

# AFME Members' Briefing Call – MiFID: From legislation to implementation

26 May 2016

- MiFID I came into force in November 2007
- Establishes regulatory framework for investment services, operation of regulated markets, and powers and duties of NCAs
- With aim to increase market integration, competitiveness and efficiency, MiFID I: abolished concentration rule and gave firms a strengthened 'passport' for providing investment services across EU
- MiFID I forced competition between venues and more choice for investors re service providers and available financial instruments. But in 2010, EC commenced review of MiFID
- Review scheduled but also done to: respond to market developments: Implement G20 commitments; and Advance Single Rule Book

- 3 years after EC launched initial consultation to revise MiFID I, EP, the Council and EC agreed L1 texts in Jan 2014
- Delay (1 year) in implementation to January 2018; but significant challenges remain to an orderly transition to new regime
- L1 texts are a mixed bag. Helpful in some areas such as transparency rules for bonds but falling short in other areas, including curtailment of OTC and dark trading for equities
- L2 end game. Process of developing detail necessary to make L1 provisions operational. Draft Delegated Acts (April 2016)
- L3 will take the form of (i) Guidelines and (ii) Q&A
- Progress has been made but significant content issues remain for e.g. bond transparency, best execution reporting, SI determination and research

- Impact on Financial Markets
- Level Playing Field
- CSAs/RPAs
- FICC Markets
- Research Valuation
- Quality and Scope of Research
- NCA role

- Proposal to apply inducements regime to research is set out in EC's Draft Delegated Directive (7<sup>th</sup> April 2016)
- CSAs are apparently permissible but must be used to fund RPAs; so segregation, client money protection and VAT still potential issues
- There is a concession for sales notes, but little else so we remain concerned by application of inducements regime
- Directive form means NCAs could gold plate
- AFME Members, together with other stakeholders, are exploring options for standardisation of CSA/RPA arrangements; scope and exemptions; variations on national transposition and international aspects

# ESMA's definition of "instruments with a liquid market" – draft RTS 2 September 2015

- The main elements of the transparency regime can be found in ESMA's RTS 2
  - RTS published in September 2015 adopts the "instrument-by-instrument" approach for bonds instead of the initial "class of financial instrument" approach to assess the liquidity profile of a bond
  - AFME's main concerns : the average number of trades per day being too low, and the lengthy application of COFIA (up to 5.5 months)



- Size specific to the instrument threshold (SSTI): trade size equal to or above which the pre-trade publication can be waived, initially set at the 60<sup>th</sup> percentile of trading activity

## April 2016: European Commission's suggested amendments to draft RTS 2

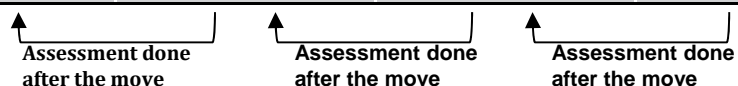
- On 14 March 2016, and 20 April 2016, the European Commission sends a letter to ESMA announcing its intent to endorse the draft RTS 2 once some amendments are introduced.
  - 6-week period during which ESMA may amend and resubmit its draft RTS 2 in the form of an Opinion starts on 20 April.
  - 4 year phase-in of the SSTI and liquidity thresholds to address liquidity concerns.
  - The Commission requests that each move to the subsequent threshold is dependent on an assessment, performed yearly by ESMA, taking into account daily trading volumes **and other relevant factors**.

	2018	2019	2020	2021
Liquidity: number of trades per day	15	10	7	2
SSTI Pre-trade Threshold (percentile)	30	40	50	60

Assessment prior to move
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- Key elements of the ESMA Opinion published 2 May:
  - Agreement in principle on a phase-in, albeit an **automatic** one, on the basis that a yearly assessment, along with annual amendments of the draft RTS would be “overly burdensome, lacks legal certainty and will result in a significantly longer phase-in than the anticipated 4 years”.
  - Temporary increase of the issuance size threshold of corporate bonds and covered bonds for newly-issued instruments
  - Introduction of a **floor** for SSTI/LIS pre-trade at EUR300K for sovereigns, public bonds, and covered bonds, EUR200K for all other bonds.

