afme/
Finance for Europe

Association for Financial Markets in Europe

AFME's Recommendations for the MiFIR/D II Review Trilogues

April 2023

Association for Financial Markets in Europe
London Office: 39th Floor, 25 Canada Square, London E14 5LQ, 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: Neue Mainzer Straße 75, 60311 Frankfurt am Main T:+ 49 (0)69 710 456 660
www.afme.eu

MiFIR/D II Review

AFME's Recommendations for the MiFIR/D II Review Trilogues

April 2023

Equity, fixed income and commodities wholesale market eco-systems that work for investors, corporates and other users of capital markets would significantly help the European economic recovery, investment and growth. We set out below on our views on the key aspects of the MiFIR/D II Review in advance of the trilogues that would help achieve those objectives.

Our comments are in line with the recent statement by a number of EU Institutions on 'Channelling Europe's savings into growth' and are focused on 'eliminating obstacles to trade within the Union and attracting foreign investment'.

Executive Summary

Key Equity Issues

- **Restricting Systematic Internalisers (SI) executions, above arbitrarily set thresholds, is likely to limit the provision of principal liquidity to EU investors and could reduce overall liquidity in the EU.**

- **We advocate for no undue restrictions to SI liquidity** (as per Council proposal), which means:

    - **removal of midpoint restrictions,** i.e. SI should be permitted to execute at midpoint at any trade size.
    - **reverting to the existing Level 1 text that sets the size at which SIs must abide by their public quotes up to Standard Market Size.**

- **There should be no size restrictions placed on midpoint execution through any mechanism. Such restrictions should not be placed on the Reference Price Waiver.** Trading venues should be permitted to execute at the midpoint at any size.

- Finally, AFME supports that **pricing mechanisms (i.e. rebates) designed to encourage liquidity provision on trading venues are preserved, and be explicitly out of scope of payments for forwarding client orders for execution,** mostly in line with the Parliament position.

Key Fixed Income Issues

- **AFME does <u>not</u> support non-EU sovereign bond deferrals being subject to the same timeframes proposed under the corporate bond** deferral framework.

- AFME calls for the harmonisation of the EU sovereign bond deferral regime by removing National Competent Authority (NCA) discretion. We suggest that, out of the two options available to NCAs, the **option to publish the details of several transactions in an aggregated form for six months is made the rule.** Aggregated data should be published 1 week after the end of the week.

- AFME's position is that **outstanding issuance size should be considered as part of the liquidity measure for sovereign bonds**, not just corporate bonds. Other **key relevant factors, for example, time since issuance should also be included** in the legal text.

- For corporate bonds we feel that the inclusion of the maximum deferral periods per trade category at Level 1 is short-sighted and that any calibration of these categories should be data led. Therefore, the **exact calibration of all trade categories and the maximum time deferrals for each, including where price and volume alignment is appropriate, should be left to ESMA** owing to the technical expertise required to specify the calibration as well as due to the need to allow for flexibility to amend the calibration in a timely manner should this be required.

- AFME supports the view that **pre-trade transparency requirements for bonds should only apply to trading on central limit order book and periodic auction systems on trading venues, and therefore support the Council's proposal to remove the pre-trade obligations for SIs under Article 18 MiFIR.**

Key Consolidated Tape (CT) Issues

- An **equities CT should include both pre-trade and post-trade data; it should be continuous and real time to ensure commercial viability.** The pre-trade equities CT should include the first five levels of the book within the definition of core market data.

- The bond CT should only **focus on post-trade data. It is crucial that the bonds CT ensures committed liquidity providers are not exposed to undue risk by not publishing post-trade details until after the deferral period has expired.**

- The role of a bond **CT Provider (CTP) is solely to aggregate and distribute trading data which is already publicly available via SIs, trading venues or APAs**. Any structure that requires or allows a CTP to apply deferrals would simply replicate work and should be avoided.

