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**CESR CALL FOR EVIDENCE ON THE IMPACT OF MIFID ON SECONDARY
MARKETS FUNCTIONING: RESPONSE BY THE ASSOCIATION OF PRIVATE
CLIENT INVESTMENT MANAGERS AND STOCKBROKERS (APCIMS)**

Dear Secretary General,

Introduction

The Association of Private Client Investment Managers and Stockbrokers (APCIMS) represents firms acting on behalf of private investors. It has around 180 members of which over 125 are private client investment managers and stockbrokers with the remainder being associate members providing relevant services to them.

APCIMS' member firms deal primarily in stocks and shares but also in other financial instruments for individuals, trusts and charities and offer a range of services from execution only trading (no advice) through to full discretionary portfolio management.

Our member firms operate on more than 500 sites in the UK, Ireland, Isle of Man and Channel Islands, employing around 25,000 regulated staff and managing some £400 billion of these countries' assets. APCIMS aims to ensure that legislative, regulatory, tax and other initiatives for change across the European Union are appropriate and proportionate to the needs of the private investment community.

General

APCIMS note that, one year on from the formal implementation date of the MiFID, CESR considers it important to conduct an internal evaluation of the workings of the new regulatory framework that the MiFID set up, and its impact on market structure.

We also note that, in this first stage of the evaluation, CESR will focus on equity secondary markets while planning to cover the secondary markets in other MIFID instruments in a second stage of the analysis. This will be started after completion of the first stage in spring 2009.

APCIMS welcome the opportunity to participate in CESR's work in this area and to provide evidence from the perspective of our members. However in doing so it is important to

recognise that MiFID has been in force in the UK for just over one year and in most other EU member states for less than that – in some cases considerably less.

Thus, while the MiFID as implemented in the UK via domestic legislation and FSA regulation has already had some significant effects, especially on aspects of secondary equity market business, changes are still working their way through the system and it is premature in our view to draw more than at best provisional conclusions at this stage. A further review when more markets have experienced the MiFID effect in practice for a substantial period would provide more authentic evidence to regulators.

In the case of APCIMS' members, after just over a year of operating under the MiFID the situation is that, in general, the costs associated with its implementation have in the main been immediate and apparent while any benefits that may accrue remain some way off. Discernible benefits of the MiFID régime to clients of APCIMS' firms are not always obvious. So the initial impressions of the MiFID from our sector of the financial service industry have not been favourable. Further details in relation to the secondary equity market aspects of this view are given below.

Finally, it must also be recognised that the recent financial instability and market turmoil have among other effects concentrated attention elsewhere and made it more difficult to distinguish the consequences of the MiFID from those issues arising from other causes.

Detailed 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 the equity secondary markets?

The advent of a range of new trading venues, including MTFs of which some are trading pan-EU portfolios of shares, contingent partly on the removal of the concentration rule, has increased the options open to market participants for completing deals in line with the MiFID's best execution requirements. It has led to greater competition which in turn has resulted in the lowering of trading fees even on older regulated markets. Spreads are narrower, commensurate with greater liquidity, and clearing costs have been reduced by as much as 50%-60% on some stock.

There remains some way to go in this area however: not all existing trading venues have lowered their fees significantly, some of the newer ones have only very recently come into operation, and not all market participants feel sufficiently familiar and comfortable with the new circumstances to take full advantage of them. But the first indications are propitious for investors in that the MiFID seems likely to lead to long-run falls in the costs of undertaking equity trades within the EU.

On the other hand the fragmentation of price information resulting from a number of venues offering deals in the same equities has in the short term at least increased the costs of information discovery. This issue is explored further in the Downsides section below. There has also been some reduction in average bargain sizes.

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

The biggest barrier is the continued ownership of clearing and settlement facilities by some trading venues, notably the older established regulated markets. Combined with local rules and conventions that favour the use of the vertical arrangements by market participants the effect of this is to inhibit competition and its downward pressure on costs. Incentives for new trading venues to come to market unhindered by legacy technology but offering new, capacious, cost-efficient and fast systems are lowered where there is bias in favour of existing vertical structures. And horizontal consolidation between clearing and settlement providers on a market-determined basis leading to cost savings and efficiencies is to all intents and purposes precluded.

Other barriers include the remnants of concentration rules in some countries, different margin rules and requirements between different trading venues even when they are in the same member state, and the fact that there is no harmonisation or interoperability between CCPs in clearing, especially cross-border.

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

There are different ways in which MiFID has improved the framework for innovation in the equity secondary markets. As noted above the changes it has made are in part responsible for the plethora of new MTFs and other trading venues in the EU. MIFID has also enhanced the prospects for more competitive clearing, at least where particular CCPs are not tied in a vertical arrangement to a particular trading venue. Further, the development of dark pools resulting from the market framework set by the MiFID has allowed larger market participants to benefit from the more flexible trading environment that they provide. Efficiencies derived from this can be passed on to smaller players.

