

**EBF RESPONSE TO CESR CALL FOR EVIDENCE
ON THE IMPACT OF MIFID ON SECONDARY MARKETS FUNCTIONING****- CESR/ 08-872 -****General remarks**

1. The European Banking Federation (EBF)¹ welcomes the opportunity to comment on the impact of the MiFID on the functioning of the secondary markets. This is an issue of core interest for our members who have a key role to play in the secondary markets both by trading on their own behalf and by acting as intermediaries, trading on behalf of their clients.
2. We have in the past pointed out that it is too early to draw definite conclusions on the functioning of the MiFID and that some of the difficulties that market participants are seeing at the early stages of the introduction of the MiFID are likely to be solved over time, as experience is being gathered that allows the identification of pragmatic solutions. However, we do want to state our overall positive impression of the impact of the MiFID to date. On a general note, we would therefore encourage regulators and policy makers to give the MiFID some more time to develop and to continue to monitor events before considering the need for any further-going initiatives.

Responses to CESR's questions*Benefits*

1. *What do you think are the key benefits for yourself or the market more generally that have arisen as a result of MiFID provisions relating to equity secondary markets?*

At the current point in time, the EBF welcomes in particular the increased competition that the MiFID has initiated on the securities exchange markets as a result of the abolition of the concentration rule, leading to both lower prices and improved services. We do expect that other benefits from the MiFID will become equally visible going forward, although this will likely occur with varying intensity and speed. It can for example be expected that in those countries where the concentration rule has been in place for a long time, there is some lag in innovation and competition on the equity secondary markets and more time will be needed before the benefits of the MiFID will be fully visible.

2. *Do you consider that there are any remaining barriers to a pan-European level playing field across trading venues? If so, please explain.*

¹ Set up in 1960, the European Banking Federation is the voice of the European banking sector, with over 30 000 billion EUR assets and 2.4 million employees in 31 European countries. The EBF represents the interests of some 5000 European banks: large and small, wholesale and retail, local and cross-border financial institutions.

Overall, we do not perceive any significant shortcomings in the regulatory framework in this respect, but believe that the markets are developing well to reap all the benefits from the liberalised rules.

It is however worth noting that some barriers still remain at the post-trading level, which may undermine the effectiveness of the competition between trading venues. Until the time that effective and cost-based interoperable arrangements between clearing and settlement infrastructures have been put in place, intermediaries will not be in a position to exercise their right of access to CDSs and CCPs comprehensively. This may result in an impediment concerning the choice of trading venues on economic grounds.

3. *Do you think that the MiFID has supported innovation in the equity secondary markets? Please elaborate.*

The emergence of Multilateral Trading Facilities (MTFs) is just one example for the innovation that has taken place in the equity secondary markets. If not solely due to the MiFID, the MiFID has certainly played an important role in accelerating such developments.

Downsides

4. *Have you faced significant costs or any other disadvantages as a result of MiFID relating to equity secondary markets? If so, please elaborate. Have these been outweighed by benefits or do you expect that to be the case in the long run? If so, please elaborate.*

Although for all firms there have undoubtedly been major costs involved in implementing the MiFID, we do on the whole expect that these will be outweighed by the benefits.

5. *Have you seen/ experienced any unexpected consequences in terms of level playing field arising from the implementation of MiFID provisions relating to equity secondary markets? If so, please elaborate.*

We do not have any specific observations to make in this respect.

Trading Costs

6. *What impact do you consider that increased competition between equity trading venues is having on overall (i.e. implicit and explicit) trading costs? Please elaborate.*

In a way proportionate to the increased level of competition between trading venues, trading costs have been decreasing, both for wholesale and for retail business. However, these savings also have to be seen in the context of the initial investments that firms have made in the necessary technology to be linked to a larger number of trading venues, and which still need to be amortised.

Potential fragmentation

7. *Do you think that there has been significant fragmentation of trading and/ or liquidity in European equity markets? If so, please elaborate. Do you think that such fragmentation raises concerns (for example, does it impact on the price formation process, the overall efficiency of the markets, search costs, best execution requirements)? If so, please elaborate on those concerns.*

We see the fragmentation of trades and liquidity as the other side of the coin to the increased number of trading venues and the enhanced competition in the trading market. If this has led to some practical difficulties we expect that these can be solved going forward e.g. through adjusted IT solutions.