- We support Parliament's proposal that **Competent Authorities shall monitor the data quality provided to the CTP by market data contributors** and, where data quality is deemed insufficient, Competent Authorities shall take the **necessary measures, including sanctions**.

- AFME agrees that a **single consolidator for each asset class, with independent governance, should be appointed by ESMA via tender process** and that there is **no mandatory consumption of the CT**.

- On the revenue sharing mechanism, **we agree with proposals to have this mechanism in place for the equities CT** to account for potential loss of revenues for small independent exchanges that do not belong to exchange groups and to a level playing field amongst all data contributors.

Key Commodities Issues

- AFME strongly recommends that the **scope of the position limits regime is not expanded beyond its scope today**, and that **minimum holding periods are not introduced on the EU's commodity markets**, which would only be to the detriment of available liquidity.

Main Paper - Detailed Positions and Rationales

Key Equities Issues

Systematic Internalisers (SIs)

- **SI is a regulatory construct that captures a collection of different business models. These are all clearly distinctive from trading venues'** business models and complement the EU equities arena.

- **Brokers are typically subject to best execution rules and will access the liquidity available on different types of venues (e.g. trading venues or SIs) in line with their clients' interests.**

- **Liquidity offered by SIs is differentiated from the type of liquidity available on trading venues** (and would not migrate to venues).

- **SI can provide bilateral (i.e. bespoke), more efficient and better priced execution to certain of its clients' orders.** This ultimately benefits end investors, such as pensioners and savers, who entrust their money to asset managers that trade with SIs to obtain the best possible results for them.

- **SIs deal on their own account, hence put their proprietary capital at risk.** This is a key characteristic which differentiates SIs from trading venues, which do not facilitate trades using their balance sheet, and instead bring buyers and sellers together by providing a matching mechanism (i.e. a multilateral facility), for which they charge a fee.

- By providing access to liquidity and offering their balance sheet (risk capital) to clients, **SIs act as a 'shock absorber' for end-users by limiting price impacts of client orders**. It is vital to preserve such risk provision as part of the EU's market eco-system in order to ensure that investors' varying needs can continue to be met.

- **EU policymakers' stated intent to 'level the playing field' with trading venues is therefore not appropriate as SIs are fundamentally different from trading venues.** An approach originating from a misunderstanding of SIs would be detrimental to investors, who will have less liquidity available when they need it, and is likely to lead to lower EU liquidity overall**.**

- **SIs trading represents an additive source of liquidity that is differentiated and cannot be replicated by other existing trading mechanisms,** and therefore should be preserved.

AFME's position

- Restricting SI executions by size [e.g. to a size > 1 x Standard Market Size (SMS) or > 2 x SMS] limits the provision of principal liquidity to EU investors.

- **We advocate for no undue restrictions to SI services (as per Council proposal)**, which means:
  - **removal of midpoint restrictions,** i.e. SI should be allowed to execute 'at midpoint at any size'. This should also be valid for trading on trading venues.

  - **reverting to the existing Level 1 text that sets the size at which SIs must abide by their public quotes at up to SMS**.

Rationale

- Both EU and non-EU investors would see restrictions to SIs as **damaging to their pursuit of best execution**, and their ability to access liquidity that would otherwise not be available. Overtime, this would impact the value of investments in EU equities and disincentivises investment in EU capital markets.

- With limitations on EU SIs, **EU firms acting in SI capacity would be unable to compete with non-EU peers** in servicing institutional investors threatening the EU's objective to effectively compete with other markets globally.

- A restriction on mechanisms offering principal liquidity (including mid-point liquidity) assumes that the trading intention will shift to central limit order books run by regulated markets, or other types of multilateral trading facilities. However, the reality is that **principal liquidity in SIs is differentiated and additive to the current execution landscape, and therefore limiting midpoint trading will not result in that liquidity shifting to other mechanisms.**

- Over time, we would expect limitations to SIs to result in a reduction of investor appetite for trading on EU markets or instruments available on them.

