



## REPORT OF THE CONFERENCE ON “MIFID: ONE YEAR ON”

Brussels, November 13, 2008

On November 13, 2008 in Brussels, the European Commission, DG Internal Market, Unit G3/Securities Markets held a conference on “MiFID: one year on.” The participants were generally satisfied with the success of MiFID since some of the main objectives such as increased competition have been reached. Despite some imperfections such as the diverging national sanctions, speakers did not call for a overhaul of the present regulatory framework.

In the Chairman's Opening Address **David Wright**, Deputy Director General, Directorate for Internal Market and Services, European Commission said that the conference was held for the continuous assessment of MiFID and to determine the strengths and weaknesses of its implementation. The conference represented an important step towards the 2010 Commission review of MiFID, Mr Wright claimed. He then previewed the six panels on economic impacts, institutional impacts, the impact on firms, internalisation, investors and international aspects.

**Charlie McCreevy**, Internal Market and Services Commissioner, expressed his positive view of MiFID in a keynote address. Despite the lack of reliable data due to its recent implementation in some Member states, the financial crisis calls for a preliminary assessment. He asked the participants to judge the impact of MiFID, and he acknowledged that MiFID had engendered many changes such as the emergence of new trading venues. Mr McCreevy claimed that the abolition of the concentration rule and the duty of best execution had changed the trading landscape, but also caused less transparency and increased fragmentation. He added that a working group for derivatives had already been established. Mr McCreevy concluded emphasising the importance of effective supervision.

The second keynote speaker, **Pervenche Berès**, MEP, PSE group, Chairwoman of the ECON Committee, European Parliament, took a more critical view on the success of MiFID. Her main concern was the EU's ability to regulate accurately and efficiently. She identified the main trade-off between competition and transparency. The real level playing field seems to be far away, Mrs Berès said.

### ***Economic impacts***

The first panel on the economic impacts of MiFID revolved around three themes: abolition of concentration rule, the code of conduct in post-trade and the negative impacts on transparency and liquidity. The moderator was **Mario Nava**, Head of Unit G2 "Financial Markets Infrastructure", Directorate for Internal Market and Services, European Commission.

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He said that the academics had argued for pre- and post-trade transparency from the outset, but that the industry had claimed to possess sufficient information.

**John Board**, Director and Professor, ICMA Centre, London, insisted on the necessity to separate the effects of MiFID from the effects of the current financial crisis, and said that market fragmentation was a necessary part of intensified competition. Mr Board distinguished between two types of transparency: to the market and to regulators. Transparency to the market would help to strengthen the market by restoring consumer confidence, Mr Board argued. The regulators' definition of transparency should be to make public where and whether the relevant information is published and in what form.

**Hugues Pirotte**, Professor, Solvay Business School, Université Libre de Bruxelles and CEO, FinMetrics SA, put forward the concept of intelligent transparency instead of complete information control. Mr Pirotte argued that intelligent transparency would imply determining which information is necessary to know first. He continued saying that risk appetite is necessary to ensure the correct functioning of financial markets and cannot be considered as the cause of market problems. Mr Pirotte likened blaming risk appetite for the financial crisis to "blaming the knife for the murder." He enumerated several areas where, in his vision, there was serious lack of transparency. Among these are the categorisation of clients and profiling. In any case, regulators need to be informed since they are investors of last resort. Both scholars agreed on the importance of educating retail investors about MiFID.

### ***Institutional impacts***

The second panel pertained to the institutional impacts of MiFID and the new supervisory challenges. The chair was **Eddy Wymeersch**, Chairman of the Committee of European Securities Regulators (CESR). He described CESR and its tools of supervision, its role in peer reviewing, mediation and transaction reporting. CESR can use a broad range of tools such as recommendations and standards that are not legally binding. Its Peer Review Panel automatically scans national practices and therefore ensures consistent implementation of the regulation. Mr Wymeersch argued that divergences in implementation and enforcement of MiFID could lead to serious regulatory arbitrage.

**Arthur Kluczny**, Chairman, Komisja Nadzoru Finansowego (KNF), remarked that CESR members are required to supply information that might be of interest to other regulators abroad. The exchange of information among different countries is based on bilateral agreements and, according to Kluczny, functions quite well.

