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DES MARCHÉS FINANCIERS

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Speech by Benoît de Juvigny, AMF Secretary General - AFME’s 6th Annual European Compliance and Legal Conference – 13 October 2022, Amsterdam

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Good morning/good afternoon,

I am very pleased to participate in this 6th edition of AFME's European Compliance and Legal conference. It is a real pleasure to be here in person in Amsterdam and to share with you the AMF perspective on some of the current topical regulatory issues.

It is no understatement to say that European capital markets have faced a succession of adverse circumstances over the last four years, with deep impacts on their structure and functioning:

- Brexit, of course, which has reshaped the European landscape for both investment firms and trading venues;
- the Covid pandemic, which forced investment firms and regulators to review their operating processes, notably with the development of teleworking;
- and finally, this year, the combination of a geopolitical, inflation and energy crises which will no doubt affect the EU's economic growth. All these events have shown the benefit of devising coordinated responses at the EU level.

They have also demonstrated, in my view, that, more than ever, the European Union needs a strong and robust financial ecosystem to weather the storm.

Robust stock exchanges are essential for the financing of the economy, but also for ensuring market liquidity and price formation, particularly in uncertain times, as we saw just after the Brexit implementation. Systematic internalisers also have an important role to play in this environment, in particular through their ability to manage large orders. At AMF, we think that the overarching goal of EU market rules should be to ensure that all categories of market participants can compete on an equal footing in view of their specific characteristics.

Talking about strong EU capital markets does not mean that Europe must become an isolated citadel. While it must be built according to its own needs, at the same time it is important to keep an eye at, and if necessary take into account, certain regulatory developments in third countries and in particular in the UK. Then, a right balance must be found between maintaining a highly-competitive and fair regulatory environment in the Union while avoiding a race to the bottom.

These considerations are particularly relevant in the context of the ongoing revision of MIFIR. It is always difficult to talk about a text under negotiation, but I would like to make a few remarks on some aspects of the review.

First, let me be clear: MiFIR has been in operation for almost 5 years, so it is quite legitimate to stop and consider with a critical eye if the requirements it introduced have benefited our capital markets. And if some rules do not display a convincing cost-benefit balance, or if they undermine the competitiveness of the EU markets and participants, then I believe we should not shy away from questioning their very existence. This is the process the UK has initiated this summer with its Financial Services and Markets Bill. In the coming months, it is quite likely that we, in the EU, will be keeping an eye on the UK developments. We simply cannot ignore the effects that changes on our respective frameworks might cause to one other.

The AMF is open to consider simplifying certain requirements – and I see a good number of candidates for such simplifications in the non-equity pre-trade transparency rules as well as the post-trade deferral regime (I will come back to that later on).

Having said that, I do believe that we should uphold and maintain certain key components introduced by MiFIR. The tick size regime and the share trading obligation are two such components, and it is useful that we stop and remember their original aim in order to convince ourselves why they should not be bargained away.

The idea of a mandatory tick size regime on EU trading venues – but also, since March 2020, for systematic internalisers where they provide pre-trade transparency [*for trades below the standard market size*] – was originally to prevent a downward spiral of narrowing of spreads by trading venues competing against each other to attract equity volumes. By mandating the minimum difference between two price levels of orders in the order-book, the objective was to ensure the orderly functioning of markets and to impose equal competition between venues.

The tick size regime introduced in 2018 by MiFID 2 is, to us, one example of a virtuous rule that has improved market efficiency and which we would not want to do without or curtail in any way. At AMF, we published two studies analysing the effects of the tick size regime on our market, respectively in 2018 and 2019. The data we collected reinforced our belief that a European regime of harmonised minimum tick sizes was inherently a sound approach, irrespective of how we looked at it (from market depth, transaction cost, to order lifespan and order-to-trade ratio). Overall, minimum tick sizes improve price formation as they simplify trading environment, reduce time in negotiation and give higher likelihood of a match.

[By the way, I noted with satisfaction that many market participants who responded to the UK Treasury's consultation on the wholesale market review in 2021 praised the tick size regime in the same terms.]