Equity market structure and transparency

Volume Cap and midpoint trading

- The Commission proposed, with the Parliament endorsement, **to replace the Double Volume Cap (DVC) with a single volume cap (SVC) set at 7% of trades that are executed under the reference price waiver (RPW) or the negotiated trade waiver (NTW)**. The Council is of the view that the DVC should be replaced by a **higher SVC, set at 10%, only in relation to the RPW**. The Parliament added a **revision clause** whereby ESMA would assess the volume cap threshold and the method by which it is defined, taking into account financial stability, international best practices, the competitiveness EU firms, the significance of the market impact as well as the efficiency of the price formation.

- **Commission and Parliament are also of the view that the use of the RPW should be further restricted to orders above a certain size**, disabling the provision of midpoint execution for smaller trade sizes.

AFME's position

- **There should be no size restrictions placed on midpoint trading through any mechanism. Such restrictions should not be placed on the RPW.** Trading venues should be permitted to execute at the midpoint at any size.

- **AFME is not supportive of the any of the proposals outlined above to retain a volume cap. Our view is that the volume cap should be removed or, alternatively, suspended for an initial 5-year period** at the end of which, ESMA should assess if and to what extent the cap is negatively impacting price formation. This helps ensure that EU regulation is evidenced based.

- **Only if ESMA demonstrates that price formation is negatively impacted, the Commission should reinstate the restriction alongside the Council proposal** (SVC, set at 10%, only covering the RPW).

- **If the volume cap were to be maintained, it should not include the Negotiated Trade Waiver (NTW)**.

- If a volume cap were to be maintained, **we would be more supportive of a shortened suspension period of 3 months each time the cap is reached,** as per the Council's proposal.

Rationale

- The **justification provided for changes to the volume cap is based on unsubstantiated claims** that EU markets are not sufficiently robust as a result of trades being executed away from pre-trade transparent venues, which we strongly rebut.

- We **note that no evidence has ever been provided to support the notion that price formation is deteriorating and we caution against policies with an aim to force trading activity on to lit venues without any critical assessment of its impact**.

- A **volume cap remains a measure misaligned with international best practices**, and **restrictions on midpoint execution disable the provision of a globally recognised fair execution price**.

- **These measures risk detrimental impacts to investors** as trading strategies would need to conform to a **limited venue offering, leading to substandard/worse execution outcomes**. In addition, within the current global context, and the shrinking size of European traded activity relative to other regions, these limitations could further impact the EU's position as a jurisdiction that is open to investors and firms looking to raise capital.

- **In absence of strong evidence supporting the notion that dark venue activity needs to be limited, any amendments to further expand the volume cap should be opposed**.

- **The NTW should not be restricted or capped (i.e. not included for the purposes of any SVC) because this waiver provides an important execution mechanism**. It enables market participants to negotiate trades at a price that is in line with the current market conditions, which is subsequently reported under the rules of a trading venue in order to fulfil a regulatory or an operational requirement.

- Similarly, **any measures to expand midpoint trading limitations to mechanisms that do not operate under the RPW should be subject to a separate assessment**.

Protection of trading venues' liquidity

- Banks, trading venues and other financial service providers all play a critical role in the EU equity market ecosystem.

- Liquidity on trading venues is primarily provided by banks and investment firms that actively make markets either by formally entering into market making agreements with trading venues, or by using trading venues' incentive price schemes (i.e. including rebates) to the providers of liquidity.

- Within new Article 39a MiFIR, the Co-Legislators have both acknowledged the importance of rebates that are offered by trading venues to investment firms that aid market makers' provision of liquidity on trading venues. **AFME supports the intention to safeguard these as a mechanism that encourages liquidity on a regular and predictable basis in EU trading venues.**

AFME's position

- AFME supports that **pricing mechanisms (i.e. rebates) designed to encourage liquidity provision on trading venues are preserved, and not prohibited by any ban on payments for forwarding client orders for execution,** mostly in line with the Parliament position.

