EDMA
EUROPE

11 September 2017

Mr Steven Maijoor
Chairman
European Securities and Markets Authority
103, rue de Grenelle
F-75345 Paris

Dear Mr Maijoor,

MiFID II to drive business off venues and away from Europe

Representing four major EU trading venues in the debt markets, facilitating the trading of over €400 billion of financial market assets daily**,** the members of the Electronic Debt Markets Association (EDMA Europe) are in the process of implementing the upcoming MiFID II / MiFIR framework. EDMA Europe's members firmly support the regulatory aims of MiFID II, including ensuring there is access to enough information to allow fair, orderly and transparent markets.

As such, we believe it is important to highlight that certain aspects of regulatory technical standards, which are designed to implement MiFID II, risk pushing many important market participants to trade outside of regulated venues ("over-the-counter" or OTC) within the EEA, or simply to move trading outside of the EEA altogether; diminishing the strength and depth of the European regulated trading venues. We believe this is counterproductive to the aims of MiFID II and could be mitigated if there was slightly more flexibility within the technical application of the rules. Market participants such as European authorised asset managers, insurance companies, pension funds, central banks, corporate treasurers and firms incorporated outside of the EEA are not directly regulated by MiFID II, and the attempts of MiFID II to capture their trading within the oversight of the EU regulators are having the opposite effect. These firms (so-called "non-MiFID firms") constitute a sizeable portion of capital markets' activity in the EEA today and they will either trade OTC or outside of Europe; in each case beyond the reach of the EU regulators.

Under the new rules (RTS 22 and 24 relating to MiFIR Article 25 and 26(5)), non-MiFID firms will need to provide regulated venues with personal data specifying who is executing the trade, and who is making the investment decision, in relation to their underlying clients. This information must be provided to multiple regulated venues on every order. Understandably, this creates significant operational, compliance and data protection challenges simply by choosing to trade on an EU regulated venue. It is EDMA Europe's understanding that in some jurisdictions, for example, local laws even prohibit firms from complying with this requirement.

Crucially, there is no mandatory requirement to trade fixed income on a regulated venue; and no comparable data collection requirement exists where one of these non-MiFID firms trades bilaterally/OTC, or on a non-EEA venue based, for example, in Singapore, Hong Kong or New York. As a consequence, an overly zealous application of these requirements, and the technical impediments to finding a more flexible solution and a level playing field when compared with bilateral trading within the EEA, is incentivising the opposite behaviour to that intended by the regulation.

EDMA Europe estimates that a material proportion of trading volumes in our impacted markets would be incentivised to leave Europe altogether. This would be contrary to the objectives of MiFID II by driving activity off regulated venues and by making European financial markets less competitive and more opaque.

This will result in less information for regulators and an overall less efficient and liquid marketplace; it would also threaten the competitiveness of European capital markets and, as a result, increase borrowing costs for European governments and enterprises. To give some perspective, one basis point increase in Eurozone government funding activities alone represents a €1 billion per annum additional cost. Ultimately, the migration of capital markets' activity away from regulated venues will put investors, public finances and economic growth more at risk than they were before the introduction of the regulation.

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Remedy to restore regulatory purpose of MiFID II: less is more

Small changes to the requirements at the ESMA Guidelines level could easily help address these concerns without weakening regulators' ability to detect market abuse. For example, if non-MiFID firms trading on EEA venues were required to provide trading venues with information at the level of the platform participant (i.e. not extending the requirements on the underlying clients of the participant for the purpose of the transaction reporting and order record keeping requirements of the venues), there would be no incentive to trade off venue. Considering also that a good portion of the non-MiFID firms are EEA authorised entities, the relevant EEA Competent Authorities will retain the ability to request data directly from the participant, if needed. It is not clear that the regulators intended to make it more onerous to trade on a venue than OTC within Europe, but that is, in practice, the most likely outcome.

We understand that there are technical limitations in the way in which the EU systems have been built which makes it difficult to implement this recommendation, and there is an element of "wait and see" in the feedback we have received from the regulators, because systems cannot be changed at this late stage. Our fear is that the market will move quickly, and irreversibly, to more opaque and remote markets.

EDMA Europe hopes that there is still a workable window of opportunity for European regulators and policymakers to cooperate with firms in finding a pragmatic approach that recognises diverse regulatory and legal systems globally; and one that accounts for the significant challenges in collecting, transmitting as well as securely storing relevant data. However, if we do not immediately address the unintentional imbalance created by these specific requirements, their implementation will achieve the opposite of MiFID II's core objectives: it would weaken European financial markets by making them less liquid, transparent and competitive, damaging investor protection and jeopardising governments' and companies' ability to fund themselves and generate growth.

We look forward to working with you to address these challenges as we move towards the implementation of MiFID II.

With best regards,

David Bullen	Rick McVey	Fabrizio Testa	Michael Spencer	Lee Olesky
Secretary-General	Chief Executive Officer	Chief Executive Officer	Chief Executive Officer	Chief Executive Officer
EDMA Europe	MarketAxess	MTS Markets	NEX Group	Tradeweb Markets

Cc: Mr Valdis Dombrovskis
Mr Markus Ferber MEP
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About EDMA Europe

Electronic Debt Markets Association represents the interests of companies whose primary business is the operation of regulated electronic fixed income multilateral trading facilities in Europe (regulated markets and/or trading venues) and act as a source of consultation between the members in their roles as operators of such venues in order to project collective views on regulatory, compliance and market structure topics for the benefit of the electronic fixed income markets.

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