PRESS RELEASE

BETTER FINANCE raises serious concerns over the current "trialogues" on EU capital market structure and their impact on the retail investment community

- BETTER FINANCE calls for restricting "dark" capital market venues to **REAL Large-in-scale (LIS) trades**, i.e., of more than €100k each, to really prevent them from dealing with "retail" orders.
- Current **Payment for Order Flow (PFOF)** proposals "surreal" and don't respond to citizens' questions.
- A real-time pre-trade **Consolidated Tape (CT)** of equity order books will put retail investors and brokers at a disadvantage due to "latency arbitrage". BETTER FINANCE calls for the adoption of the Council's approach.

11 May 2023 | BETTER FINANCE, the European Federation of Investors and Financial Services Users, is becoming increasingly concerned by the ongoing "MiFID/MiFIR review" trialogues–interinstitutional negotiations involving the European Commission, Council, and Parliament.

While the discussions are highly technical and complex, it is imperative that retail investors are able to benefit from a level playing field in transparent and regulated European securities trading. Under the current texts however, market structure - a critical component of the CMU Action Plan–is still biased against the interests of retail investors.

Moreover, BETTER FINANCE regrets that the process to date has been dominated by particular industry interest (i.e., large buy-side and sell-side corporations), and is becoming increasingly technical and undemocratic, excluding input from buy-side stakeholders, specifically EU citizens as end investors.

The MiFIR review aimed to enhance transparency and ensure fair competition among execution platforms, by establishing an EU-wide Consolidated Tape for shares, bonds, and ETFs, using real-time data, as well as strengthening market structure requirements and establishing measures to prevent conflicts of interests.

BETTER FINANCE identifies three key concerns for retail investors in the MiFID/MiFIR review:

- With regards to **Market Structure**, BETTER FINANCE urges a REAL Large-in-scale (LIS) threshold for Systematic Internalisers (SIs) –in essence private discriminatory and non-transparent equity market venues– in the enforceable Level 1 legislation, rather than leaving it to ESMA.

  The threshold should be set at EUR 100000 per trade for most liquid instruments. As of the end of 2022, the average trade size of dark, Systematic Internalisers was approximately EUR 13000[1], proving that they are increasingly capturing retail trades that would be better serviced in the "lit" markets where these trades can participate in price improvement (not hidden away from price formation mechanisms).

  This contradicts the essence of MiFID I and II, which aimed to restrict dark venues to large professional trades. Guillaume Prache, Managing Director of BETTER FINANCE, emphasizes that "the average trade size of EUR 13,000[2] for dark venues is not "large," and European politicians

[1] Source: 2023 Report from Liquidnet, "Liquidity Landscape | 2023: What Next for European Markets?"
[2] Source: Exhibit 10 - SI flow, Liquidnet Report, p.6

should not delegate this crucial matter solely to a technical authority but take action and set the threshold at EUR 100,000 themselves".

- After several changes to the **Payment for Order Flow (PFOF)**, the latest compromise proposal can only be described as "surreal". While the MiFIR proposal from the European Commission originally prohibited PFOF, individual Member States can now opt out.

  Claims that Payment for Order Flow (PFOF) benefits retail investors contradict best execution requirements. The notion that PFOF does not widen spreads for end investors is questionable, as market makers wouldn't pay substantial amounts to retail brokers otherwise.

  We await a detailed explanation with solid evidence. The burden of proof lies with those asserting the benefit for retail investors of payments from market makers and investment banks to retail brokers. Furthermore, proposing additional disclosures is yet another attempt to shift responsibility from providers to non-professional investors.

- Finally, we don't understand how a real-time pre-trade **Consolidated Tape** (CT) of equity order books would benefit retail investors, as they are more likely to suffer from "latency arbitrage," i.e., the time it takes for information to reach them compared to their trading counterparties.

  Latency issues with real-time data would again favour technologically advanced dark venues and market makers in accessing the best bids/offers information, at the expense of end investors and transparent markets. This would further encourage more dark trading and privatization of retail flow execution, leading away from lit and multilateral venues.

  The current CT is also incomplete due to waivers and voluntary "opt-in" for small venues. The detrimental effects of an incomplete, pre-trade, and real-time CT on market transparency, accessibility, and provider retribution are all concerning factors. This is particularly concerning since it remains unclear whether retail brokers or individual investors will have direct access and be required to pay for it.

  The ideal design for a Consolidated Tape (CT) benefiting retail investors would allow real-time monitoring of all transactions across active EU venues, including dark pools and Systematic Internalisers. It should include data points to assess the quality of execution received at the time of transactions, as opposed to a real-time pre-trade CT. BETTER FINANCE supports the solution outlined in the Council text, which aligns with this approach.

***

Contact: Director of Communications | Arnaud Houdmont | +32 (0)2 514 37 77 | houdmont@betterfinance.eu