Rationale

- **Liquidity on venues can be inherently scarce and vary considerably during the course of the trading day. Banks and investment firms are the primary providers of liquidity on trading venues** either by formally entering into market making agreements with trading venues, or by using trading venues' incentive price schemes (i.e. rebates) to the providers of liquidity.

- The **incentive schemes that trading venues put in place to promote liquidity do not raise any conflict of interest** that needs to be addressed or prevented.

Key Fixed Income Issues

- It is important that policy proposals are driven by accurate and complete data analysis. Bond markets are by their nature heterogeneous and therefore very different to equities markets.

- Market makers fulfil a critical role in facilitating trading by utilising their own capital to provide pricing on demand. Anything that causes undue risk to this process will negatively impact the provision of liquidity.

- The following AFME positions ensure the efficient provision of liquidity is maintained.

Sovereign Bonds

1. **Non-EU sovereign bond deferrals**

AFME's position

AFME does not support non-EU sovereign bond deferrals being subject to the same timeframes proposed under the corporate bond deferral framework.

Rationale

AFME is concerned about the lack of consideration for non-EU issued sovereign bonds around the application of deferrals in the post-trade transparency regime. The limitation on the applicability of sovereign bond requirements to EU issues in the proposed compromise text means that non-EU sovereign bonds, which make up ca. 60% of sovereign transparency, default to the proposed deferral framework for corporate bonds, which does not support the ongoing ability for trade aggregation and limits the maximum possible deferral to 4 weeks.

As a result, all non-EU sovereign bonds would be subject to significantly shorter transparency time frames than what they are subject to under the current rules and EU sovereign bonds under the proposed rules. For example, the specific trade details of an illiquid Colombian sovereign bond would be significantly more transparent than illiquid European government bonds (4 weeks vs current proposal of 6 months).

2. **Sovereign bond deferrals**

AFME's position

AFME calls for the streamlining of the legislation, with the harmonisation of the EU sovereign bond deferral regime by removing NCA discretion. We suggest that, out of the two options available to NCAs, the **option to publish the details of several transactions in an aggregated form for six months is made the rule.** Aggregated data should be published 1 week after the end of the week.

Rationale

Proposals on the table allow national competent authorities to apply discretion around their treatment of deferrals for sovereign bonds by the choice of two deferral options. This discretion however has been withdrawn for corporate bonds deferrals and should also be removed for sovereign bonds deferrals.

3. **Sovereign bond liquidity determination**

AFME's position

AFME's position is that **outstanding issuance size should also be considered as part of the liquidity measure for sovereign bonds**, not just corporate bonds. Time since issuance is also a key factor impacting liquidity and should be included as part of the text.

Rationale

In the Parliament proposals, the definition of liquid market inserting a reference to issuance size, is only in relation to corporate bonds, when in fact sovereign bonds could also use issuance size as a liquidity determinant.

In addition, we note that:

- The reference to issuance size should be amended to outstanding issuance size to ensure accurate calibration

- Outstanding issuance size is not the only determinant of liquidity and all other relevant factors including, but not limited to, time since issuance should be considered

