|  |
| --- |
| Reply form for the Consultation Paper on MiFID II/ MiFIR review on the functioning of Organised Trading Facilities (OTF) |

**Responding to this paper**

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions summarised in Annex I. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **25/11/2020.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

**Instructions**

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_FOTF\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_FOTF\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_FOTF\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open consultations” 🡪 “Consultation on the functioning of the Organised Trading Facility regime”).

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should read this paper**

This document will be of interest to (i) alternative investment fund managers, UCITS management companies, EUSEF managers and/or EuVECA managers and their trade associations, (ii) distributors of UCITS, alternative investment funds, EuSEFs and EuVECAs, as well as (iii) institutional and retail investors investing into UCITS, alternative investment funds, EuSEFs and/or EuVECAs and their associations..

**General information about respondent**

|  |  |
| --- | --- |
| Name of the company / organisation | Click here to enter text. |
| Activity | Choose an item. |
| Are you representing an association? |[ ]
| Country/Region | Choose an item. |

**Introduction**

***Please make your introductory comments below, if any***

<ESMA\_COMMENT\_FOTF\_1>

**ARRACO GLOBAL MARKETS LIMITED – RESPONSE TO ESMA CONSULTATION PAPER ON THE FUNCTIONING OF ORGANISED TRADING FACILITIES (OTF) PUBLISHED ON 25 SEPTEMBER 2020 WITH RESPONSES REQUESTED BY 25 NOVEMBER 2020.**

This submission has been drafted by Arraco Global Markets and reflects the views of senior management.

We thank ESMA for inviting input from stakeholders and wish to address certain questions raised as set out below.

**Executive Summary**

Arraco Global Markets Limited operates an organised marketplace, for sophisticated market participants dealing in REMIT Wholesale Energy products[[1]](#footnote-2). It holds an Investment Firm license for receiving and transmitting orders and pre-arranging of CCP block trades to be executed and cleared on the relevant regulated market.

Arraco does not hold an OTF licence as it does not execute trades in financial instruments, however, Arraco does provide a *“multilateral system … in which multiple third-party buying and selling interests in….* (block futures)  *are able to interact in the system in a way that results in a contract in accordance with Title II of this Directive*[[2]](#footnote-3)”, this is because the underlying assets in which it deals are either REMIT Wholesale Energy Products, regulated by Directive 1227/2011, exempted from MIFID II and CCP block trades which are pre-arranged by Arraco under the rules of the regulated market, executed (*“result(ing) in a contract”)* on the relevant regulated market. Arraco specifically chose to arrange / pre-arrange transactions in these types of instruments only, because doing so would negate the need for an OTF license and the associated capital commitment and regulatory requirements. Arraco’s decision to establish itself as an OMP, restricted to REMIT products and pre-arrangement, was largely driven by regulatory and capital requirements[[3]](#footnote-4).

ESMA notes in the consultation paper that over the past months many concerns have been raised by market participants about firms functioning in a similar way as multilateral systems, but without being authorised as a trading venue. It goes on to state: “*The information received in this respect* ***comes primarily from authorised trading venues*** *who are stressing what they deem to be an unlevel playing field and who are asking ESMA to take remedial actions.”* It does not state these concerns are raised by consumers or market participants using commodity derivatives to hedge underlying commercial risk.

It is Arraco’s position that those market participants raising concerns are the incumbent broking community who are attempting to use regulation to increase barriers to entry, diminish legitimate competition and retain market share. If ESMA are to consider the concerns of these market participants as having merit, they run a significant risk of distorting the market through excessive regulation which does not reflect underlying risk, thereby increasing transaction costs and creating poor outcomes for market participants, and, in the case of energy commodities, retail consumers of gas and power to whom costs are ultimately passed.

It is Arraco’s position there is a place in the market for broking firms to offer sophisticated clients services which fall outside of the requirement to operate an OTF platform, because the services offered are in wholesale energy market transactions and CCP block trades which are executed on the relevant regulated market. Whilst the services offered by market participants such as Arraco may appear to function in a similar multilateral way, such brokerage services may not carry the risk held by those currently requiring trading venue registration as an OTF. Market participants such as Arraco do not provide execution in financial instruments, do not hold any positions in financial instruments and do not hold any counterparty credit risk; as a result they do not and cannot offer an execution venue. Their role with regards to CCP block trades as financial instruments, is to provide pre-arrangement under the rules of the regulated market, posting such pre-arrangement to the regulated market.