**David Lawton**, Head of Markets Policy, Financial Services Authority (FSA), claimed that MiFID increased competition across securities venues, and that MTFs captured market shares thanks to their lower trading prices. However, Mr Lawton warned that if the market size of each venue was calculated based on the market share each venue claimed to have, the total would exceed 100%. Mr Lawton concluded his intervention adding that divergences across Member states in implementation and enforcement represent another challenge for MiFID.

**Hubert Reynier**, Managing Director, Regulation Policy and International Affairs Division, Autorité des marchés financiers (AMF) explained that the access to data is positive but not enough. The main obstacle is the lack of capacity to analyse data. Due to the overwhelming quantity of electronic data, regulators would have to invest to hire specialists, which is currently not feasible given their limited resources.

**Gert Luiting**, Senior Officer, Strategy, Policy and International Affairs Department, Autoriteit Financiële Markten (AMF), previewed some results of the CESR Mapping Exercise on MiFID that will be published by the end of November 2008. Mr Luiting said this report will analyse

the supervisory landscape, supervisory practices and the nature and use of sanctioning and enforcement powers. Mr Luiting argued that there are quite remarkable divergences between EU Member States in those three areas based on a survey statistics from all CESR members.

## ***Impact on firms***

The third panel discussed MiFID's impact on firms. The moderator was **Richard Britton**, Consultant on international regulatory matters, International Capital Market Association (ICMA).

**Spyros Capralos**, Chairman, Athens Exchange; and President, Federation of European Securities Exchanges (FESE), said the issues that need to be considered when judging the impact on firms are execution quality, transparency of price discovery, neutrality of venues, and a level playing field.

**Eli Lederman**, Chief Executive, Turquoise, reviewed the great success of his company that started its activities in August 2008, and argued that MTFs intensify competition. For him, MiFID represent a great success since increased competition forces traders to be more efficient, which eventually lowers costs for end-investors. According to him, post-trade transparency represents the most appropriate way to ensure pre-trade transparency.

**Adolfo Garcia**, Head of Securities Forum and MiFID coordinator, Santander Group, presented the procedure his bank went through when implementing MiFID in three different national markets. The bank tried to convert this directive into a commercial opportunity, Mr Garcia said. He urged the Commission to pursue harmonisation across securities.

**Matthias Bock**, Executive Director and General Counsel, Goldman, Sachs & Co. oHG, spoke from the perspective of the wholesaler. In this role, MiFID was a positive step since it improved how clients perceive the market despite high compliance costs, Mr Bock argued. He added that MiFID simplifies Goldman Sachs' business activities because the company was operating in different European markets.

## ***Internalisation***

Following the lunch break, the fourth panel focused on internalisation. The moderator was **Judith Hardt**, Secretary General, Federation of European Securities Exchanges (FESE). She asked the panel to expose their views on expected and unexpected outcomes, venues and level playing field, liquidity and price formation and the post-trading landscape.

**Peter Randall**, Chief Executive, Chi-X, used his presentation to let the audience know about his own company's success and to explain that his platform saved traders huge amounts of money. Regarding transparency, he criticised renowned newspapers for only quoting the London Stock Exchange.

**Adam Kinsley**, Director of Regulation, London Stock Exchange (LSE), adopted a more neutral approach and reminded the audience that MiFID was neither responsible for the financial crisis nor was the only reason for all integration. For example, despite lower prices, spreads have widened. He pointed to further weaknesses such as the lack of some systematic internalisers on the CESR list. Despite the imperfections of MiFID, there is no need for MiFID II, Mr Kinsley concluded.

**Sonja Lohse**, Head of Group Compliance, Nordea Bank AB, listed Nordea's expectations for MiFID: higher turnover; difficulty in predicting which new platforms would be sustainable; higher costs due to the need for interconnectivity; change in market participants' trading

behaviour, and the need for technology and interoperability. Ms Lohse said that certain MiFID policies had already been integrated into Nordea's system before its entry into force. Ms Lohse welcomed the positive aspects of MiFID, but warned that her company still needed time to adapt to the new landscape.