Corporate Bonds

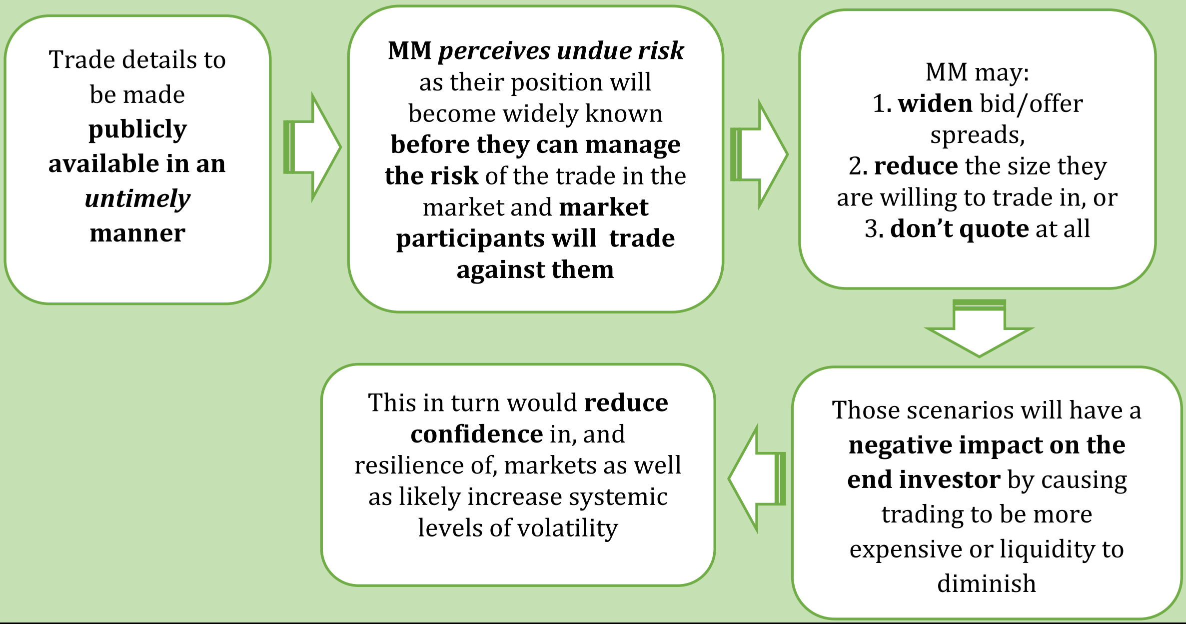
AFME's position

- Whilst we **support a deferrals structure that encompasses 5 trade categories**, we are **not supportive of proposals that lack validation from existing trading data**, such as that undertaken by AFME on corporate and sovereign bonds. The exact calibration of all trade categories and the maximum time deferrals for each, including where price and volume alignment is appropriate, **should be left to ESMA** owing to the technical expertise required to specify the calibration as well as due to the need to allow for flexibility to amend the calibration in a timely manner should this be required.

Rationale

- Bond market structure is very distinct from that of equities. This is largely due to the heterogenous nature of the different securities involved, the relatively large average trade size (€2.5m for corporate bonds according to ESMA's Report; for comparison, the average size for equities is split by venue type: RM: €8k, MTF: €9k, SI: €37k and OTC: €98k) and the very high level of infrequency with which individual securities trade
- The consequent lack of natural liquidity available in each security is clearly demonstrated by the very low number of securities deemed sufficiently liquid to be subject to immediate post trade transparency under ESMA's transparency regime (fewer than 1% of total outstanding.)
- Given the **heterogenous characteristics of bond markets**, the probability of equal and opposite simultaneous trading interests always existing on the market is relatively low and the **availability of market makers ready to step in to fill this gap is therefore particularly important**.
- **When trading, market making (MM) firms** take on risk by committing balance sheet. Until they are able to trade out of the position, the market maker will take the debt into its inventory and will be exposed to market risk (changes in the asset's price during this time).
- Appropriately calibrated deferrals provide necessary temporary protection from 'undue risk' for the market participants that provide liquidity. In fact, were MM to be exposed to undue risk the service of liquidity provision to the wider market would be fatally compromised. The larger and the more illiquid the trade, the bigger the risk. We explain the causal chain below.

Diagram 1. Causal Chain



Pre-trade transparency for bonds

AFME's position

- AFME support the view that **pre-trade transparency requirements should only apply to trading on central limit order book and periodic auction systems** on trading venues.

