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Banking and the MiFID II review

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Steven Maijoor
Chair
European Securities and Markets Authority

Good morning Ladies and Gentlemen, sehr geehrte Damen und Herren

I am delighted to speak at the Euro Finance Week programme here in Frankfurt today, a city which plays such a pivotal role in European financial markets.

A role, I am convinced, that will only strengthen in the coming years. To prepare for Brexit, which is now likely to occur early next year, UK firms are setting up entities and expanding activities in the EU27 to allow them to continue serving EU clients. This will have quite an impact on our financial landscape and will ultimately result in the strengthening of several financial centres in the EU and we can already see that Frankfurt is one of them.

Germany will also have the EU presidency in the second half of 2020 and, as we can see from the recent position papers of the German Ministry of Finance, there could be an appetite to consider the amendment and revision of certain provisions in MiFID II and to work on some possible near- and medium-term changes to MiFID II. I want to thank the Ministry of Finance for its constructive contribution to the discussion on possible changes to MiFID II.

Moreover, considering possible changes to MiFID II, the ongoing dialogue with stakeholders will become even more important. Therefore, this event is an excellent opportunity to have an exchange of views with the German financial market community on MiFID II priorities.

Before moving to our work on the MiFID review and possible areas of MiFID II deserving further analysis, let me start with highlighting some achievements of MiFID II that we have seen so far:

- MiFID II has to an extent delivered on its goal to improve transparency in financial markets. As an example, ESMA believes that trade transparency in asset classes such as ETFs and derivatives subject to the trading obligation has positive effects on the market as a whole. Anecdotal evidence suggests that liquidity in ETFs has increased markedly since the introduction of MiFID II. At the same time, it is fair to recognise that there are areas, such as bond market transparency, where we are not quite there yet. I would also like to note that the negative side effects of increased transparency in secondary markets that many stakeholders were concerned about ahead of MiFID II implementation did not materialise;
- MiFID II started delivering on its goal to move more trading onto regulated trading venues. For instance, we currently have 83 organised trading facilities (OTFs) operating in the EU, allowing the execution of transactions on venue that largely used to be traded OTC. Moreover, we can observe a trend of moving more trading in bonds to regulated trading venues. While the latter is certainly also linked to the general trend towards more electronic trading, the range of trading modalities possible under MiFID II on regulated trading venues also contributed to this trend. At the same time, I acknowledge that developments in other areas may be less positive, and that we need to assess whether MiFID II requirements are all adequately calibrated when trying to promote multilateral trading;
- Still in the area of transparency, MiFID II has brought more information to clients on the costs of the products and the services provided to them so they can make informed investment decisions and to better check the outcome of their investments. These positive results were broadly supported by a large-scale survey published earlier this year by BaFin based on a sample of more than 15,000 individuals approached;
- On the side of strengthening the role of firms providing services to clients, especially retail, MiFID II has broadened the regulatory and supervisory focus through the implementation of the new product governance requirements which have emphasised the responsibility of firms, and their senior management, when designing investment products and when selecting them for offering to clients;
- Rules on research unbundling are one of the other significant changes brought forward by MiFID II. While a full assessment of the impact of the new rules is premature, we see a significant number of asset managers absorbing the cost of research into their own resources instead of opaquely charging their clients through their trading

commissions. The new rules have forced managers to pay increased attention to research, and whether they need the research and to the quality of what they actually get. It is interesting to note the increased interest in the new rules by actors outside the EU. However, it is fair to say that we also hear concerns about the availability of research on smaller listed entities. When reviewing this specific issue, we need to ensure that there is solid evidence on the table to assess whether an adjustment is warranted: we should not be surprised that those market participants that lost opportunities as a result of changing business models are complaining about the new arrangements;

- Another achievement should be mentioned in relation to the strengthening of the supervisory toolkit at EU and national level through the new product intervention powers. By using our new powers ESMA was able to prevent or reduce investors' detriment by prohibiting the marketing, distribution and sale of binary options to retail clients and imposing a set of restrictions in relation to CFDs addressed to retail clients. These temporary product intervention measures expired this summer. At this time almost all National Competent Authorities (NCAs) in the EU have taken national intervention measures under MiFID II to address, in a permanent way, the investor protection concerns arising from these products and we can certainly say that, action in relation to these types of financial products has been very effective in terms of both investor protection and convergence among regulators in the EU;
- ESMA's convergence efforts, together with the NCAs, generally result in a more consistent application of the MiFID II legal framework in the EU. These efforts facilitate the interpretation of requirements through guidelines, opinions, Q&As and the sharing of practical experience among supervisors. We are aware that differences persist; convergence will always be an on-going process in which, once you achieve certain outcomes, you should pursue a new target; and
- When undertaking these activities, one of our objectives has been to make the rules work by providing clarifications requested by market participants or competent authorities, especially in areas in which legal requirements are new. An example of this concerns indeed the guidelines on product governance, in which we have focused on the key topic of the identification of the target market. We have provided the requested guidance to stakeholders, also to avoid that the adoption of different approaches for the identification of the product's target market in different jurisdictions could negatively affect their distribution in the single market. Another example concerns the Q&A that ESMA issued to handle the application of the disclosure

requirements on costs and charges to investment services provided over the phone, in relation to which a strict reading of the requirements would have made this way of providing services to clients very complex.

Therefore, while the achievements I have just described are certainly positive, we also acknowledge that there are areas where improvements may need to be considered to ensure that MiFID II delivers on its objectives and is applied in a convergent manner across the EU.