If and to the extent ESMA recommend that all those market participants appearing to function in a multilateral fashion, regardless of execution, should register as an OTF, we recommend ESMA tailor the capital requirements and regulatory oversight appropriately, so as not to diminish competition and unnecessarily increase barriers to entry.

Put simply, regulation should be based on the risk presented. Appearing to act ‘multilaterally’ but not actually providing execution, matched principal trading, client crossing and so on, should not be regulated in the same manner as offering a full OTF service. Regulation should reflect the market risk presented, be tailored, risk based and proportionate to the objective sought, as is set out not only in MIFID II, but also directives relating to capital requirements that support MIFID II[[4]](#footnote-5).

In support of our position, we set out our responses to the questions raised below and respectfully request ESMA take these matters into account when considering the requirement for a regulatory response.

<ESMA\_COMMENT\_FOTF\_1>

**Questions**

**Q1: What are your views about the current OTFs landscape in the EU? What is your initial assessment of the efficiency and usefulness of the OTF regime so far?**

<ESMA\_QUESTION\_FOTF\_1>

ESMA & the G20’s intention through MIFID II, was to reduce systemic risk in financial markets, by increasing transparency in what was seen as the opaque over the counter derivatives market (OTC), one aspect of this was to encourage CCP block trades to grow, allowing the exchange to reduce bilateral counterparty credit risk. It is Arraco’s views the current OTF landscape as it relates to transacting in OTC Derivatives is largely fit for purpose.

Regulatory capital requirements stipulate initial capital of Eur 730,000 to register as an OTF, although we acknowledge this will be reduced in Directive 2019/2034, if the operator does not hold positions or client money. In addition, firms wishing to register as an OTF are expected to meet several regulatory requirements. It is Arraco’s view that this is appropriate in the circumstances in which a firm is offering execution services, matched principal transactions, or engaging in client crossing.

We do not believe registering as an OTF is necessary if a firm is not executing financial instruments. A firm acting as pre-arranger is not introducing systemic risk into the financial markets and therefore should not be regulated as an OTF.

<ESMA\_QUESTION\_FOTF\_1>

**Q2: Trading in OTFs has been fairly stable and concentrated in certain type of instruments throughout the application of MiFID II. How would you explain those findings? What in your view incentivizes market participants to trade on OTFs? How do you see the OTF landscape evolving in the near future?**

<ESMA\_QUESTION\_FOTF\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FOTF\_2>

**Q3: Do you concur with ESMA’s clarifications above regarding the application of Article 1(7) and Article 4(19) of MiFID II? If yes, do you agree with the ESMA proposed amendment of Level 1? Which other amendment of the Level 1 text would you consider to be necessary?**

<ESMA\_QUESTION\_FOTF\_3>

Arraco does not concur with the clarifications made or with the proposed amendments, it is Arraco’s position the current Level 1 texts are fit for purpose.

The activity Arraco undertakes, for example, with regards to CCP block trades may be considered by some to fall within the definition of a *“system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system[[5]](#footnote-6)”.* However, the activity Arraco (and others operating a similar Non-Matched Principal model) undertakes is simply acting as “franchisee” of the relevant regulated market, assessing interest, improving liquidity and pre-arranging in the CCP block trades listed on a particular regulated market.

Firms such as Arraco are simply marketing interests; receiving and transmitting these interests, but not providing execution services, nor are they offering matched principal trading, or client crossing of orders in financial instruments.

ESMA’s suggestion to require an investment firm operating in such a manner to register as an OTF, simply because it is perceived to operate in a ‘multilateral’ manner by providing this type of service, is in conflict with other EU Directives, relating to Trading Venue authorisation, for example Directive 2014/65/EU.