But innovation is not without its costs. One postulate is that MIFID has led to more choice in trade reporting but as noted below the fragmentation entailed in the competition between trading venues and the different reporting mechanisms they use has caused greater difficulties and costs in establishing a reference price for some securities. This has knock-on effects for firms trying to fulfil appropriately the MiFID's best execution obligations. There have also been up-front costs, including time and resource costs as well as direct financial expenditure, in developing new systems and technologies to implement aspects of the MiFID such as new order-routing and connectivity.

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.

APCIMS' member firms have faced significant up-front and ongoing costs in terms of both time and money in the implementation of parts of the MiFID relating to secondary equity markets. As made clear in the general introduction above the benefits have been slower to accrue to firms which are required to be MiFID-compliant on the one hand but lack the size or client base on the other to be truly cross-border operators. The effect on our members has been very mixed.

In the secondary markets area the costs of internal compliance have included the design and development of new IT systems such as those related to undertaking and monitoring the ongoing operation of new best execution requirements, connecting to new trading venues and price information feeds, revising and putting into practice new internal policies and procedures,

putting in place express written consent arrangements for often many thousands of retail clients (not all of whom have responded expeditiously and efficiently to relevant requests from firms) relating to possible off-market trading where this achieves the best outcome for them, and ensuring execution quality.

However, the enduring relationships that APCIMS' members have with their clients, and in some cases the personal nature of that relationship, mean that clients' best interests were already being catered for. So it has not been clear that, to date, the added costs of MiFID have brought commensurate net client benefit.

Further disadvantages have accrued to APCIMS' firms through the fragmentation of post-trade information. This has been disruptive to best price discovery since firms cannot afford connectivity to every venue (and no attempt should be made to mandate this) and there are clear costs involved in seeking liquidity on competing venues, especially with the need then to assemble available liquidity into a useable and justifiable (in terms of getting best outcomes) form for clients. Fragmentation also makes it less easy and more expensive to comprehend trading volumes in a consolidated and timely manner and to undertake appropriate transaction cost analysis. This is the downside referred to in the last paragraph of question 1 above. In addition, the new execution venues have taken time to get going so they have in some cases only just reached the point of covering all FTSE 350 stocks. The fact that they have done so may make comparisons between venues easier in the future (although they may not go further) but until now the partiality of their development has added to costs and difficulties.

Among key developments that could improve the situation could be a consolidated trade report tape. This is some way off but in the UK at least there is discussion about how it could be achieved. If a way through were found the existence of such a facility would simplify matters and strengthen the possibility of competition between venues bringing ready price benefits to the execution of client orders rather than difficulties in establishing where the benefit lay and its dimensions. It will be for the market to decide on a commercial basis how such tape could be formed. It should not be mandated by regulators.

We have commented above on the question of trading platforms controlling their own clearing and settlement venues, which MiFID has not resolved.

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

The unexpected adverse effects of greater competition in post-trade reporting in giving rise to trade data from different sources has been noted above. For APCIMS' firms this has made it less easy to assemble a complete picture of the market, while transaction cost analysis and execution quality analysis is more difficult to undertake. It may be that in some EU markets MIFID has provided market users with more easily accessible trade data than was available before, but the experience of APCIMS' members in the UK has been that accessibility has been reduced. The situation could change with, for example, the advent of a consolidated tape mechanism as mentioned above, and there may be other means of usefully recombining data to make it easier to handle, but for the moment the fragmentation of price discovery and post-trade reporting has caused real difficulties.

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.

We agree with the analysis made in the group letter submitted by LIBA and other organisations on this question. In the case of APCIMS' members, the relative scale of technology costs to the size of firm is likely to be larger so any offsetting cost reductions elsewhere will have lower impact.

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 these concerns.

Fragmentation of trading and liquidity in European equity markets has unquestionably increased as a result of MIFID. MTF's have gained significant market share over the last year, although the position of established regulated markets has remained dominant so far, with resultant greater fragmentation and potentially adverse effects on the price formation process. Much of this is dealt with above.

The growth of technology will help. But it will be expensive and will take time. Some of the smaller APCIMS members will find it beyond their means to make the necessary investments and may not alone achieve the benefits arising from becoming technologically viable via order routers to trade securities actively across a number of execution venues. Many will be unable to make arrangements to access new markets that they decide to include in their execution policies, and adapt their trading processes so that simultaneous trading across multiple venues can be controlled and managed. It seems from this standpoint that the MiFID is organised to benefit larger firms dealing in the wholesale market rather than firms providing investment services to clients overwhelmingly from the retail sector even though they have to comply with it. The difficulties caused by fragmentation for the price formation process together with the increased search and other costs associated with attempting to combat these difficulties fall disproportionately on smaller firms and make it harder and more expensive for them to achieve best execution.

