
Press Release

AFME responds to ESMA's initial set of MiFIR/MiFID Review Consultations

30 August 2024

The Association for Financial Markets in Europe (AFME) is pleased to provide its response to the initial set of consultations released by the European Securities and Markets Authority (ESMA). These consultations address three key areas: Bond Transparency, Consolidated Tape Provider and Reasonable Commercial Basis.

Victoria Webster, Managing Director, Fixed Income at AFME, said: *"AFME supports the objective of enhancing transparency in European bond markets, as it can lead to improved pricing and market participation. However, it is imperative the framework is carefully calibrated, with a strong focus on data analysis, particularly for less liquid segments of the bond market."*

April Day, Head of Equities (ECM, Trading and Post Trade) at AFME, said: *"AFME supports ESMA's efforts to bring more rigorous scrutiny to market data pricing. Market data is essential to any firm offering wholesale financial services. Applying the requirements for reasonable commercial basis in a more consistent manner will help to ensure that market data clients in the EU get a fair deal for the data they buy, but enforcement will only be effective if the fundamental rules are drafted precisely. We encourage ESMA to be mindful of market participants' feedback on this consultation paper – they have suggested amendments to the drafting of the law to ensure that regulators will have a sound legal basis to prevent discriminatory pricing."*

In more detail:

On RTS 2 Bond Transparency:

- AFME acknowledges the complexity of ESMA's task in calibrating bond transparency thresholds. While we appreciate that ESMA's data analysis aims to support achieving an adequate level of transparency, it overlooks similar analysis of undue risk; this will have a detrimental impact to the delicate balance between transparency and liquidity with wider, negative knock-on effects on investors and issuers. AFME are specifically concerned about the treatment for illiquid bonds which results in excessive immediate transparency for many illiquid bonds.
- AFME have expanded on their previous analysis based on Average Daily Volume (ADV) of bonds to calculate the average time it takes for a market maker to trade out of risk. They have presented a more balanced and data-driven framework which results in high levels of immediate transparency for bond markets, supporting ESMA's goals while safeguarding market liquidity and competitiveness.

On Consolidated Tape Provider:

- Consideration needs to be paid to the different requirements across asset classes, meaning a 'one-size-fits-all' approach to minimum technical requirements is not appropriate across bonds, equities and derivatives. For example, unnecessarily aggressive latency threshold for a bond CT which would disproportionately increase costs to users.
- AFME has previously advocated against revenue distribution for data contributors to a bond CT. The voluntary approach that has been introduced should be just that and should not be awarded any special weighting in a tender application and should not be a determinant for progressing (or not) bond CTP applicants to the next stage of the selection process.

On Reasonable Commercial Basis:

Association for Financial Markets in Europe

London Office: Level 10, 20 Churchill Place, London E14 5HJ, United Kingdom T: +44 (0)20 3828 2700

Brussels Office: Rue de la Loi 82, 1040 Brussels, Belgium T: +32 (0)2 883 5540

Frankfurt Office: WorkRepublic, Zeil 127, 60313 Frankfurt am Main, Germany T: +49 (0)69 710 456 660

www.afme.eu

- High market data costs have been a longstanding concern for market participants despite the requirement in Article 13 of MiFIR for market data providers to make pre- and post-trade data available to the public on a reasonable commercial basis and to ensure non-discriminatory access to that data. Legislators in the EU recognised this problem and set out to address it by revising MiFIR.
- AFME recognises that the previous approach of issuing non-binding guidelines on reasonable commercial basis was ineffective. AFME supports the new approach of strengthening the guidelines and converting them into legal obligations so that market data providers will not be able to engage in price discrimination (charging clients according to the value that the data represents to individual clients). In AFME's view the draft RTS is a step toward ensuring that reasonable commercial basis requirements are applied consistently across the EU.
- However, while acknowledging the progress that ESMA has made, AFME continues to be concerned that the drafting of the RTS will undermine its objectives. We have proposed several amendments to the draft RTS to address gaps that will allow discriminatory pricing to persist.

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AFME Contacts

Rebecca O'Neill

Head of Communications and Marketing

Rebecca.oneill@afme.eu

+44 (0)20 3828 2693

Notes:

1. AFME (Association for Financial Markets in Europe) promotes fair, orderly, and efficient European wholesale capital markets and provides leadership in advancing the interests of all market participants. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME participates in a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) through the GFMA (Global Financial Markets Association). For more information, please visit the AFME website: www.afme.eu
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