

Towards delivering the CMU

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Good morning, ladies and gentlemen,

I am delighted to speak today at the FESE convention.

The first session yesterday focussed on the competitiveness of the EU and touched upon many topics that will shape the EU's capital markets in the coming years, such as the Capital Markets Union, digital transformation and sustainability. The focus of today's session is on one of the key pillars of the EU capital markets and its ongoing review, MiFIR.

As ESMA, we have always been very supportive of the ambition to create a genuine single European capital market. The Capital Markets Union is not a new project, and we made some progress since 2015. However, much has happened since then as well. The UK is no longer a member of the European Union, we went through a global health crisis with COVID, sustainability and digitalisation of the economy are transforming our world, including the financial sector, and the Russian invasion of the Ukraine is also having a profound impact on our societies and economies.

Hence, integrated EU capital markets, including a strong regulatory framework and its consistent application, have become more important than ever.

ESMA is closely involved in delivering the Capital Markets Union, both when it comes to further developing the single rulebook via providing technical advice or drafting



technical standards, and by ensuring day to day the convergent application of these rules across the EU.

Today, I will share with you ESMA's views on a few topics starting with the MiFIR review, and in particular the consolidated tape, before providing you with some insights on our supervisory convergence work in the area of MiFID II and the trading venue perimeter. I will also touch upon some recent market events and the lessons we might draw from them.

MiFIR Review – towards the establishment of a consolidated tape

The European Commission published the long-awaited proposal for a review of MiFIR in November last year, but this has not been the start of the process for us. ESMA has been contributing to this review for several years, starting with the review report on the cost of market data and the consolidated tape that we published in December 2019 and concluding with the review report on algorithmic trading in September 2021.

Many of our proposals, such as on the consolidated tape, the equity and non-equity transparency regime and investor protection have made their way into the Commission's proposal. Not surprisingly, we are overall very supportive of the proposal and fully share its ambitions. At the same time, it is fair to say that we also have some suggestions on how to further improve it in places.

The Commission proposal is now in the hands of co-legislators, and we hope that it will be possible to conclude on this file quickly. I know that many of you are closely following the negotiations and are ready to share your expertise to help further finetuning the text.

The review is extensive and touches on so many different areas that it would be impossible to cover all of them today. I will therefore focus my remarks today on the creation of a consolidated tape since I know that this is a topic that many of you are particularly concerned about.

One of MiFID II's key objectives was to establish a more transparent financial system following the lessons learnt from the financial crisis in 2008. Hence, it has also been

one of the key elements that ESMA has been working on since the implementation of MiFID II in 2018. Providing transparency goes beyond imposing requirements on market participants but extends to ensuring that the information available to market participants is accurate, meaningful, comparable and accessible. The consolidation of all transparency information from the various data sources into one single consolidated tool is a catalyst to achieve these goals. Particularly in a fragmented market like in the EU a consolidated tape can provide real added value for all categories of investors and would represent a significant step towards a truly integrated single capital market.

[MiFID II already provided for a consolidated tape, but due to the lack of commercial incentives and a very rigid regulatory framework it did not emerge. Therefore, as I'm sure you know, the Commission proposal on the revised MiFID provides for ESMA selecting one CTP per asset class.]

Let me start by saying that we strongly support the main elements contained in the Commission's proposal. We firmly believe there should be one, single, real-time tape per asset class. We also fully support the idea that the tape should be receiving mandatory data contributions from market data providers and that ESMA should select, authorise and supervise the consolidated tape. The success of the consolidated tape highly depends on these key characteristics.

As we already stated in our 2019 MiFID review report, we advocate for a post-trade tape as we believe this is the best and most pragmatic way to succeed in the short to medium-term. It is also with a post-trade tape that we understand that there are most use cases, in particular for non-equity markets.

The consolidated tape is the most discussed topic in the secondary markets area – and I am aware that there will be a panel on this very topic later in the day. I firmly believe that we should build on the current momentum and create the conditions for a tape to emerge quickly. As ESMA, and considering our important role in appointing, authorising, and supervising the consolidated tape, we are therefore fully supportive of an ambitious timeline.

Nevertheless, we are concerned that the current timeline foreseen in the proposal is

not realistic. We would therefore suggest an adequate timeframe allowing for the launching of the procedure, for entities to apply and for ESMA to select and subsequently authorise a successful candidate. We also consider that a staggered approach may be a good idea, meaning that the consolidated tape for certain asset classes could be prioritised over others. As ESMA we can, of course, prepare to the extent possible and we are already working internally on how to best organise the procedure (despite any remaining uncertainties in the legislative process).

Despite some concerns regarding timing we are taking a positive and forward-looking approach to the establishment of the tape. We are doing so by focusing on removing the main obstacles that we have already identified in our 2019 review report, in particular in relation to some data quality issues.