That said, the market is moving fast and market solutions appropriate to smaller firms could well develop. This would be the preferred route. APCIMS does not believe that the situation currently created should be met by further legislation or regulation with their potential for more unintended consequences. The point has been made before in this submission that it is much too early to draw definitive conclusions about the MiFID in the secondary equities trading and other areas, and a lot more transition time is needed to see how matters develop overall.

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

There is some mitigation but the key issue is for the market to go further in reacting to fragmentation by producing a consolidated tape mechanism or recombining data in other ways which respond adequately and affordably to the difficulties. As stated, further transition time is needed for this and other consequences of MiFID to be dealt with by market change.

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.

APCIMS is not aware of any particular concerns in this area. We note the points made by LIBA and others that the categorisation of shares was determined after long and complex negotiations and that where needed firms have devoted considerable resource to adapting systems to take the outcome into account. More time should be allowed before trying to make decisions about changes to the requirements (which may in any case not be necessary) and potentially subjecting market participants to more system change.

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?

APCIMS has no view on dark pools per se other than to note that, where there are benefits accruing to the market as a whole from, for example, larger firms getting better and fairer execution for clients, these should in time find reflection throughout the market.

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?

APCIMS has no comment on this issue.

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

See our comments on previous questions.

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?

Our Members use pre- and post- trade transparency data from as many sources as they can, depending upon their size limitations, and/or make use of specialist retail service providers to assist them, so that they can offer clients the best possible trade execution services.

Improvements are always possible. At present, as noted above, the key will be for the market to produce a consolidated tape or to recombine price data in other useful ways to ameliorate the problems of fragmentation.

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.

APCIMS members have concerns as indicated above about the cost, accuracy and accessibility of pre- and post-trade data. There will always be anxiety about the potential effects of these issues on the quality of data until such time as the market has solved the problems caused by fragmentation.

We note comments in the submission by LIBA and others about double reporting and delays, and in particular about the posting of trades to obscure venues where the price information is

less likely to be captured. We agree that this is not in line with the spirit of MIFID and that it should be a matter for the relevant competent authorities.

15. Do you think 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, the overall efficiency of the markets, search costs? If so, please elaborate on those concerns.

Yes; see our responses to the questions above on fragmentation and reconsolidation of sources of post-trade data. Fragmentation is an inevitable corollary of competition and the advent of new venues with their lower trading costs but associated greater complexity and expense of finding information which is certain to be right and of good quality. It is this added element of uncertainty about information quality that must be addressed by new, market developed systems. At this stage it is too early to make definitive assessments of benefits and costs. In addition to calls for a European consolidated tape there has been talk of adopting order-routing requirements analogous to Reg NMS in the USA. We agree with others that it would be wrong to mandate a resolution of these concerns, which are better dealt with by market solutions. Any mandated developments would be costly, complex and difficult in view of the existing differences in reporting formats and post-trade infrastructure and would likely lead to little or no benefit, certainly at such an early stage in the MiFID process, if they impede the market from finding its own way.

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

APCIMS' members consider that the problems of access to information that fragmentation has caused mean that, although the current availability of data is sufficient to allow them to facilitate best execution, this is difficult to achieve and there will be some uncertainty about it. In this context it should be recalled that it is not obligatory to survey the market as a whole to obtain the best possible result for each trade, and that in some circumstances it may be appropriate for a firm to conclude that the best result is available consistently on a single venue. Best execution is handled instead by reference to the trading venues which a firm accesses in order to obtain, on a consistent basis, the best possible result, and this is a matter of judgment and choice.

The data required should therefore be capable of helping a firm judge which venues it should access in executing an order. Pending the development of third party data re-aggregation or consolidation (which will be useful only if the firm can act on it when executing) meaningful access (i.e. with the ability to trade quickly against relevant information) to multiple venues involves (and has already involved) substantial system investment by firms.

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

Yes, provided they have the time to build the necessary technology to do so. Commercial consolidation of data will increase over time.

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 agree with the assessment made in the submission by LIBA and others, especially with their last point that more time is needed to enable a full evaluation and that, when that evaluation is made, it must take account of all relevant factors.

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

We agree that there may be a need to consider the implications of MIFID as regards dual or secondary listed equities where the primary listing, and main price formation, is in a non-EEA jurisdiction.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Barrass', with a stylized flourish at the end.

John Barrass
Deputy Chief Executive