Rationale

- MiFID pre-trade transparency in quote-driven systems is ineffective, and it does not help increase transparency in bond markets. It is rather just an unjustified cost for market participants complying with the system.
- The quotes are bilateral, often non-actionable, and not accessible by market participants. Once quotes become actionable they are published, however at that point the trade would have taken place and the details of the actual transaction published under the post trade transparency requirements, which makes the pre-trade details of limited use.

Key Consolidated Tape Issues

- The ambition of a consolidated tape (CT) is to create a centralised database, meant to provide a comprehensive view on market data which would have the objective to improve overall price transparency across execution venues.

- The establishment of a consolidated tape would help *de facto* integrate EU markets, reduce home biases in investments and attract international capital to the EU. An appropriately constructed consolidated tape will also help improve the quality of market data, reduce its costs and decrease the complexity relating to market data licences.

AFME's Positions and Rationales

- We support that the **bond CT is established first, followed by the equity CT 6 months later**.
- We are **extremely supportive of the provisions that require competent authorities to monitor, and CT providers to assess the quality of market data**.
- AFME agrees with the proposals for a **single consolidator for each asset class, with independent governance, to be selected and appointed by ESMA via tender process** and that market participants are **not obliged to use the consolidated core market data provided by the CTP (no mandatory consumption)**.

On the Equities CT

- On scope, an **equities CT should include both pre-trade and post-trade data; it should be continuous and real time to ensure commercial viability.** We support the Parliament's proposals in this respect and also agree with the Parliament's proposal to include the first five layers of the book within the definition of core market data.
- **Only a pre-trade and post trade CT for equities can deliver all the benefits and use cases identified** on the independent study on the creation of an EU consolidated tape.

- On mandatory contribution, **we agree with the Parliament's exemption for small, independent European markets** which, in our view, is appropriately calibrated.
- On the revenue sharing mechanism, **we agree with proposals to have this mechanism in place for the equities CT** to account for potential loss of revenues for small independent exchanges on level playing field and proportionality grounds. We are **not in favour of the Council's proposal to allow the redistribution only in respect of trading venues** and not all execution venues.

On the Bonds CT

- The **role of a bond CTP is solely to aggregate and distribute trading data which is already publicly available via SIs, trading venues or APAs**. Any structure that requires or allows a CTP to apply deferrals would simply replicate work and should be avoided.
- On scope, we fully support the Parliament's proposals and we make two important remarks:
    - **the focus should be on post-trade data** because the majority of bonds are trading via the RFQ (Request for Quote) negotiation protocol, which means that the pre-trade price and the post-trade price would actually print very close to each other.
    - **it is crucial that the bonds CT ensures committed liquidity providers are not exposed to undue risk by not publishing post-trade details until after the deferral period has expired.** The consolidated bond data generated from the tape can then be analysed and deferrals modified if, and when appropriate.

On the revenue sharing mechanism, we agree with the Commission and Parliament approach **not to compensate for revenues lost in the case of bond markets**, given that there are no revenues that are lost by the establishment of a CT for bonds.

Key Commodity Issue

Minimum holding period for certain commodity derivatives

Unlike the Commission's proposal and the Council's texts, the Parliament's position includes a mandate for ESMA to assess whether setting minimum holding periods for commodity derivatives relating to wholesale energy, agricultural, or emission allowances products would effectively limit the volatility on these markets and ensure convergence between prices of derivatives in the delivery month and spot prices for the underlying commodity, without prejudice to price discovery on the market for the underlying commodity.

AFME's position

- **We do <u>not</u> see compelling arguments for the introduction of minimum holding periods for certain commodity derivatives** and we are concerned that the proposed assessment process would not fully identify all the potential risks to EU commodity markets. AFME considers that a public consultation as well as a full and detailed cost benefit analysis would be required.
- If enacted, the assessment should consider whether setting a minimum holding period would limit volatility on these markets and ensure convergence between prices of derivatives in the delivery month and underlying spot prices.

