

## **MiFID II to drive business off venues and away from Europe**

The January 2018 date for the new MiFID II rules to take effect is imminent, but there remain some serious issues associated with how the overarching principles are going to be implemented in practice.

Our firms fully support the MiFID framework, as well as the European Securities and Markets Authority (ESMA) in its aim of creating technical standards that bring the majority of non-equity products into a robust regulatory regime and move a significant part of over-the-counter (OTC) trading onto regulated venues.

However, the current drafting of ESMA's regulatory technical standards on transaction reporting and order record keeping creates the risk of a serious unintended consequence, one that may result in important market participants trading away from regulated venues, or moving their trading activity outside of Europe altogether. This would diminish the strength and depth of European regulated trading venues and the competitiveness of European capital markets.

This is down to the way that order data has to be recorded and transaction details reported for "non-MiFID firms". The latter comprises market participants such as European authorised asset managers, insurance companies, pension funds, central banks, corporate treasurers and firms incorporated outside of the European Economic Area (EEA). These non-MiFID firms constitute a significant portion of capital market activity and ESMA's standards would require regulated venues to collect significant amounts of personal data in relation to these clients, specifying who is executing the trade and who is making the investment decision. Furthermore, this information will have to be provided to multiple venues and on every single order.

Crucially, there is no requirement to trade fixed income products on a regulated venue and there is no comparable data collection rules when a non-MiFID firm trades bilaterally/over-the-counter, or on a non-EEA venue, for example, in Singapore, Hong Kong or New York.

Faced with the choice of adhering to the significant operational, compliance and data protection challenges as a result of choosing to trade on an EU regulated venue, these firms are being incentivised to trade over-the-counter or outside of Europe; thereby beyond the reach of European regulators.

This is a serious and worrying issue and we estimate a material proportion of trading volumes in our markets would leave Europe altogether. Indeed, our fear is that the market will move quickly, and irreversibly, to more opaque and remote markets. This would be contrary to the objectives of MiFID II.

It would result in less information for regulators and an overall less efficient and liquid marketplace; it would also threaten the competitiveness of European capital markets and as a result, increase borrowing costs for European governments and enterprises.

We are confident that this problem could be mitigated if more flexibility was built into the technical application of the rules. And this is why we have today written a joint letter to the European Securities and Markets Authority, as well as members of the European Parliament and European Commission, highlighting this issue. Whilst there is still a window of opportunity, we ask that European regulators and policymakers work with us to find a pragmatic approach which recognises diverse regulatory and legal systems globally, taking into account the significant challenges in collecting, transmitting and securely storing relevant data.

It would only take some small changes to address these issues which would not weaken regulators' ability to detect market abuse. For example, if non-MiFID firms trading on EEA venues could be required to provide information at the level of the platform participant, there would be no incentive to trade off venue.

Ultimately, the migration of capital markets activity away from regulated venues will heighten the risk for investors, public finances and economic growth when markets are still recovering from the financial crisis.

We urge ESMA to review the rules to prevent the perhaps irreversible emergence of opaque and remote marketplaces. MiFID II legislation should benefit all market participants and support economic growth across Europe, without compromising transparency. An exodus of trading activity from Europe is not in anyone's interests.



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Electronic Debt Markets Association represents the interests of companies whose primary business is the operation of regulated electronic fixed income multilateral trading facilities in Europe (regulated markets and/or trading venues) and act as a source of consultation between the members in their roles as operators of such venues in order to project collective views on regulatory, compliance and market structure topics for the benefit of the electronic fixed income markets.



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