

EDMA Position Paper: Impact of MiFIR Article 26(5)

The Electronic Debt Markets Association (EDMA) represents the common interests of companies whose primary business is the operation of regulated electronic fixed income trading venues (multilateral trading facilities and regulated markets) in the UK. EDMA seeks to foster and promote liquid, transparent, safe as well as fair markets working with members in their roles as operators of such venues.

Background

Given the Chancellor's recent Mansion House speech launching the Financial Services Growth and Competitiveness Strategy, it would seem opportune to raise an example of "rolling back regulation that has gone too far in seeking to eliminate risk" as the Chancellor herself stated. The Chancellor was also keen to introduce "targeted changes in the areas where the UK already has particular strengths" – in this case the provision of fixed income trading venues to the world. We also note the FCA have, in the past year, increased their focus on their secondary objective of supporting growth in the medium to long term and the competitiveness of the UK's financial sector, by putting it at the heart of their new strategy.

It is in that context that EDMA would like to highlight an opportunity given the challenges and implications of transaction reporting obligations under Article 26(5) of UK MiFIR (Regulation (EU) No 600/2014). We wish to raise awareness regarding problems in the regulatory treatment of transactions executed on a trading venue¹ (TV) compared to transactions executed outside a trading venue. Under Article 26(5) of UK MiFIR, TVs must submit transaction reports in relation to the transactions in financial instruments traded on their platforms which are executed through their systems by firms that are not subject to UK MiFIR. The TV must populate all the details that the firm would have to report if it were subject to UK MiFIR. The venue must collate not only market-side information, such as the economics of the trade and the identity of the non-MiFIR and/or third country firm involved, but also client-side information, such as fields containing information about the underlying client or clients of that non-MiFIR and/or third country firm. The collection and reporting of this underlying client data requires significant ongoing investment in operational infrastructure by TVs; this cost is ultimately borne by market participants and thus limits the level of trading activity in the UK, especially by non-UK market participants. Also, the collection and reporting of this underlying client data by non-MiFIR firms, especially those from 3rd countries like Switzerland, to satisfy the Article 26(5) requirement can contravene their own existing non-financial laws, for example with regard to data privacy.

There is a regulatory asymmetry when comparing trading on a trading venue ("on-venue") to trading outside of a trading venue ("off-venue"). When trading off-venue, non-UK MiFIR and/or third country firms have no

¹ As defined in Article 2(1)(16) of UK MiFIR (Regulation (EU) No 600/2014): *'trading venue' means a regulated market, an MTF or an OTF;*

Article 2(1)(13) of UK MiFIR (Regulation (EU) No 600/2014): *'regulated market' means a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with Title III of this Directive;*

Article 2(1)(14) of UK MiFIR (Regulation (EU) No 600/2014): *'multilateral trading facility' or 'MTF' means a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with Title II of this Directive;*

Article 2(1)(15) of UK MiFIR (Regulation (EU) No 600/2014): *'organised trading facility' or 'OTF' means a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with Title II of this Directive;*

obligation to transaction report their side of a given trade. Their counterparts who *are* subject to UK MiFIR must only report their side of the transaction (market-side information). However, when trading on-venue, the TV must collect transaction reporting data from the non-UK MiFIR and/or third country firm in order to fulfil their Article 26(5) obligation. The non-MiFIR and/or third country firm consequently faces a greater burden when trading on-venue. This contradicts one of the stated aims of MiFID II/R by acting as a discouragement to on-venue trading.

The Opportunity for UK markets

In addition to putting TVs at a competitive disadvantage to off-venue trading, we believe that the substantial disruptions non-UK MiFIR and/or third country firms face to their existing workflows when trading on UK regulated TVs acts as a deterrent to participating in UK capital markets. TVs oblige their non-UK MiFIR and/or third country firms to supply them with data for which they would otherwise have no purpose. Non-MiFIR and/or third country firms must provide this information when trading on TVs, but not when trading off-venue. This creates a barrier for non-UK MiFIR and/or third country firms to access liquidity in UK markets most efficiently, by engaging UK liquidity providers in competition via TVs. We believe that this reduces the competitiveness of UK markets by acting as a deterrent for non-MiFIR and/or third country firms investing in UK markets or participating on UK TVs.

Proposed solution

To address the challenges described above, EDMA proposes that the transaction reporting requirements under Article 26(5) of UK MiFIR be limited to the market-side of transactions only. Namely, the information related to the transaction itself and direct participant of the TV, rather than the client-side allocations information on the clients of the TV participant.

The proposed approach would 1) level the playing field by aligning the reporting requirements for TVs with those of off-venue trading, 2) improve competitiveness by reducing barriers to entry for non-UK MiFIR and/or third country firms and 3) preserve regulatory oversight by ensuring that the FCA continue to receive critical transaction details.

By amending reporting requirements for trading venues as set out above would, beyond fairness and levelling the playing field within the UK, remove barriers to entry for third-country firms, thus enabling UK-regulated venues to attract greater participation, enhancing liquidity and market depth in fixed income markets.

We urge the FCA to adjust the requirements stemming from Article 26(5) of UK MiFIR to amend the reporting requirements on trading venues. We note that this will facilitate the goals of the UK Government as set out in the Chancellors “Leeds reforms” and the FCA’s own new growth and competitiveness strategy.