ESMA clarify in Directive 2014/65/EU that the act of operating in a ‘multilateral’ manner is already a MIFID II Investment Service: ‘*Reception and transmission of orders in relation to one or more financial instruments’.* ESMA clarify this in Directive 2014/65/EU where it states: *‘(44) For the purposes of this Directive, the business of reception and transmission of orders should also include bringing together two or more investors, thereby bringing about a transaction between those investors.’[[6]](#footnote-7)* We believe that the act of operating multilaterally in financial instruments, but not providing execution is covered by the definitions above and does not require authorisation as an OTF.

This proposal by ESMA would contravene Directive 2013/36/EU, *‘Article (43) Member States should ensure that credit institutions and investment firms have internal capital that, having regard to the risks to which they are or may be exposed, is adequate in quantity, quality and distribution’.[[7]](#footnote-8)* The existing OTF EUR 730 000 initial capital is excessive to the risk presented.

In addition to the initial capital requirements, a broker acting in a ‘multilateral’ manner if required to register as an OTF, whilst not actually providing execution services, would be expected to comply with Articles, 20, 24, 25, 27, 28 and 58 of MIFID which Arraco considers to be excessive given the market activity undertaken.

**Recommendation**

Arraco believe reception and transmission services without execution, as provided in MIFID II are not activities requiring authorisation as an OTF, the existing regulatory framework is adequate. If a broker wishes to offer investment services (by either making, taking or holding positions, acting as matched principal, crossing client orders and/or providing execution of financial instruments) we agree that it would then be appropriate for the operator to be licenced as an OTF.

If ESMA are minded to compel all operators who act in a multilateral manner, regardless of the risk presented, to become authorised as an OTF, we would urge ESMA to consider a sub-category of OTF licencing. We refer to it here as the “OTF Lite”.

In order to create, understand and regulate the OTF Lite, Arraco suggest the creation of a three tier classification of financial instruments, based upon how they are settled, where they are executed, how they are executed and the risks associated with each class.

Proposed Financial Instrument Classification.

|  |  |  |  |
| --- | --- | --- | --- |
| **Class** | **Description** | **Systemic Risk level** | **Execution venue** |
| Class 1  | Block Cleared trades traded directly on an exchange’s order book by the client, not brokered. | Minimal / none – as dealt with by the RM and Clearing House | Exchange/ Regulated Market |
| Class 2 | Block Cleared trade, Pre-arranged by an Agency Cross Block Broker. Buyer, seller details posted directly to the Exchange / Regulated Market, who provide execution.  | Minimal / none – as dealt with by the RM and Clearing House.  | Exchange/ Regulated Market |
| Class 3 | OTC Derivatives, bilateral transactions entered via a broker and given up to the exchange for subsequent clearing. Execution of financial instruments within its own systems.Operating as Matched Principal.Crossing of client ordersBroker holds risk until the trades are accepted by each client and/or the regulated market. | High | Broker OTF |

Arraco suggest the creation of a new classification of OTF, the OTF Lite, for financial instruments detailed above.

|  |  |
| --- | --- |
| **Broker license** | **Class of products brokered** |
| OTF | Class 3 – Higher Risk |
| OTF-Lite | Class 2 – No Risk |

The OTF Lite licence would allow the firm to offer pre-arrangement in CCP block trades but would not permit matched principal transactions or own venue execution.

**OTF Lite Regulatory requirements.**

The OTF Lite should be a simple registration, to avoid causing disruption to the commodity markets and to encourage market participants to enter the market. It should allow counterparties to easily identify that the broker only deals in Class 2 financial instruments.

We would recommend the following additional requirements:

* Broker must be an Investment Firm
* Licensed for reception and transmission of orders in relation to one or more financial instruments under MiFID II.
* The broker cannot provide execution in financial instruments, make or take positions.
* The initial capital requirement of the OTF Lite should be 150,000 Euro[[8]](#footnote-9).
* Registration fees to be administered through national competent authorities should not exceed 1,000 Euro.
* As the OTF lite does not provide execution in financial instruments and pre-arranges under the rules of the regulated market it should be exempt from complying with Articles 20, 24, 25, 27, 28 and 58 of MiFID II.
* No reporting should be required as required in Article 58 of MiFID II. The regulated market should provide the reporting services.
* Broker should be expected to notify national competent authority as to which block trades it pre-arranges transactions in and broker must notify national competent authority if these underlying assets change ( for example: power, gas, carbon, LNG, freight etc.)
* C6 REMIT Carve Out still applies to REMIT trades traded via the OTF Lite.