A case in point would be the amendments to the ESMA technical standards on transparency that we recently proposed to the Commission. This work was of a very technical and complex nature, even for a technical standard, and focussed on providing further clarity on how to provide post-trade transparency and clarifications on different trading flags. The review picked up on many concerns we have received from stakeholders over the last years about inconsistent publication of post-trade transparency information. We believe that these amendments will improve the consistency and quality of data published and are paramount for the successful establishment of the consolidated tape.

We consider it key for the successful establishment of the tape to ensure consistent publication requirements for the consolidated tape as well as for trading venues and APAs. We therefore are of the view that the work on further specifying the data to be submitted to and published by the tape should be developed by ESMA via technical standards. Entrusting ESMA would ensure consistency in the data to be published. We will – as usual – of course consult widely on any technical standards. As an example, we received almost 60 responses to the consultation on the review of the transparency technical standards covering a large and diverse range of different stakeholders.

We will continue working on data quality, particularly relation to OTC data. This remains

a top priority for us. Nevertheless, I don't believe that the remaining challenges regarding the format and overall quality of the reported data should make us deviate from our trajectory towards the establishment of a consolidated tape. We should, on the contrary, seize this opportunity to concentrate our efforts towards more harmonised standards and practices, in close collaboration with all relevant stakeholders in the market and work together to ensure the success of this important initiative.

The trading venue perimeter

Having touched upon the ongoing MiFIR review, I want to go further into our work on this dossier. As securities regulators, our work does not end with the level 1 discussions, it rather starts there

As a follow-up to the findings of ESMA's review of MiFID II/MiFIR, we are working on providing further guidance where we identified inconsistent practices across the EU. One of these areas, that is no doubt of interest to FESE and its members, is the discussion around the trading venue perimeter.

We have recently consulted on a proposed ESMA opinion which intends to clarify what a multilateral system is and which provides guidance on when systems should seek authorisation as a trading venue. The opinion aims at enhancing supervisory convergence in the EU and levelling the playing field between market participants.

Without going too much into detail, which is intrinsic to this debate and which many of you are very familiar with, the guidance intends giving clarity as to when a platform requires authorisation as a trading venue. This is particularly important for RFQ systems, systems that pre-arrange trades and ultimately formalise those on a trading venue. Often these type of systems are promoted by new technology providers that undoubtedly play an important role introducing innovative solutions to the market but they need to do so without jeopardizing the level playing field.

We are analysing very closely the feedback we received to this consultation and will be finalising the opinion within the next few months.

I would also like to emphasize that the work on the trading venue perimeter is not

limited to the publication of the opinion. We are working together with competent authorities in assessing the different systems on a case-by-case basis, as the features and complexity of such systems vary greatly. We do so by looking at concrete cases where the dividing line concerning trading venue authorisation is blurred and discussing the merits of each case at case-specific sessions of our standing committees. This is particularly important for new and innovative solutions that we want to encourage, whilst ensuring an adequate level of protection for investors.

[Digital transformation and crypto-assets – not delivered

Talking about innovation and pioneering solutions – we cannot talk financial markets these days without discussing crypto-assets.

Crypto-assets remain less significant than traditional assets in terms of market share, but they continue to gain mainstream acceptability - with growing capitalisation in recent years. Today, linkages between crypto-assets and core financial markets, while increasing rapidly, are still limited. However, the quick developments and cross-border nature of crypto-asset markets raise the potential for increased risk to the ESMA objectives of financial stability, orderly markets and investor protection. They also heighten the risk of regulatory gaps and fragmentation..

Worryingly, the current EU regulatory framework is not capturing most crypto-assets and thus investors are not properly protected. In this context, ESMA, together with the other ESAs, issued a new warning for consumers in March this year. The recent issues with rapid falls in the value of some cryptocurrencies have only exacerbated the risks and the need for rapidly moving ahead with a robust EU-wide legislative regime. The fall of Terra, which saw its value wiped out in just a few days should not be taken lightly. More and more European investors are turning to this market to invest their lifetime savings and we need to ensure an appropriate regulatory framework and effective supervision. So far, only some national supervisors can rely on a domestic legislative regime for crypto assets.

Therefore, we believe that the European Commission's Digital Finance Package, which includes a Regulation on Markets in Crypto-Assets (MiCA), is a welcome step

forward. As you know, MiCA is intended to cover crypto-assets falling outside the current EU financial services framework. It will support innovation, by putting in place a safe and proportionate framework to foster fair competition in this market. It will bring legal certainty, by clearly defining the regulatory treatment of crypto-assets that are not covered by existing financial services legislation. It should instil appropriate levels of investor protection and market integrity given that several crypto-assets present many of the same risks as more familiar financial instruments. Finally, it should contribute to financial stability, by addressing the risks related to so called “stablecoins”.

At ESMA, we are already reflecting on how we will fulfil the mandates that EU co-legislators may give us. In this area, we would notably see it as appropriate for ESMA to play a greater role when it comes to the authorisation and supervision of significant Crypto Asset Services Providers. This would support a harmonised approach within the EU, with beneficial outcomes for both firms and investors, also considering that Crypto-Asset issuers and service providers typically operate cross-border.