MiFID II requires a large number of follow-up review reports and we have started working on many of those. We wrote to the Commission to suggest a staggered timeline for delivering these reports, considering that Brexit will have a fundamental impact, especially in the markets area. In addition, we also believe that these staggered, and focused, reviews of key provisions in MiFID II will render the overall review more beneficial for the market.

Investor Protection

In the area of investor protection, MiFID II requires that, before 3 March 2020, the Commission shall, after consulting ESMA, present a report to the European Parliament and the Council on, *inter alia*, the impact of the requirement to disclose any fees, commissions and non-monetary benefits (inducements) and on the experience with the mechanism of banning certain products (product intervention).

The mandate from the Commission to ESMA for this report covered a broader area than the one indicated under MiFID II, mainly as it was extended to cover the requirements on costs and charges disclosures.

Consumers still struggle to perceive the importance of cost disclosures and the impact of inducements. Nonetheless, ESMA's report on investment products' cost and performance has widely confirmed how impactful costs are on investors' returns. For this reason, I believe that these requirements remain a key element of the investor protection framework in MiFID II and ESMA is working together with national supervisors to clarify them, to ensure their proper application, or to suggest regulatory changes to the Commission when needed.

In order to gather further input and evidence on the impact of these MiFID II requirements from market participants, consumers and their associations, ESMA published two calls for evidence, one on disclosure of inducements, costs and charges and one on product intervention, which have now closed. The analysis of responses received will help ESMA in advising the

Commission on these important topics.

While I cannot pre-empt the outcome of ESMA's analysis, my personal view on one of the aspects of costs disclosure is that we should consider whether disclosures to non-retail clients deserve some review as currently they receive almost the same level of detail as retail clients.

If we talk about MiFID II disclosures, it is worth mentioning the PRIIPS file and on the efforts that ESMA and the other ESAs are making to address the main regulatory issues identified since the implementation of the KID. We need to get to a KID that meets the intended outcomes, i.e. facilitating improved consumer understanding. More specifically, in order to reply to stakeholders' concerns about the current performance scenarios being potentially misleading, in the Consultation Paper (CP) issued in mid-October, we propose to amend both the methodology and presentation of the performance scenarios. At the same time, considering consumers' and industry's concerns regarding the extent to which the current cost information is understandable and consistent with other sectoral disclosures, notably with MiFID and IDD, the CP also proposes changes to the presentation of costs and some of the underlying calculation methodologies. Finally, we also published a supervisory statement to provide more clarity whether, depending on its characteristics, a bond is in or out of scope of PRIIPS.

Let me conclude the investor protection topic with a current development that might counter our common goal of achieving a Capital Markets Union with greater participation by retail investors in which their interests are served. I fully understand that the banking industry is concerned about the erosion of their margins in the current and prolonged low interest rates environment. However, this situation should not result in an increase in fees or commissions charged to clients or in a sub-optimal assessment of the suitability of investments for retail investors.

Markets

Also, in the area of markets, we are working on several review reports. I will focus today on the report that is the most advanced: the cost of market data and the establishment of a consolidated tape (CT) for equity instruments. But let me first share with you some of the other key consultations and review reports you can expect in the coming months.

We have started working on the review report assessing the MiFID II transparency regime. As you can imagine this will be a comprehensive report covering many issues, such as the equity and non-equity transparency regime, the double volume cap and the derivatives trading obligation and the systematic internaliser regime. In parallel, we are working on a report assessing the quoting behaviour of Systematic Internalisers (SIs) in non-equity instruments. We intend to consult on these reports towards the beginning of next year and aim at submitting the reports to the Commission in July 2020.

Let me move back to the review report on the cost of market data and the equity CT, which we intend to submit to the Commission next month. We are currently reviewing the more than 70 responses we received to the CP published in July, which will assist us in finalising the review report. There was quite a split in responses received from data users, like banks, versus responses received from trading venues, in particular regulated markets.

Concerning the development in prices for market data, most data users concurred with ESMA's analysis that MiFID II has not delivered on its objectives to reduce the price of market data so far. Many data users raised concerns, accompanied by evidence, that trading venues increased market data prices and introduced new types of fees over the last years. Most trading venues responding to the CP disagreed with this assessment and considered that prices for market data were overall stable. There was however some agreement among most respondents that we should not move to price regulation for setting market data prices, such as for instance a revenue cap, but work towards further improving the current approach of providing market data on a reasonable commercial basis.

Moving to the CT, there was strong support for our assessment on why to date no CT has emerged, which is mainly due to limited rewards and strict regulatory requirements for operating a CTP as well as competition by non-regulated entities, such as data vendors. There was also strong support for further measures to improve the data quality of OTC post-trade data, by either an industry-led initiative, ESMA guidance or a combination.

Concerning the assessment of key factors for establishing a CT, most respondents agreed that trading venues and the so-called Approved Publication Arrangements (APAs) should be required to contribute data to the CT, the CT should share parts of its revenues with contributing entities, and the CT should cover 100% of equity instruments and transactions. The feedback on other issues was mixed and, in most cases, split between trading venues and data users. For instance, most trading venues were in favour of a tape of record, whereas data users preferred a real-time tape. Concerning mandatory consumption of the CT, many data users were not fond of that proposal, while it received support from trading venues.

As you can see, there remains a lot of work ahead for us and I think I am not wrong in predicting that work on market data will remain an important topic for the years to come.

Conclusion

Ladies and Gentlemen, I would like to thank you for your attention. I am now happy to answer questions from the audience.