<ESMA\_QUESTION\_FOTF\_3>

**Q4: Do you agree with ESMA’s two-step approach? If not, which alternative should ESMA consider?**

<ESMA\_QUESTION\_FOTF\_4>

Arraco does not agree with ESMA proposal for a two-step approach, however it does agree that the regulatory response should be tailored appropriately to the risk presented.

As recommended in our response to Question 3, we believe a differing regulatory regime based on the risks presented by the financial instrument, mode of execution and credit risk, rather than the size and sophistication of the relevant firm is appropriate. It is for these reasons we recommend the OTF Lite, if a regulatory response is to be proposed.

ESMA state in point 43[[9]](#footnote-10), ‘*regarding systems operating in a similar way to a trading venue but without proper authorisation’* does ESMA refer to systems that are not registered as a MIFID II investment firm? ESMA states that *‘exchange between parties on essential terms of a transaction (being price, quantity) with a view to dealing in those financial instruments is sufficient to require authorisation as a trading venue. The information exchanged does not need to be a contractual agreement between parties for the interaction to occur*.’

In Arraco’s opinion, this activity is captured by the requirement to register as an MIFID II Investment Firm, with Investment Activity being for the *‘Reception and transmission of orders in relation to one or more financial instruments’*, as is stated in Directive 2014/65/EU ‘*‘(44) For the purposes of this Directive, the business of reception and transmission of orders should also include bringing together two or more investors, thereby bringing about a transaction between those investors.’[[10]](#footnote-11)* We believe the currently regulatory regime is adequate, but if ESMA are minded proposing a two-step regulatory response we recommend the OTF Lite.

<ESMA\_QUESTION\_FOTF\_4>

**Q5: Do you agree with ESMA’s proposal not to amend the OTF authorisation regime and not to exempt smaller entities? If not, based on which criteria should those smaller entities potentially subject to an OTF exemption be identified?**

<ESMA\_QUESTION\_FOTF\_5>

We are of the view that ESMA should not amend the OTF authorisation regime, it is adequately designed for the products which are executed on it; OTC Derivatives not traded via a Regulated Market.

Exemptions from the requirement to register as an OTF should be based upon the financial instruments being brokered, how they are matched, executed and settled and the risks associated with them throughout the trade lifecycle.

We believe a firm should remain exempted from being required to register as an OTF, if it does not provide execution of any financial instruments. The allegation certain firms are *“functioning in a similar way as multilateral systems*” is unclear and the systemic risk this Consultation is seeking to address is also unclear. The risks to be mitigated should be execution and credit risk. The currently regulatory framework is appropriate[[11]](#footnote-12).

If the brokerage is taking risk by providing execution in block trades within its own clearing accounts operating in a ‘Matched Principal basis', for example, holding those positions until they are accepted by the client we are of the view that brokerage should be licenced as an OTF, because they are Introducing additional risk into the financial markets.

<ESMA\_QUESTION\_FOTF\_5>

**Q6: Which provisions applicable to OTFs are particularly burdensome to apply for less sophisticated firms? Which Level 1 or Level 2 amendments would alleviate this regulatory burden without jeopardising the level playing field between OTFs and the convergent application of MiFID II/MiFIR rules in the EU?**

<ESMA\_QUESTION\_FOTF\_6>

Arraco believes regulation should be based on the risk presented by a particular Financial Instrument, rather than size or sophistication of firm.

MIFID II focused on trading venues where execution takes place, as this is where the systemic risk is created in the event of a market disruption event. Currently Directive 2014/65/EU provides an adequate regulatory framework for Investment Firms not acting as matched principal, executing or crossing client orders.

Arraco believe for a broker not executing trades, acting as matched principal or crossing trades, the OTF requirements are burdensome; Articles such as 20, 24, 25, 27, 28 and 58, applying specifically to an OTF platform and are excessive given the risk presented by the activity.

Arraco recommend the OTF Lite be restricted to Non MIFID II classification products[[12]](#footnote-13) (REMIT wholesale energy products) and prearrangement of CCP block trades. The broker acts as a non-clearing, non-trading market participant.

