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Fédération Européenne des Usagers des Services Financiers

EuroFinUse Position on the proposals in MiFID II on capital market structures

The European Federation of Financial Services Users (EuroFinUse)

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Executive Summary

MiFID I has fragmented capital markets in Europe into different "market venues". These new venue categories – and, among them, the "MTFs" – are mostly unknown and inaccessible; at least directly, by individual investors. And, even worse, pre and post trade data are now also fragmented and individual investors no longer have free and easy access to those vital data for investment decisions. Lastly, they have no guarantee that their orders will get the best execution and especially the best price available among all these market "venues", many of them being totally hidden from individual investors. In fact, there is evidence that transaction costs did not significantly come down for individual investors since the implementation of MiFID I.

MiFID I thus has been contributing to further marginalize individual investors and to discriminate them versus institutional and financial ones, and to explain the dwindling participation of individual shareholders to European equity markets: their relative weight has decreased from around 50 % a few decades ago to only around 10 % nowadays.

The MiFID II proposal from the EC does not in our view fix this major market fragmentation issue and the induced lack of consolidated trade data readily available to small investors. Like MiFID I, this proposal it is still mainly aimed at satisfying financial institutions and intermediaries, rather than the real economy users (such as non-financial issuers and end investors), for whom the capital markets were developed in the first place. MiFID II only favours again the "*reintermediation*" of capital markets which used to provide the direct finance conduct for the real economy.

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First of all, we would like to refer the reader to EuroFinuse's previous position papers and responses to EU consultations related the MiFID Review[1]. While having had already communicated our proposals on the sales practices part of MiFID II; we would also like to present our proposals to the capital markets structure part. Our following proposals are, ultimately, aimed at ensuring the delivery of best execution and the access to trade data to retail investors:

1. MiFID II would create yet another "market venue" called "OTF". We believe this would be a mistake. The right direction would be to reduce capital markets' fragmentation and increase transparency for end investors and non-financial issuers (e.g., the "real economy")

We support Amendment 641 of the Draft Report on MiFID II of the ECON Committee[2], which proposes the deletion of the OTF category stating that "*all trading platforms operated by market operators or investment firms should be during multilateral trading subject to proper market rules (i.e. transparency, non-discretionary execution, non-discriminatory access, and full market surveillance)*"

2. Article 27 MiFID 2: A real Best Execution obligation

Retail clients are being denied access to the best available execution prices available in today's competitive capital markets. The emergence of many new trading venues and trading systems in Europe only sometimes delivers superior execution quality. In general, retail investors have seen little improvement in order handling or the quality of execution since MiFID was implemented.

Best execution is a fundamental tenet of the MiFID regime. Article 21 MiFID states that investment firms, as brokers, must take all reasonable steps to achieve execution of retail investor orders at the best price and the lowest cost[3]. Yet retail investors have seen little improvement in order handling or the quality of execution since MiFID was implemented. This is despite the emergence of many new trading venues and trading systems in Europe competing

[1] For instance, EuroFinUse's Position on MiFID II (recast), our Response to the CESR Technical Advice to the European Commission in the Context of the MiFID Review - Equity Markets; and our Response to ESMA's Guidelines on Remuneration Practices under MiFID; among others.

[2] http://www.europarl.europa.eu/RegData/commissions/econ/amendments/2012/489465/ECON_AM(2012)489465_EN.pdf

[3] Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, *OJ L 145*, 30 April 2004 http://ec.europa.eu/yqol/index.cfm?fuseaction=legislation.show&lexId=1

with incumbent regulated markets in the last five years. Investment firms today face many more trading venues and trading systems competing for orders. The many benefits of competition between trading venues and trading systems are not being passed through to the retail investor[4].

Retail investors are losing out because the existing Best Execution requirements are both insufficient and inadequately enforced. Regrettably, the Commission's MiFID 2 legislative proposal does nothing to strengthen Best Execution requirements. The European Parliament, however, has sought to strengthen such requirements and, in the same line, EuroFinUse proposes an amendment to Article 27(1) that would oblige investment firms take all necessary (and not only the reasonable) steps to obtain the best possible execution result for their clients.
Therefore, Article 27(4) MiFID 2 should be strengthened so that investment firms 'take all *necessary* steps to include those venues that enable the investment firm to obtain on a consistent basis the best possible result for the execution of client orders'.