8. *Do you think that MiFID pre- and post-trade transparency requirements adequately mitigate potential concerns arising from market fragmentation?*

We believe that the pre- and post-trade transparency requirements are an important part of the solution and give firms the necessary tools to find their own solutions to deal with the market fragmentation.

Transparency

9. *Is the categorisation of shares appropriate in relation to: the definition of liquid shares; 'standard market size'; 'orders large in scale'; and 'deferred publication'? If not, please elaborate.*

The MiFID rules for the categorisation of shares are appropriate in our view, including the requirements that allow deferred publication of the details of certain transactions on the basis of their type or size.

10. *Do you see any benefits (e.g. no market impact) to dark pools of liquidity (to be understood as trading platforms using MiFID pre-trade transparency waivers based either on the market model or on the type or size of orders)? If so, what are they?*

Dark pools have an important role in that they allow the execution of large orders without creating a market impact. Pre-trade transparency requirements for such types of orders would otherwise lead to artificial price distortions. I.e., without the possibility of trading in dark pools the investor would be forced to execute the transaction in tranches.

11. *Do you see any downsides to dark pools of liquidity (e.g., impacts on the informational content of light order books)? If so, what are they?*

We do not have any concerns with regard to the existence of dark pools.

12. *Do you consider that the MiFID pre- and post-trade transparency regime is working effectively? If not, why not?*

In principle, our conclusions are positive with regard to the MiFID's pre- and post-trade transparency regime. This is despite the larger number of trading venues and sometimes

regretted consequence of data fragmentation, for which market solutions are being developed.

Data

13. *What MiFID pre- and post-trade transparency data do you use, and for what purpose? Does the available data meet your needs and the needs of the market in general?*

Data are usually collected through commercial data providers and used for the two purposes of trading on the one hand, and monitoring execution policies on the other hand.

14. *Do you think that MiFID pre- and post-trade transparency data is of sufficient quality? If not, please elaborate why and how you think it could be improved.*

Cf. our above remarks on the fragmentation of liquidity and data.

15. *Do you think that there has been significant fragmentation of market data in the EEA equity markets? If so, please elaborate. Do you think that such fragmentation raises concerns (for example, does it impact on the price formation process, the overall efficiency of the markets, search costs)? If so, please elaborate on these concerns.*

The fragmentation of market data is a natural result of the emergence of a larger number of trading venues. If this has at this early stage led to some of the difficulties CESR refers to, we are confident that the market will find solutions to overcome such teething troubles.

16. *Does the current availability of data facilitate best execution? If not, please elaborate.*

The ready availability of data is one necessary element for best execution. However, it must be seen in the context of the broader best execution requirements, in the sense that firms will include those trading venues in their execution policies that have sufficient liquidity and where a sufficiently large number of instruments are traded. I.e., before a firm can pass on to its clients the benefits from any one particularly good price offered on one trading venue, there is first a longer process of monitoring to establish whether a trading venue is worthwhile to be included in the number of trading venues to be taken into account for execution.

17. *Do you think that commercial forces provide effective consolidation of data? If not, please elaborate.*

Although there are still some shortcomings at the current point in time, we do experience that the developments towards commercial solutions for the consolidation of data are swift and go in the right direction.

General

18. *Do you think that the implementation of MiFID is delivering the directive's objectives in relation to equity secondary markets (e.g., fostering competition and a level playing*

field between EEA trading venues, upholding the integrity and overall efficiency of the markets)? If not, why do you think those objectives have not been met?

We do believe that the developments so far have been overall positive in terms of achieving the MiFID's objectives. However, it is still too early to draw definite conclusions at this stage. A more comprehensive assessment can only be undertaken at a later point in time.

19. Do you see any other impact or consequence of MiFID on equity secondary markets functioning?

For the time being, we do not have any other remarks to make on the consequences of MiFID on the equity secondary markets, although more consequences might become apparent going forward.