<ESMA\_QUESTION\_FOTF\_6>

**Q7: Do you consider that ESMA should publish further guidance on the difference between the operation of an OTF, or other multilateral systems, and other investment services (primarily Reception and Transmission of Orders and Execution of orders on behalf of clients)? If yes, what elements should be considered to differentiate between the operation of multilateral systems and these other investment services?**

<ESMA\_QUESTION\_FOTF\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FOTF\_7>

**Q8: Do you consider that there are networks of SIs currently operating in such a way that it would in your view qualify as a multilateral system? Please give concrete examples.**

<ESMA\_QUESTION\_FOTF\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FOTF\_8>

**Q9: Do you agree that the line differentiating bilateral and multilateral trading in the context of SIs is sufficiently clear? Do you think there should be a Level 1 amendment?**

<ESMA\_QUESTION\_FOTF\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FOTF\_9>

**Q10: What are the main characteristics of software providers and how to categorise them? Amongst these business models of software providers, which are those that in your view constitute a multilateral system and should be authorised as such?**

<ESMA\_QUESTION\_FOTF\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FOTF\_10>

**Q11: Do you agree with the approach suggested by ESMA regarding software providers that pre-arranged transactions formalised on other authorised trading venues? Do you consider that this approach is sufficient to ensure a level playing field or do you think that ESMA should provide further clarifications or propose specific Level 1 amendments, and if so, which ones?**

<ESMA\_QUESTION\_FOTF\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FOTF\_11>

**Q12: Do you agree with the principles suggested by ESMA to identify a bulletin board? If not, please elaborate. Do you agree to amend Level 1 to include a definition of bulletin board?**

<ESMA\_QUESTION\_FOTF\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FOTF\_12>

**Q13: Are you aware of any facility operating as a bulletin board that would not comply with the principles identified above?**

<ESMA\_QUESTION\_FOTF\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FOTF\_13>

**Q14: Market participants that currently operate such systems are invited to share more detailed information on their crossing systems (scale of the activity, geographical coverage, instruments concerned, etc…), providing examples of such platforms and describing how much costs & fees are saved this way as opposed to executing the relevant transactions via brokers or trading venues.**

<ESMA\_QUESTION\_FOTF\_14>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FOTF\_14>

**Q15: Do you consider that internal crossing systems allowing different fund managers within the same group to transact between themselves should be in scope of MiFID II or regarded as an investment management function covered under the AIFMD and UCITS? Please explain. In your view, should the regulatory treatment of these internal crossing system be clarified via a Level 1 change?**

<ESMA\_QUESTION\_FOTF\_15>

TYPE YOUR TEXT HERE

**Q16: Do you agree with the interpretation provided by ESMA regarding how discretion should be applied and do you think the concept of discretion should be further clarified?**

<ESMA\_QUESTION\_FOTF\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FOTF\_16>

**Q17: For OTF operators: Do you apply discretion predominantly in placement of orders or in execution of orders? Does this depend on the type of trading system you operate? Please explain.**

<ESMA\_QUESTION\_FOTF\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FOTF\_17>

**Q18: For OTF clients: Do you face any issue in the way OTF operators exercise discretion for order placement and order execution? If so, please explain. Does it appear to be used regularly in practice by OTF operators?**

<ESMA\_QUESTION\_FOTF\_18>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FOTF\_18>

**Q19: Do you think ESMA should clarify any aspect in relation to MPT or that any specific measure in relation to MPT shall be recommended?**

<ESMA\_QUESTION\_FOTF\_19>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FOTF\_19>

**Q20: In your view what is the difference between MPT and riskless principal trading and should this difference be clarified in Level 1?. In addition, what, in your view, incentivizes a firm to engage in MPT rather than in agency cross trades (i.e. trades where a broker arranges transactions between two of its clients but without interposing itself)?**

<ESMA\_QUESTION\_FOTF\_20>

It is Arraco’s position, the difference between MPT and pre-arrangement of CCP block trades is considerable.

MPT involves significant transaction and credit risk; a broker can make, take, or hold positions on behalf of clients, before passing those positions (give up) back to the client. In block trades, the MPT broker will hold the positions of both buyer and seller, until the trades are accepted by both sides, generating bilateral credit risk.