	3 January 2018 – 15 May 2019	16 May 2019 – 15 May 2020	16 May 2020 – 15 May 2021	From 16 May 2021
Liquidity: number of trades per day	15	10	7	2
SSTI Threshold for pre-trade (percentile)	30	40	50	60



New issues	Issuance size in EUR	Issuance date
Corporate bond	1bn	Until 31 December 2019
	500M	After 31 December 2019
Covered bond	1bn	Until 31 December 2019
	500M	After 31 December 2019



# afme / Evolution of SI determination approach

Finance for Europe

- A firm is deemed a “systematic internaliser” if it deals on own account on an “organised”, “frequent and substantial” and “systematic” basis when executing client orders outside a RM, MTF or OTF without operating a multilateral system (MiFID II Article 4 (1) (20)).
- Level 1 gives mandate to the EC to define the thresholds (MiFID II Article 4 (2)). From an IBIA approach in the original text, Delegated Regulation of 25 April 2016 now assesses SI status on issuer level.
- While this addresses the problem of not having SIs for new issues, it exposes firms to undue risk as firms will have to be SIs in bonds they don’t trade.



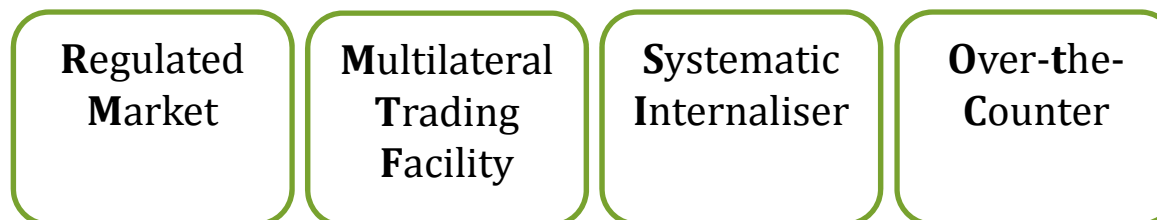
**An investment firm shall ensure the trades it undertakes in shares admitted to trading on a regulated market or traded on a trading venue shall take place on a regulated market, MTF or systematic internaliser, or a third-country trading venue assessed as equivalent...unless...**

MiFIR Art 23

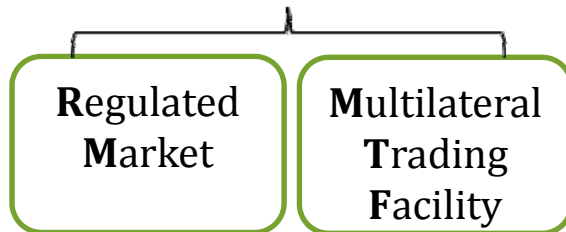
- ...non-systematic, ad-hoc, irregular and infrequent; or
- ...carried out between eligible and/or professional counterparties and do not contribute to the price discovery process.

An investment firm that operates an internal matching system which executes ...on a multilateral basis must ensure it is authorised as an MTF

### Equity Market Structure



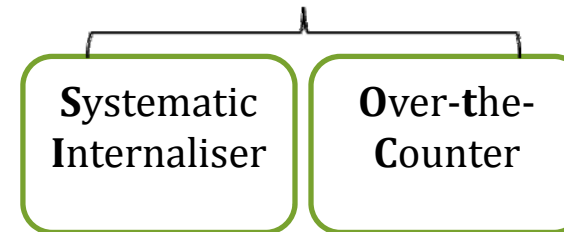
## Multilateral Trading Venues



- **‘Multilateral system’** means any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system;

- Pre-trade Transparency Waivers:
  - Reference Price Waiver
  - Negotiated Trade Waiver
- Together capped at 4% per venue and 8% across EU

## Bilateral Trading



- **‘Systematic internaliser’** means an investment firm which, on an organised, frequent, systematic and substantial basis, deals on own account when executing client orders outside a regulated market, an MTF or an OTF without operating a multilateral system;

- Frequent and systematic:
  - Liquid - transactions  $\geq 0.4\%$  EU, and daily; Illiquid - daily only
- Substantial:
  - 15% total turnover firm, or 0.4% total turnover EU

# Q&A



The Association for Financial Markets in Europe advocates stable, competitive and sustainable European financial markets that support economic growth and benefit society.

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