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FINANCE DENMARK

Response to ESMA's call on evidence regarding Digital Finance

August 1, 2021
Doc: FIDA-931287038-693763-v1

Q1. Please insert here any general observations or comments that you would like to make on this call for evidence, including how relevant digital finance may be to your own activities.

When conducting a call for evidence, we encourage ESMA to consider service providers providing financial services or performing activities in the field of digital finance in a broad context. The Call for Advice from the EU Commission and in particular the Call for Evidence from ESMA consistently brings up the issue or Big Tech companies offering financial services. But they don't address the issue of fin techs doing the same.

With the restrictions placed on e.g., investment firms, there may have developed a void, which unregulated (or unauthorized) service providers are using. Also, the Call for Advice and the Call for evidence do not address or ask questions about the issue that there currently exist substantial differences in the legislation, regulation and supervisory attention as regards different types of financial firms performing the same financial activity. For example

1) the difference in regulatory requirements for banks and insurance companies respectively when doing mortgages or trade finance,
2) the difference in regulatory requirements for banks and PSPs respectively when doing payments
3) the difference in regulatory requirements for a bank and another type of financial institution doing corporate credits

In this regard it is also important to ensure investor protection. The rules should be technology agnostic to ensure the same level of investor protection. In general, it is important to eliminate any unlevel playing field.

Q2. Do you observe changes in value chains for financial services [1] (e.g., more fragmented value chains) as a result of technological innovation or the entry of technology firms? How different is the situation now when compared to pre-Covid?

N/A

Q3. Do you consider that financial firms[10] are increasingly relying on technology firms to fulfil critical or important functions? If so, for which particular functions? Are there particular types of technologies (e.g., BigData, artificial intelligence, cloud computing, others) and technology firms involved?

N/A

Q4. Do you have examples of technology companies providing financial services in the EU, either directly or through arrangements with financial firms? If so, please briefly describe their business model and the type of financial services that they provide.

N/A

Q5. Do you have examples of technology companies being used by financial institutions in the EU to fulfil critical or important functions? If so, please briefly describe their business model and the way in which they contribute to, or facilitate, these critical or important functions.

N/A

Q6. Do you see changes in the way or extent to which financial market data are being collected, used and disseminated by unregulated data service providers?

Financial market data is to be understood as raw market data which information regarding orders (bid, ask, volume, timestamp, instrument id etc.) and trades (price, volume, time, instrument id etc.). The financial market data is handled in the following way:

1) When displaying market data on a customer platform, the raw market data is very often provided by an uregulated data distributor/vendor (such as Refinitiv, ICE/Interactive Data).
2) When displaying market data in the security dealers' trading application (accessible for the security dealers' traders and sales representatives), the raw market data may be fed directly from the trading venue if the security dealer is a member or from one of the security dealer's brokers, who are a member. Beside this access, traders and sales representatives

[1] Please refer to the 'Abbreviations and definitions' section of the call for evidence, page 3, for the definition of this term [10] Ibid

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may have access to raw market data from a data distributor/vendor in a terminal display.

3) When displaying market data in the security dealers' risk application, back-office application, compliance application, etc., the raw market data would generally be fed from a data distributor/vendor.

All members use the raw market data from the trading venues – that is indispensable for trading and to meet best execution and other regulatory requirements. Data distributors/vendors do not offer raw market data without latency (and mark up). Also, using market data from the data distributor/vendor still requires security dealers to execute a market data license agreement with each the trading venues (and therefore payment to those venues).

Data distributors'/vendors' pricing model for market data is usually based on unique instruments being consumed by applications, together with view charges per user/employee who do not have a terminal service. And they will of course pass on the costs of the end-user fee plus a mark-up (explained to cover their costs of maintaining their platform as well as the administrative burden of reporting on our behalf to each trading venue, keeping data users informed of the policy changes, updating permission package following the trading venue notification, etc.)

Security dealers may be paying the end-user fees per trading venue to the data distributor/vendor, but this amount will be passed on to the trading venue in the end. Therefore, the data distributor/vendor is "only" earning the added mark-up to such end-user fees.