When the broker ‘matches’ the buyer and seller together on an interest, the broker is then - until the trades are repositioned into the buyer and seller accounts - the guarantor of the trade.

An MPT broker works on the premise that both counterparties have credit (bilaterally or CCP Credit) for the trade to be completed, in the scenario an MPT broker matches a trade between buyer and seller and one counterparty fails before the position is either transferred or accepted, the broker would be left to hold or unwind this position.

Some regulatory intervention from ESMA would be welcome as it would also bring clarity to national competent authorities and market participants. Arraco notes that many counterparties dealing via a broker providing MPT should be managing credit exposure to the broker more actively (in this scenario the broker is providing the OTF service) because if the opposing counterparty to a trade fails, the broker will become the counterpart.

The MPT business model provides a broker with more flexibility to be able to execute trades and process trades, but with this flexibility comes increased risks, therefore, operating as an MPT could be a differentiator for some, as it is seen as being a ‘full service’ broker, when contrasted with an Agency Cross broker.

<ESMA\_QUESTION\_FOTF\_20>

**Q21: Do you agree with ESMA’s proposal to clarify that the prohibition of investment firms or market operators operating an MTF to execute client orders against proprietary capital or to engage in matched principal trading only applies to the MTF they operate, in line with the same wording as applicable to regulated markets?**

<ESMA\_QUESTION\_FOTF\_21>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FOTF\_21>

1. Memo 14-305 <https://ec.europa.eu/commission/presscorner/detail/en/MEMO_14_305> **15. What energy contracts are covered by MiFID II, which are excluded and why?** However, the final text excludes wholesale energy contracts covered under the Regulation on the integrity and transparency of the market wholesale energy (REMIT) because these contracts are subject to a certain level of regulation and supervision comparable with financial markets legislation. [↑](#footnote-ref-2)
2. Article 4 (23) MiFID [↑](#footnote-ref-3)
3. At the relevant time, Organised Market Place requirements; for a brokerage to become an Organised Market Place (OMP), required50,000 Euro regulatory capital, establishment of a Legal Entity Identifier for the given OMP entity, registration via the Energy Regulator of the country in which the OMP would operate and registration with ACER on the REMIT portal. A firm could then report trades on behalf of clients. For a brokerage to become an Organised Trading Facility (OTF), the brokerage would have to become an IFPRU €730,000 Limited Licence Firm; with a Pillar 1 capital adequacy requirement (CAR). An IFPRU 730 firm means that the brokerage must carry €730,000 of capital made up of:

• €730,000, or

• Credit Risk plus Market Risk, or

• Fixed Overhead Requirement

It also requires firms to comply with a dedicated set of MiFID II/MiFIR rules which apply indiscriminately regardless of size/risk presented. [↑](#footnote-ref-4)
4. Directive 575/2013, Directive 2019/2033 [↑](#footnote-ref-5)
5. Article 4(19) MiFID II [↑](#footnote-ref-6)
6. Directive 2014/65/EU [↑](#footnote-ref-7)
7. 2013/36/EU – (43) - <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32013L0036> [↑](#footnote-ref-8)
8. Directive 2019/2034 - Article 9 – Initial Capital – point 3: 3. The initial capital of an investment firm required pursuant to Article 15 of Directive 2014/65/EU for investment firms other than those referred to in paragraphs 1, 2 and 4 of this Article shall be EUR 150 000. [↑](#footnote-ref-9)
9. Esma 70-156-2013 [↑](#footnote-ref-10)
10. [↑](#footnote-ref-11)
11. Directive 2014/65/EU – Investment Services & Activities - (1) Reception and transmission of orders in relation to one or more financial instruments. [↑](#footnote-ref-12)
12. Memo 14-305 <https://ec.europa.eu/commission/presscorner/detail/en/MEMO_14_305> **15. What energy contracts are covered by MiFID II, which are excluded and why?** However, the final text excludes wholesale energy contracts covered under the Regulation on the integrity and transparency of the market wholesale energy (REMIT) because these contracts are subject to a certain level of regulation and supervision comparable with financial markets legislation and so their exclusion is justified as a proportional amendment to avoid unnecessary dual regulation. [↑](#footnote-ref-13)