

**Olivier Guersent**  
**Director General**  
**DG FISMA**  
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**Ref: MiFID II – SIs operating broker crossing networks**

Dear Mr Guersent,

I am writing to you regarding the potential establishment of networks of systematic internalisers (SIs) to circumvent certain MiFID II obligations. MiFID I did not prevent significant trading activity from being carried out outside of MiFID-authorized trading venues. MiFID II/MiFIR aims to close these loopholes to ensure that trading, where appropriate, takes place on regulated platforms. In particular, MiFID II requires that investment firms operating internal matching systems and executing client orders on a multilateral basis need to be authorised as trading venues. Furthermore, recital (19) of the Commission Delegated Regulation of 25 April 2016<sup>1</sup> clarifies that SIs may undertake matched principal trading only on an occasional basis.

Several market participants have made ESMA aware of their observations that certain investment firms, that currently operate broker-crossing networks, might be seeking to circumvent the MiFID II requirements by setting up networks of interconnected SIs and other liquidity providers. Such arrangements would allow SIs to cross third party buying and selling interests via matched principal trading, or other types of back-to-back transactions. In addition, those arrangements would be supported by liquidity provision agreements between members of the networks. To our knowledge, these reflections currently focus on trading in shares. However, we consider that, should this concept gain traction, it could potentially also be extended to other financial instruments.

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<sup>1</sup> Commission Delegated Regulation of 25.4.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.



We are very concerned about this potential loophole. In its technical advice of 19 December 2014, ESMA already raised concerns that the SI regime may be used to circumvent the MiFID II provisions, in particular concerning the trading obligation for shares.<sup>2</sup>

ESMA will look into the issue, closely monitor developments and, may in the future, clarify the scope of SIs' permitted activities as well as the characteristics of multilateral systems via Q&As.

In the meantime, we encourage the European Commission, if it shares the concerns described above, to look into this matter to determine whether it should use any of its regulatory tools, like the power to adopt delegated acts further specifying the definitions in the Level 1 Directive. In that case, ESMA stands ready to advise the Commission.

We are copying Mr Ferber to this letter as he discussed the matter briefly with us, enquiring whether any action would be possible to address the related concerns.

Yours sincerely,

Steven Maijor

c.c. Markus Ferber, MEP  
Roberto Gualtieri, Chair of ECON

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<sup>2</sup> See paragraph 27 on p. 224 of ESMA's technical advice of 19 December 2014 (ESMA/2014/1569).  
[https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-1569\\_final\\_report\\_-\\_esmas\\_technical\\_advice\\_to\\_the\\_commission\\_on\\_mifid\\_ii\\_and\\_mifir.pdf](https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-1569_final_report_-_esmas_technical_advice_to_the_commission_on_mifid_ii_and_mifir.pdf)