Rationale

- Minimum holding periods for certain derivatives seem highly likely to disrupt the ability of market participants to hedge, particularly in volatile markets where they may need to adjust their positions more frequently. Market participants would also be restricted in their ability to close out positions that need to be reduced or could be restricted from unwinding a position that needs to be closed due to unforeseen factors (e.g. sanctions). We see it as another undue restriction on market makers and their ability to provide liquidity. It also seems likely to put EU firms at a disadvantage compared to non-EU firms, as an EU energy market participant could purchase a short-term option from a non-EU firm without being subject to this restriction.

- As an example, to illustrate the liquidity issue, where a market maker sells a derivative to a counterparty that market maker then has to purchase a future on exchange to risk manage their position. The same is the case in reverse if the market maker then buys a derivative from another counterparty. A holding limit would prevent the market maker buying and selling a particular future within a set period meaning that market maker could only provide liquidity to either buyers or sellers (but not both). This would make liquidity provision impossible, with severe consequences for the orderly functioning of these markets.

Other Issues

Designated Publishing/Reporting Regime

The Designated Publishing Regime or Designated Reporting Regime (DPR or DRR) was not included in the original Commission proposal. It appeared for the first time in the July 2022 Rapporteur's Report. The proposed regime has been confirmed, unchanged in the Council text, and confirmed in the final Parliament draft of March 2023.

AFME are supportive of the DPR, which seeks to eliminate uncertainty about which party to a trade should report a transaction and reduce the regulatory burden on investment firms, particularly smaller ones, **however it should not be implemented at an individual instrument level**. This would provide no greater benefit than what is currently in place today (under the SI regime), as it requires counterparties to a trade checking who is a Designated Reporting Entity at instrument level instead of checking if the other participant is an SI at instrument level.

The objective of the DPR is to decouple the SI obligations from the post–trade transparency regime, which AFME supports. The compromise text suggests that ESMA would automatically map all existing SIs to be DPR in those products, however this would not work due to the difference in granularity (SIs can opt in at the instrument level) and would defeat the ultimate objective of decoupling the SI regime from the reporting waterfall. **To reduce the current complexity an "instrument level" qualification should not be an option for this regime. Otherwise, this new regime would only replace the existing reporting regime with a different name, rather than simplifying the process.**

Share Trading Obligation (STO)

In its proposal, **the Commission has codified the perimeter of the STO in line with ESMA's recommendations**. It also establishes an EU 'official list' of shares subject to the STO, (i) exempting shares traded on a third country venue *in the local currency;* and (ii) removing the existing exemption for shares which are characterised by non-systematic, *ad hoc*, irregular and infrequent trading.

On the first point on exemption for shared traded on a third country venue *in the local currency*, while the Council has confirmed the Commission's drafting, **the Parliament has slightly adjusted the language to amend 'local currency' to '*a non-EEA currency*'**. The Parliament acknowledges that shares that have their main centre of liquidity outside the EU, may also be denominated in currencies other than the local currency of the third country market.

Both Council and Parliament have confirmed the Commission's proposal on the removal of the exemption for non-systematic, ad-hoc, irregular and infrequent trading.

AFME's position

- AFME supports the Parliament's proposal to **change the phrase 'in the local currency' to 'a non-EEA currency'**.
- **We do not support the removal of the exemption for non-systematic, ad-hoc, irregular and infrequent trading.**
- The phrase 'traded on a trading venue' in the Commission's and Council's proposed Article 23(1) text, **should be changed into 'admitted to trading on a regulated market' as per Parliaments' proposals.**
- AFME supports the Commission proposal requiring ESMA to publish the list of the shares with an EEA ISIN subject to the share trading obligation and to keep it updated at all times.;

Rationale

- It is important that Article 23 MiFIR is drafted appropriately to avoid unintended consequences for investors seeking to trade third country shares which have their main centre of liquidity outside the EU. **We agree with the Parliament that it is key to ensure that EU investors are not frozen out of access simply because shares do not trade in the 'local currency'.**