3. Pre- and post-trade data should be available to retail investors at a reasonable cost

Policy makers should also ensure retail investors gain access to this vital pre- and post-trade market data for trading venues across Europe easily. Currently, this market data is excessively high in Europe; without access to this data, European retail investors are denied access in equal terms to investment opportunities.

The cost of retail market data is not only expensive for institutional investors but moreover prohibitive for retail investors, due to the fact that they must pay to access each Member State's market. The cost of data is a significant deterrent for retail investors to undertake cross-border investment in the EU. This is evidenced by the limited cross-border participation in Europe's financial markets[5]. In the U.S. retail investors can access real-time market-wide data for as little as $10 per month. In Europe the cost of this data is around $10 per month per EU Member State's market (and often more). This is the major reason why many retail investors treat the U.S. markets as their second most active market, behind their own domestic market.

[4] For instance, 30% of trades on Equiduct were executed at a better price than on the Home Market in October 2012 and no trades received a worse price.

[5] European Commission: Special Eurobarometer 373 – Retail Financial Services, September 2011 http://ec.europa.eu/internal_market/finservices-retail/docs/policy/eb_special_373-report_en.pdf

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The European Commission's MiFIR proposal does little to correct this discrepancy[6]. Article 12(1) MiFIR would oblige regulated markets, MTFs and OTFs to make pre- and post-trade data available on a reasonable commercial basis. This should be amended to provide this data free of charge to retail investors to aid informed investment decisions. MiFIR must improve investment opportunities for retail investors and should as a matter of principle deliver access to the diversity of European markets. Trading venues should provide separate retail pricing structures for market data to retail investors free of charge. This would reduce the barriers to retail investor access to Europe's capital markets. Improving retail participation in Europe's capital markets would increase liquidity in secondary markets. The lack of access to data for retail investors is a weakness in the single market which could be addressed in MiFIR according to our proposed Amendment below.

[6] European Commission: Proposal for a Regulation of the European Parliament and of the Council on markets in financial instruments and amending Regulation [EMIR] on OTC derivatives, central counterparties and trade repositories [COM(2011) 652 final], 20.10.2011 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0652:FIN:EN:PDF

ANNEX – Suggested Amendments by EuroFinUse

Article 20

Text proposed by the Commission	Amendment
(…)	Deleted
Justification	
The OTF category is deleted as all trading platforms operated by market operators or investment firms should be during multilateral trading subject to proper market rules (i.e. transparency, non-discretionary execution, non-discriminatory access, and full market surveillance)[7].	

Article 27(1) MiFID 2

Text proposed by the Commission	Amendment
1. Member States shall require that investment firms take all reasonable steps to obtain, when executing orders, the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. Nevertheless, whenever there is a specific instruction from the client the investment firm shall execute the order following the specific instruction.	1. Member States shall require that investment firms take all ~~reasonable~~ **necessary** steps to obtain, when executing orders, the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. Nevertheless, whenever there is a specific instruction from the client the investment firm shall execute the order following the specific instruction.
Justification	
Investment firms should always route orders to ensure the best possible outcome for the client. Best execution should be provided as a matter of course, and firms should take all necessary steps to achieving it. The best execution principle has been highly ineffective so far, and firms do not go far enough to achieve it.	

[7] According to the already proposed Amendment 641 of the Draft Report on MiFID II of the ECON Committee.

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Article 12(1) MiFIR

Text proposed by the Commission	Amendment
1. Regulated markets, MTFs and OTFs shall make the information published in accordance with Articles 3 to 10 available to the public on a reasonable commercial basis. The information shall be made available free of charge 15 minutes after the publication of a transaction.	1. Regulated markets**, and** MTFs shall make the information published in accordance with Articles 3 to 10 available to the public on a reasonable commercial basis. The information shall be made available free of charge **~~15~~ 5** minutes after the publication of a transaction. **Market data as referred to in Articles 3 to 10 shall be published in accordance with those articles and made available to private clients of investment firms and credit institutions free of charge in real-time, where the primary use is for the purposes of making personal investment decisions.**

Justification

In Europe the cost of retail data is excessively high, and retail investors must pay to access each Member State's market. Retail investors pay a similar cost to access the much larger US market, which is why this market is often the second most active market for retail investors behind their domestic market. A low cost standardised view of the market will increase cross-border investment in Europe to the benefit of all.

The excessive cost of pre-trade data is a key barrier for retail investor access to European Capital Markets. Trading venues should provide separate retail pricing structures for market data in order to remove fragmentation and improve retail participation in European Capital Markets.