If we try to explain it in another way: For the same instrument, security dealers will be charged (1) by the trading venue where this instrument is traded (end-user fee, distribution fee, non-display fee), and (2) by the data distributor/vendor who provided this instrument (instrument fee and view charge). So, we are paying several times and different type of fees for using and viewing this single instrument.

Although, the original source of the market data is always the Exchanges (regardless of latency), market data can also be obtained from data vendors. Data vendors' main function is to collect data at the trading venues and deliver it to security dealers and investors. There are three main reasons why security dealers use market data vendors in addition to direct market data access via membership of the trading venue:

- Simple access: The process of accessing (and formatting of) raw market data differs from venue to venue. The biggest data vendors have access to all venues and offer to deliver the data in a standardised stream. Thus, it is more convenient to access market data from one market data vendor than, e.g. 7-8 different venues. As such, the vendors act as a "consolidated tape".
- Processed data: Market data vendors offer a variety of processed market data. It can sometimes be more cost-efficient for the security dealers to buy the processed market data than process it themselves.
- Other services: Market data vendors also offer other useful services in relation to security dealing, e.g. chat functions or valuation tools.

Please beware that the licensing is always with the exchange – even when the data is delivered through a vendor.

However, even as the value chain is rather unchanged, vendors are unregulated entities in the value chain which they should not be due to the lack of supervision. With the present problems with high and increasing market data costs, which is first and foremost a problem in relation to the exchanges when it comes to raw market data, the vendors add another layer in this discussion in particular when it comes to processed/value added data.

Q7. What implications, if any, do changes in value chains (e.g., more fragmented value chains) have on your own activities? To which extent are you taking an active role in these changes?
Changes in the value chain, such as fragmentation, when it comes to financial market data add additional costs as there will be a need to mitigate the fragmentation by adding other services.

Q8. Do you see new or exacerbated risks (e.g., to investor protection, financial stability, market integrity, security or level playing field) in relation to the reliance on technology firms by financial firms?
N/A

Q9. Do you see new or exacerbated risks (e.g., to investor protection, financial stability, market integrity, security or level playing field) in relation to the provision of financial services by technology companies?
N/A

Q10. Do you see new or exacerbated risks (e.g., to investor protection, financial stability, market integrity, security or level playing field) in relation to the collection, use and dissemination of financial market data by unregulated data service providers?

Yes. Please also see our response to Q6 and Q7.

Please also beware in relation to level playing field that in case a security dealer is not satisfied with a vendor – it is possible to change. But – it is not easy, and it is costly to. This is the main reason behind the existence of dominant players. For example, a qualified vendor change would take 2-3 years and require a substantial amount of resources.

Another problem is the new trend with merger of trading venues and vendors as this creates new types of dominant players which is expected to increase costs – both directly and indirectly – and lower quality on top.

Q11. Do you consider that some adaptations to the EU regulatory framework are needed to address the risks brought by changes in value chains?

Yes. Firstly, we believe that unregulated data service providers must be subject to regulation and supervision. Secondly, Finance Denmark strongly encourage the power of supervision with data providers as well as trading venues should rest at ESMA in order to ensure consistency in supervision and enforcement across EU, thereby ensure a level playing field for both the data providers as the trading venues. As both data providers and many trading venues operate on a cross border basis, it requires a significant and increasing amount of resources to ensure compliance with the regulatory requirements and ensure a level playing field. We also note an increasing consolidation trend within the exchange and information business – not only horizontally, but also vertically, which complicates the business model even further and calls for more supervision and enforcement.

Q12. Do you consider that some adaptations to the EU regulatory framework are needed to unlock the benefits brought by changes in value chains?

Yes. Please see our response to Q10 and Q11

Q13. Do you consider that there is a need to enhance supervisory practices, e.g., cross-border or cross-sectoral cooperation, in relation to changes in value chains?

Yes. Please see our response to Q10 and Q11

Q14. Which recommendations, if any, would you make to EU regulators/supervisors to address opportunities and challenges brought by changes in value chains?