Even while the negotiations on MiCA are still ongoing, we already work with EU and national supervisors to foster convergence and cooperation in the crypto asset space. We regularly exchange information about scams and frauds, learn from each other’s experiences by discussing real supervisory cases, and aim to find common ways to address related risks across the EU.]

Commodities and circuit breakers

Before concluding, I’d like to touch upon one final topic that I’m sure you have all been closely following over the last weeks. Whilst we attempt to build and maintain a framework that ensures orderly markets and appropriate protection for high-street investors, we need to remind ourselves that extreme events, such as flash crashes or system disruptions, can nevertheless occur even in well-regulated and mature markets.

Recently, two separate market events occurred in two important markets – commodities and equities.

Following Russia's invasion of Ukraine we have seen high volatility and price hikes in commodity markets, in particular oil, natural gas, wheat and other agricultural products. ESMA, as well as regulators in other jurisdictions are therefore closely monitoring those markets. Considering its responsibilities in the area of clearing and CCP supervision, ESMA is in particular paying specific attention to the increase in collateral requirements resulting from this volatility in commodity derivative markets and the impact it may have on market participants, market infrastructures and financial stability.

The events that occurred in early March on the London Metal exchange regarding Nickel trading reminded us that in certain situations, market volatility can quickly turn into a challenge for trading venues to maintain orderly markets. The recent events in commodity markets are leading us to reflect carefully on the additional tools that could be put in place to better identify potential risks to orderly markets at an early stage so that market infrastructures, and ultimately authorities, can take action as necessary before those risks materialise. In that respect, we are in particular looking at how transparency in these markets, for instance through additional information on the OTC positions held by market participants trading on-venue commodity derivatives, could allow market participants, trading venues and regulators to better identify risks and maintain orderly markets.

This work is not limited to Europe but has a global dimension given the global nature of some of these markets. We are therefore in close contact with our fellow international regulators and are also involved in international work streams. In order for regulators and market participants to be able to identify as soon as possible potential risks for markets and financial stability, close monitoring and international cooperation will be key.

Moving to the equity space, shortly after the event on the London Metal exchange, a flash crash at the Stockholm main index occurred. During this flash crash prices fell as much as 7% in just five minutes and there was a notable impact on prices of other EU markets and for a short period of time. While the driving factors of these two events have been very different, the first one triggered by concerns on the supply of commodities, and the second being triggered by, most likely, an erroneous order, both

events have in common that they highlighted the central role of circuit breakers in times of market stress. It is important to draw the right conclusions from these events and a discussion on the appropriate design of circuit breakers may well be warranted.

It is important to highlight though that, in general, the recent volatility episodes experienced in the past few years - not only due to Covid-19 in March 2020 but also due to the Ukraine-Russia conflict underway - have been overall well managed by EU markets and their infrastructures.

During the Covid crisis, trading venues proved to be broadly resilient, despite the surge in trading activity and market volatility. According to our analysis, circuit breakers were widely and efficiently used, and trading capacity was tested by volumes reaching all-time highs, with few operational issues. The weekly number of circuit breaker trigger events on the constituents of STOXX 200 reached record levels of around 2,000 and 3,000 in the second and third week of March 2020, before stabilizing in April 2020 to a level close to the long-term average of around 42 per week. This compares, for example, with previous peaks of daily circuit breaker triggers of around 1,200 around the Brexit referendum in the week of 20 June 2016. Circuit breaker events also faced a modest spike in February this year following the emergence of the conflict in Ukraine, with around 400 and 600 circuit breaker trigger events in the last week of February and first week of March respectively..

As I said, although trading venues have proven to be resilient in the past few years, outages and flash crash events can still occur and can have a detrimental effect on the well-functioning of markets and ultimately their reputation. While circuit breakers appear to have functioned as they were intended, also in the case of the Stockholm event by helping the market to bounce back, we should always use such events to look back and consider are there lessons to be learned? We need to remain vigilant and keep thinking about ways to improve the functioning of markets. Taking the words of Thomas Edison “There’s a way to do it better – find it”. We are embracing that philosophy in our resolve to find ways to further improve resilience of markets with tools that work efficiently and effectively. To achieve that goal, as always, we welcome and encourage your input and look forward to continued dialogue.



Conclusion

Ladies and Gentlemen, it was a great pleasure to have had the opportunity to address you here today, at the heart of Europe, on some of the challenges that we, as security regulators, are facing today. There is no doubt we face times of great uncertainty, there are many challenges we need to confront, but I am confident that our resolve to ensure resilient and effective markets and a better and even more united European Union will prevail.

We have to embrace the challenges with an open heart. Even though we recognise we play a small role in the grand scheme of things, we need to stand ready to do our part in building better and more effective EU markets, for the benefit of all investors and companies in Europe and to strengthen the global stability of our financial system by continuing our efforts towards increased global cooperation.

Thank you.