- The removal of the non-systematic, ad-hoc, irregular and infrequent trading exemption on the basis of its non-specificity, **represents an unnecessary reduction of flexibility and the ability of EU firms to allow access to the best liquidity pools for EU investors when current or future edge cases in trading specific shares occasionally arise. This includes the flexibility to execute transactions OTC in extraordinary market conditions.** We note that similar points were made by market participants in response to the ESMA consultation on equity transparency back in 2020 and, as stated by ESMA in their Review Report, a slight majority of respondents were in favour of maintaining the exemption.

- **The term 'traded on a trading venue' should be replaced with "admitted to trading on a regulated market"** in order that the operative provision remains in line with the intent of correctly codifying the perimeter of the STO. Then EU brokers are not compelled to access smaller liquidity pools within the EU instead of deep liquidity centres where EU investors will be able to access the best price and liquidity conditions.

Systematic Internaliser definition

AFME supports the Council and Parliament approach to only apply the systematic internaliser definition where the **qualitative criteria** indicating that an investment firm performs its activities on an organised, frequent, systematic and substantial basis are met, or where an investment firm chooses to opt-in under the systematic internaliser regime.

Information to be published by the CTP

AFME supports the current framework whereby **SIs are identified by a generic 'SINT' identifier, to ensure SI data is published on an anonymous basis and SIs are protected from undue risk**.

AFME encourages the EC and Co-Legislators to clarify further at Level 1 that the MIC code applies to trading venues and that SIs will be identified with a generic 'SINT' identifier. This could be achieved via small amendments to the proposed 'core market data' definition, Article 27h MiFIR and corresponding recital(s).

Commodities position limits

Unlike the Commission's proposal and the Council text, the Parliament's position includes a review clause on the position limits regime – requiring ESMA to assess the effectiveness of the position limit and position management controls regimes as well as the appropriateness of limiting the scope of position limits to agricultural commodity derivatives, critical/significant commodity derivatives traded on a trading venue and to economically equivalent OTC contracts by 31 December 2025.

AFME's Position

- We would strongly recommend that **the scope of the position limits regime is not expanded beyond its scope today**.

Rationale

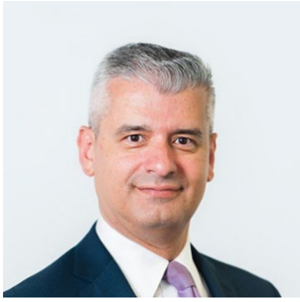
- The commodity derivative position limits regime has only recently been subject to a detailed review and was subsequently narrowed in February 2021 through the MiFID Quick Fix Directive, with recital 12 to the Directive stating that the position limit regime had "proved to be unfavourable for the development of new commodity markets", and that as a result 'position limits should only apply to critical or significant commodity derivatives that are traded on trading venue and to their EEOTC contracts.' There is no need to review the regime again, so soon after implementing these necessary amendments, especially where reversing the change would reinstate a regime which is unfavourable for the development of new commodity markets.
- It is worth noting that less significant or non-critical commodity derivatives contracts which are no longer subject to the position limits regime are still subject to the position reporting regime as well as other MiFID obligations including those in relation to market transparency and transaction reporting.

AFME Contacts

April Day
Managing Director, Head of Equities
April.Day@afme.eu
+44 (0)20 3828 2682

Carlo De Giacomo
Manager, Advocacy
Carlo.DeGiacomo@afme.eu
+32 (0) 478 09 51 98

Giulia Pecce
Assistant Director, Head of MiFID Policy
Giulia.Pecce@afme.eu
+44 (0) 20 3828 2746



Pedro Pinto
Director, Advocacy
Pedro.Pinto@afme.eu
+32 (0)2 883 5548

Victoria Webster
Managing Director, Fixed Income
Victoria.Webster@afme.eu
+44 (0)7785 460 434