BME SPANISH EXCHANGES COMMENTS ON CONSULTATION PAPER BY ESMA MIFID TASK FORCE FOR THE AMENDMENTS TO COMMISSION DELEGATED REGULATION (EU) 2017/587 RTS1 (ESMA70-156-275)

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Bolsas y Mercados Españoles (BME) integrates the companies that operate the securities markets and the financial market infrastructures in Spain. Amongst others, it brings together, under a single activity, decision-making and coordination unit, the Spanish equity, fixed income and derivative markets and their clearing and settlement systems.

We welcome the Consultation Paper prepared by the ESMA MiFID Task Force for the Amendments to Commission Delegated Regulation (EU) 2017/587 RTS1 (ESMA70-156-275) and thank the European Securities and Markets Authority for the opportunity to contribute with our views to this process as hereunder.

Q1: Do you agree with ESMA's proposal to clarify that SIs' quotes would only reflect prevailing market conditions where the price levels could be traded on a trading venue at the time of publication?

BME has worked together with FESE in the evaluation of the ESMA proposal and in line with the first response strongly supports ESMA's proposal to clarify that Systematic Internalisers' (SIs) quotes would only reflect prevailing market conditions where the price levels could be traded on a trading venue at the time of publication. BME considers that this is a very welcome recognition by ESMA and a necessary development in order to deliver on the objectives of MiFID II/MiFIR.

Why it is important to address price improvement provisions

BME strongly supported the ESMA Q&A on market structure published on October 3rd 2017 that clarifies that SIs are bound by minimum tick sizes when offering price improvement up to SMS.

In publishing this Q&A, ESMA rightly recognized that "marginal price improvements on quoted prices would challenge the efficient valuation of equity instruments without bringing any real benefits to investors". BME considers that the current Level 2 proposal, building on the Q&A, is very welcome, as it would promote legal clarity and consistent application of MiFID II/MiFIR throughout the EU.

Restricting an SI's capacity to price improve to meaningful price increments only, i.e. of at least one tick compared to the best bid and offer on the reference venue, will help to ensure that SIs and multilateral trading venues are on an equal footing.

As noted by ESMA in paragraphs 7-10 of the consultation paper, without these clarifications, meaningless price improvement that SIs would be tempted to offer would drive significant trading flows towards them, following MIFID II's best execution requirements for investment firms. This trend would be accentuated by the extensive use of smart order routers, which have the ability to 'ping' multiple venues and SIs for prices and will always give priority to - even marginally - better prices.

In the same context, BME also welcomes ESMA's second Q&A from October 3rd 2017, that clarifies that trading venues and SIs using similar technology and systems should process transactions for post-trade publication at the same speed. In the absence of such a clarification, control over the timing of trade publication on SIs (up to 1 minute) would have given firms (particularly market makers) operating SIs a considerable advantage over market makers on public markets. Moreover, it would also have given market makers further incentives to set up as SIs instead of providing liquidity on public markets, with potentially significant consequences on overall liquidity and market quality.

Amend MiFID II's Level 1 Framework to Extend the Tick Size Regime to SIs

However, while the clarifications above are essential to ensure that meaningless price improvement does not undermine the efficient pricing of traded instruments, it is regrettable that they only apply to liquid instruments and up to SMS.

Ultimately, while the ESMA proposal to amend RTS 1 is a step in the right direction, the market above SMS is still open to the risk of tick size arbitrage by SIs.

BME is therefore supportive of calls for an amendment to the Level 1 framework, in order to extend the minimum tick size regime to SI trading in all sizes

We consider that there is no reason to limit the application of minimum tick sizes to SI orders and quotes up to SMS only, considering that on multilateral markets, the tick size regime applies to all sizes regardless of whether orders and quotes are transparent and the application of tick sizes to dark orders can and will be monitored via the trading venues' rules and order record keeping requirements. Extending the tick size regime to SI trading in all sizes is thus necessary to level the playing field and promote a transparent European market structure, as intended by MiFID II/MiFIR.

Q2: Do you agree with the drafting amendment described above?

Yes, BME agrees with the drafting amendment.

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