FESE: one step forward, one step back – MiFIR review proposal risks missing the moment

Substantive changes are needed to ensure the legislative package published today does not risk undermining the Capital Markets Union (CMU), says the Federation of European Securities Exchanges (FESE).

Brussels, 25th November 2021

EU capital markets must remain competitive, geared towards financing the economic recovery, green transition and digital transformation. To achieve this, mobilising end-investors is necessary and requires a transparent, well-functioning and stable market. Equally, issuers need liquid markets that ensure low financing costs. Building an ambitious and effective CMU is therefore more important than ever.

Today's CMU package, however, seems like one step forward, one step back. While some aspects are a step in the right direction to further integrate capital markets, other core elements of the MiFIR reform do not meet the objectives of increasing transparency and liquidity, fostering a level-playing field between execution venues, and bolstering the competitiveness of Europe's equity markets.

Without substantial revision, the MiFIR reform will not help to promote further financing of the economy through public markets.

Exchanges do recognise and welcome the prohibition of payment for order flow (PFOF) to protect investors and the removal of the open-access regime for exchange-traded derivatives – changes which will support innovation in European markets. These, alongside the implementation of certain ESMA recommendations, will together make markets stronger. Although the details of the proposal require further in-depth analysis, we also support the principle of the European single access point (ESAP) to help in integrating capital markets.

Nevertheless, FESE believes the equity market structure changes in the MiFIR proposal only scratch at the surface of Europe's reality. Director General of FESE, Rainer Riess, commented:

> "The MiFIR review proposal is a missed opportunity, lacking a clear vision for how to strengthen the fairness, integrity and transparency of European markets. The proposal published today fails to address how the EU can increase its competitiveness to the benefit of issuers and investors.
>
> MiFID II was intended to bring more transparency to Europe's markets. We know from studies that over the past ten years the EU has lost over 500 listed companies. Fragmentation and the opacity of Europe's secondary markets have increased, with half of all trading taking place in the dark. Originally intended for large trades, dark venues do not contribute to price formation, thus limiting the information available to investors.
>
> A balance must be struck which preserves and enhances transparency and price formation. Further consideration of the renewed dark trading cap is required to ensure it does not suffer from the same loopholes as the current cap.
>
> We welcome the ban on payment for order flow practices and encourage policymakers to investigate other similar practices within the sphere of internalised

trading. Otherwise, in our view, end investors will continue to pay the price of an ill-designed market structure."

FESE regards the much-anticipated centrepiece of the proposal, the consolidated tape, as similarly mixed. It defines a single tape covering all venues – which FESE welcomes – but exchanges remain deeply concerned by the risks of such an elaborate and complex experiment. While a well-designed tape would help to provide all stakeholders with easy access to a consolidated view of the market – such as in the 15-minute delay tape scenario recommended by Oliver Wyman – the European Commission has not chosen the most appropriate way forward. Riess remarked:

> "We welcome that all venues will be subject to a standardised data reporting format and hopefully, combined with stringent enforcement, this will put an end to lower quality data from SIs and OTC. But while the root cause issue is the lack of quality data from off-exchange venues, the proposal puts the costs of the tape almost entirely on exchanges – i.e. public transparent markets. The use case of the tape remains unclear. And the revenue-sharing model proposed as a safeguard is too imprecise to offer serious reassurance.
>
> Perhaps, most worryingly for the future of Europe's markets, the proposal fails to address market structure deficiencies, insufficiently tightens best execution rules, and leaves the door open to a pre-trade tape, where ghost liquidity and latency arbitrage would be ubiquitous."

The consolidated tape will not be an adequate substitute for the necessary reforms to market structure. FESE believes that, to realise the core objective of MiFIR, its review should focus on a deeper re-design of market structure to increase transparency and liquidity, and make markets fairer and more accessible: a less complex market structure would serve issuers and investors.

Elsewhere, the scope of the ESAP should be carefully assessed to avoid introducing additional disincentives to listing on public markets. Recognition of the "file once" principle for issuers is welcome, but attention should still be paid to ensure information harmonisation measures are proportionate. Without this, the ESAP may risk having a negative impact on issuers, particularly SMEs, which may lack the resources to report according to certain formats.

Looking ahead, CEO of the Prague Stock Exchange, and FESE President, Petr Koblic, observed:

> "Today's consolidated tape proposal represents a serious risk to the sustainability of numerous exchanges' business models, especially for smaller exchanges and their local capital markets.
>
> The challenges hampering the success of the CMU, though complex, are entirely fixable — and the EU can do so in a way that benefits all market participants. We need a strong vision of where we want to take European markets.
>
> FESE stands ready to continue working with other stakeholders and policymakers to pursue the shared goals of stronger, more transparent, and more competitive European capital markets. The reforms we propose would help to make markets fairer and more efficient. We encourage policymakers to be ambitious and develop a strategic approach towards European capital markets to support the recovery, to empower investors, and to deliver sustainable growth. Let's finally complete the Capital Markets Union."

FESE Rue Montoyer, 25, 1000 Brussels — info@fese.eu — +32 2 551 01 80

Notes to editors:

For further information, please contact:

Stephen Gilmore
Communications Officer
Federation of European Securities Exchange
Email: gilmore@fese.eu
Tel: +32 2 551 01 87

About FESE

The Federation of European Securities Exchanges (FESE) represents 36 exchanges in equities, bonds, derivatives and commodities through 18 Full Members from 30 countries, as well as 1 Affiliate Member and 1 Observer Member.

At the end of October 2021, FESE members had 9501 companies listed on their markets, of which 15% are foreign companies contributing towards European integration and providing broad and liquid access to Europe's capital markets. Many of our members also organise specialised markets that allow small and medium sized companies across Europe to access capital markets; 1402 companies were listed in these specialised markets/segments in equity, increasing choice for investors and issuers. Through their RM and MTF operations, FESE members are keen to support the European Commission's objective of creating a Capital Markets Union.

FESE is registered in the European Union Transparency Register: 71488206456-23.