Deutsche Börse Group's comments

on ESMAs Consultation Paper on
Draft technical standards on the provision of investment services and activities in the Union by third-country firms under MiFID II and MiFIR
(ESMA35-43-213)

Frankfurt, 28th April 2020

Deutsche Börse Group (DBG) appreciates the opportunity to comment on ESMAs Draft technical standards on the provision of investment services and activities in the Union by third-country firms under MiFID II and MiFIR. From the perspective of a market operator with a global client base, we welcome that the revised MiFID II/MiFIR equivalence framework has established a set of criteria and conditions to enforce the MiFID II goals of transparency, stability and investor protection and to contribute to a level-playing field between investment firms irrespective of their country of origins.

We understand that Art. 47(1) MiFIR determines the scope of the regulatory perimeter of entities being eligible for registration with ESMA by referring to 'firms authorised in that third country'. ESMA is mandated to further specify the technical requirements to make this provision applicable. **We generally consider that the detailed disclosure and reporting requirements for third country firms as specified by ESMA in its Draft Report are appropriate and suitable to support the regulatory and supervisory objectives. However, we would like to raise ESMA's attention to the potential drawbacks of a specific disclosure requirement which mandates firms to inform at the point of registration on the 'competent authorities of the third country that are responsible for the supervision of the third-country firm' (Section 3.4 – recital 11c).**

When it comes to third countries' policy approach for firms dealing on own account, the priorities as regards registration, authorisation and supervision of these firms as well as the concrete implementation of the respective approach may differ considerably from the EU's framework. Importantly, other third countries do not explicitly regulate so-called "proprietary traders" and/or allow indirect supervision of these firms by so-called self-regulatory organisations. Therefore, **we ask ESMA to consider these divergent supervisory set-ups, and see merit in exploring additional or alternative ways of providing the information that ESMA deems relevant and necessary for the conduct of its supervisory tasks. DBG proposes to enhance the field descriptions relating to the identity of a third country firm's national competent authority (NCA) to clearly state that instead of an NCA's identity only the respective fields could also indicate self-regulated organisation, where applicable.**

Background and potential implications

(Self-regulated) proprietary trading firms are non-bank like entities. They are non-systemic and follow a business model that poses a limited risk. Proprietary trading firms further play an important role in Europe's financial markets, as they often act as liquidity providers, including in specialised ETD products.

Requiring self-regulated third country (proprietary) firms, to set up a branch in a new jurisdiction in which firms with their respective set-up are regulated by a NCA would represent a disproportionate form of dual regulation and supervision that may well not be compatible and would constitute a highly burdensome market access arrangement for such firms.

In particular, such an approach would be disproportionate in respect of the risks that proprietary trading firms represent and of the benefits they bring to the overall market. Many (self-regulated) proprietary trading firms are major providers of liquidity in the markets operated by regulated trading venues in Europe.

Were they to withdraw from that role, this could considerably constrain the cross-border provision of liquidity on EU trading venues and hence disturb the price discovery process leading to increased volatility, reduced competition in the market, and could eventually even increase systemic risks. Fewer liquidity providers would damage the interests of commercial, financial and industrial users of the markets in particular those managing price risks which are inherent in their physical businesses. Market quality and resilience in EU markets would suffer, resulting in a further aggravation of a stressed market situation, which may spread to the wider economy.

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We hope our remarks are considered helpful and stand ready for any further discussions or requests.