**Pierre Francotte**, Chief Executive Officer, Euroclear SA/NV, asked whether intensified competition and high fragmentation is preferable to few players, higher technology and less fragmentation. Mr Francotte called for the next phase of MiFID to concentrate on risk.

## ***Investors***

The fourth panel debated the investors' perspective under the moderation of Dr. **Peter de Proft**, Director General, European Fund and Asset Management Association (EFAMA).

**Charles-Henri Taufflieb**, Chairman, Commission for « Compliance and Codes of conduct », European Associations of Corporate Treasurers (EACT), argued that the two main contributions of MiFID are its impact on financial instruments and complicated rules. Mr Taufflieb also criticised the unsatisfactory approach banks are taking towards MiFID and remarked that there are discrepancies in the categorisation of clients. Questionnaires are not well received and responses not even obligatory, Mr Taufflieb said.

**Guillaume Prache**, Member of FIN-USE; Vice-president de la Fédération des Associations Indépendantes de Défense des Épargnants (FAIDER), proposed the extension of best execution to other financial products such as derivatives.

**Didier Cahen**, Secretary General, EUROFI, argued that better information and advice of retail investors have emerged thanks to MiFID. However, several financial instruments were not covered by MiFID and retail investors lacked evaluation instruments, Mr Cahen claimed. Furthermore, he called for campaigns to educate retail investors.

**Jean-Pierre Paelinck**, General Secretary, Euroshareholders, argued that the reliability and availability of information had been mixed with propaganda. He called for reliability rather than transparency and said that retail investors have lost their confidence in the market.

## ***International Aspects***

MEP **Piia-Noora Kauppi**, Group EPP-ED moderated the fifth and last panel that discussed international aspects of MiFID. She emphasised the importance of the G20 summit of November 15 for the future of the international financial system and wondered, among other things, whether the agreement between the US and Australia could be used as benchmark for EU-US agreement.

**Bertrand Huet**, Managing Director, European Legal & Regulatory Counsel, Securities Industry and Financial Markets Association (SIFMA), claimed that mutual recognition is one possibility to improve financial markets and to recover from the financial crisis. He added that trust is at the core of international cooperation and that regulators' reaction to the crisis should have been more harmonised.

**René Maatman**, Board member responsible for securities markets surveillance, Autoriteit Financiële Markten (AFM), stressed the importance of mutual recognition to avoid a regulatory race to the bottom. He predicted that this will be achieved within the EU without any major obstacles. However, Mr Maatman said that cooperation and mutual recognition may be an issue for the EU as a whole vis-à-vis foreign entities. This is because other

countries might gain a comparative advantage by settling for lower regulatory standards, thereby becoming more attractive to investors prone to use illegal market practices.

**Elisabeth Jacobs**, Director of International Affairs, U.S. Securities and Exchange Commission (SEC), argued that the global impact of the financial crisis revealed the interconnectedness of all markets. However, before making any assessment of how the cooperation between the EU and the U.S. could evolve, the direction of the new US Presidency had to be clear. Mrs Jacobs praised the role of the G20 as a forum for policy makers.

**Maria Velentza**, Head of Unit G3 "Securities Markets", Directorate for Internal Market and Services, European Commission, said that the main reason for a global financial policy is that a global economy needs global governance and policy. The objective is the convergence towards global standards. The method to reach this goal is negotiation, which can be done in two ways: first, working in parallel and ensuring alignment and, second, exemptive relief. The main driving force behind global policy should be the European Commission, Ms Velentza argued.

In his closing remarks **David Paulis**, Director General, Directorate for Internal Market and Services, European Commission, considered the conference interesting and useful in view of the Commission's MiFID review of 2010. He added that there are MiFID believers and sceptics with respect to its impact on the market. The objective of more competition has been reached, but that was not the case for better investor protection, Mr Paulis affirmed. He also said that weak enforcement was due to unequal powers and divergence of sanctions across Member states. Mr Paulis argued that the international agreement between Australia and US is not a model for the EU and it is even questionable whether these two countries should take the lead in reforming the global financial architecture. He concluded mentioning the importance of the G20 summit as a new Bretton Woods.

Christiane Haberl