue risks and compromise the execution prices to the detriment of clients. It is very important that both price and volume can be deferred. In particular for smaller markets where only a limited number of SIs are active also the price carry almost the same information as the volume. EOD is too short for large transactions and illiquid instruments and for those transactions we propose to allow deferral of both price and volume until T+2. For very large transactions in corporate bonds, we support deferral of two weeks for both price and volume. (Since many corporate bonds are not traded on a daily or even weekly basis, SIs need longer time than T+2 to unwind large positions).

SSTI is important in order to allow SIs to execute client orders against own account without being exposed to undue risks. If removed, it is important to lower the LIS to levels replicating

[2] All recommendations from ESMA Final Report, page 26-27, point 58-65 should be implemented

the present levels of SSTI, alternatively a percentage of LIS. It should be noted that SSTI is also the threshold for pre-trade transparency under article 18 and that a removal of the SSTI without lowering LIS could have unintended negative effects for SIs also as regards pre-trade transparency as pre-SSTI is the threshold for SI quotes according to MiFIR, art. 18.

Finally, the ESMA recommendations to change MiFIR, art. 18 must be implemented[3].

Transparency – equity

In order to avoid unintended consequences, it is very important that the Commission's proposals on increased quoting obligations for SIs, changed STO, inclusion of a threshold for RPW and a continuation of a volume cap are analyzed together. Otherwise, the NSA sees a clear risk that the end-result of these amendments will be to re-introduce a sort of concentration rule in EU which will not be to the benefit of clients who need access to different forms of multilateral and bilateral trading (see above).

On the specific proposals:

- The increased quoting obligation for SI obligation from the current 10 % to 200 % of Standard Market Size (SMS) is too extensive and will lead to increased risks for SIs. The NSA considers that ESMAs proposal of 100% of SMS is more well calibrated.
- NSA considers that the volume cap is complex and should be removed. We note that this is the case in the UK. If the volume cap is kept, it should be limited to Reference Price Waiver (RPW) i.e., the pre trade waiver that is used for used for multilateral trading platform with no pre-trade transparency (dark pools). Negotiated Trade Waiver (NTW) fills an important function on the market by allowing firms to execute client orders under the rules of a trading venue as so-called manual trades.[4] Such manual trading is often an alternative to SI trading and by allowing free use of NTW, the co-legislators would therefore achieve the policy objective of more on-venue trading whilst still ensuring that firms can meet the needs of their clients.
- The NSA also supports deletion of the Share Trading Obligation (STO) which we consider to be complex and of limited use to the EU securities market. If kept, it is important not to delete the exemption in article 23.1 a) which serves an important function in some situations. We also consider that the exemption for non-price forming trades in article 23.1 b) should be applicable to all types of clients.

RTS 27 and RTS 28 - reports

The NSA supports the abolishment of the RTS 27 reports and consider that also the RTS 28 report should be deleted from the requirements. In our opinion neither report has proved to fulfil a function. It is important to avoid a "gap" between MiFID Quick Fix temporary exemption (ending 28 February 2023) and the implementation of the amended MiFIR rules.

[3] ESMA Final Report on SI in non-equities

[4] Manual trades are key in facilitating clients' best interests and can be used for various purposes i.e. matching clients orders, starting orders, finishing orders, improving spreads and add liquidity to the order book.