Please see our response to Q10 and Q11

Q15. Do you have any other observations or comments in relation to changes in value chains?

Platforms and bundling of various financial services

Q16. Do you have examples of platforms[2] bundling different financial services from different financial firms in the EU? If so, please provide a brief description of the most prominent ones.

N/A

Q17. Do you consider that the use of platforms by financial firms for the marketing or the conclusion with customers of financial products and services is widespread in the EU? Do you observe an increase in the use of platforms compared to pre-Covid?

N/A

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Q18. (To financial firms) As a financial firm, are you using platforms for the marketing or the conclusion with customers of your financial products and services? If yes, please provide a brief description of:

- **a) The types of services provided by the platform.**
- **b) The arrangement in place with the platform (e.g., are you or the platform responsible for the governance and/or maintenance of the technical infrastructure and the interactions with customers)?**
- **c) The extent and way in which the arrangement is disclosed to the customer.**
- **d) The tools and processes in place to ensure that the risks attached to the financial products and services are properly disclosed to the customers.**

N/A

Q19. (Same question to platforms) As a platform, do you facilitate the marketing or the conclusion with customers of financial products and services? If yes, please provide a brief description of:

- **a) The types of services provided to financial firms.**
- **b) The arrangement in place with the financial firms (e.g., are you or the financial firm responsible for the governance and/or maintenance of the technical infrastructure and interactions with customers)?**

[2] Please refer to the 'Abbreviations and definitions' section of the call for evidence, page 3, for the definition of this term

c) **The extent and way in which the arrangement is disclosed to the customer.**
d) **The tools and processes in place to ensure that the risks attached to the financial products and services are properly disclosed to the customers.**

N/A

Q20. Which key opportunities and challenges do you see in relation to the use of platforms by financial firms?

N/A

Q21. Do you consider any of the following risks to be new/exacerbated where financial firms use platforms for the marketing or conclusion with customers of contracts for financial products and services? Please explain

a) **Risk to financial stability**
b) **Risk to investor protection**
c) **Risks in relation to conduct of business**
d) **ICT and security risks**
e) **Money laundering / Terrorism financing**
f) **Risk to data protection and privacy**
g) **Risk to fair competition**
h) **Market manipulation**
i) **Other**

N/A

Q22. (For financial firms) Which controls and processes are in place to oversee the specific risks emerging from the use of platforms?

N/A

Q23. Do you consider that some adaptations to the EU regulatory framework are needed to address the risks brought by the use of platforms?

N/A

Q24. Do you consider that some adaptations to the EU regulatory framework are needed to unlock the benefits brought by the use of platforms?

N/A

Q25. Does the use of platforms give rise to any challenges regarding the cross-border supervision of financial sector activities in the EU? Do you consider that there is a need to enhance supervisory practices, including convergence measures, in relation to the use of platforms?

N/A

Q26. Which recommendations, if any, would you make to regulators/supervisors to address opportunities and challenges brought by the use of platforms?
N/A

Risks of groups combining different activities

Q27. Are you aware of mixed activity groups (MAGs), including BigTech groups, whose core business is not financial services but that have subsidiary undertakings that provide financial services in the EU?
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Q28. Which types of financial services do these entities provide?
N/A

Q29. In such MAGs, how and to what extent the dependency of a subsidiary financial firm on its parent company and/or other subsidiaries of the same group influences the provision of the financial service?
N/A

Q30. Do you see new or exacerbated risks in relation to MAGs?
N/A

Q31. Do you consider that there is a risk of unlevel playing field between individual ('solo') financial firms and MAGs?
N/A

Q32. In your opinion, is the current EU regulatory framework adequate for MAGs?
N/A

Q33. Do you consider there is a need for new cooperation and coordination arrangements between financial supervisors and other authorities (data, competition, consumer protection, AML/CFT, cyber) within the EU and/or with 3rd countries in order to ensure effective supervision of MAGs?
Please see our response to Q10 and Q11.