Now, a word on the STO. It is easy to put the blame on such a complex piece of legislation like MIFIR for not fully delivering on all of its initial objectives. But let’s be fair: we should acknowledge that MIFIR has had some merits. It brought some welcome clarity to European markets as it undertook to encompass within a single rulebook the various trading models and protocols (lit order books, request for quotes, voice trading, dark pools) that coexisted under MiFID, sometimes with no clear legal basis (for instance the broker crossing networks). To each of those, MiFIR designed bespoke transparency rules, where previously there were sometimes none. In the equity space, the Share Trading Obligation (STO) was a way to give substance to those transparency rules by channeling trades in EU shares towards EU trading venues and SIs, and away from OTC.

I believe that the rationale which presided over the STO in 2014 still bears some relevance today. This is all the more true at it is fully consistent with the goal of strategic autonomy pursued by EU policymakers.

As you probably know, much energy has been devoted in Council working groups during the first semester to find the right calibration for the consolidated tape. Despite all the efforts, a compromise could not be reached by the end of the French presidency, but our Czech colleagues have taken up that task.

Establishing the tape may be seen as a threat by some, but I remain convinced that there is room to find a compromise where everyone ultimately finds an advantage to the tape.

I want to reiterate the view that the AMF has consistently upheld over the past years: establishing an equity tape is, in our view, essential to the attractiveness of the EU. It is a must-have if we want to claim any form of achievement on the Capital Markets Union agenda by the time this Commission reaches the end of its mandate. That is because we cannot continue to satisfy ourselves with the current state of fragmentation of the EU with regard to equity market data. The aggregated market feeds which data vendors currently offer do not provide a true picture of where the market is at a given time.

Of course, it is unlikely that an equity tape will appeal to those traders who need low latency data feeds – which is not something the tape can reasonably deliver – but there are many other categories of users to whom a tape delivering post-trade data close to real time will constitute an added-value tool.

While we do not want to downplay the importance of a bond tape at all, we still want to emphasize that the priority in the current MiFIR negotiation should be to establish the conditions for a commercially viable equity tape. And when I say “viable”, I mean that any time delay in the range of 1 minute or more is a deal-breaker, because it is clear to me that there will be no business model for such a tape. [And for the avoidance of doubt, do not deduce from what I have just said that I would be happy with a 59 second delay! The AMF preference is for a delay of a few seconds at most ("close to real time").

Lastly on the tape, some of you may be aware that co-legislators are mulling over the possibility that the post-trade equity tape may incorporate a kind of snapshot of the best available spread in the market at the time every trade takes place: a kind of "pre-trade EBBO" ('*European best bid and offer'*). This would not be a "live" EBBO, but a spread made available ex-post as an add-on to the details of any executed trade. At AMF, we see this possible addition as an interesting tool to help market participants assess the execution provided by their broker. With such data widely available, users could more easily adjust and optimise their best execution policy.

The concept of best execution is also at the heart of another heated debate in Council over a possible ban of payments for order flow (PFOF) proposed by the Commission. Back in July 2021, ESMA expressed the view that, in most cases, the receipt of PFOF by firms from third parties is not compatible with the MiFID II requirements on conflicts of interests. This is a view shared by the AMF. Retail investors may be offered a commission-free access to trading, but we have strong doubts that their orders are eventually executed at the best price, taking into account all implicit costs. Possible compromises have been tested, consisting in some enhanced transparency over PFOF in exchange of keeping the practice lawful, but I must say we remain rather unconvinced. In any case, it is necessary to deal with PFOF under the current MiFIR review.

MIFIR is not only about equity markets. The non-equity world, and in particular the bond market, also plays a key role in the EU. This is an area where we see some clear potential for a simplification of the rules. The AMF's view is that for non-equity markets, we had better focus on post-trade – rather than pre-trade – transparency. In the end, post-trade data is what really matters to market participants. In other words, we could certainly remove the complex and cumbersome pre-trade transparency requirements so long as there is a well-functioning and harmonized set of rules on post-trade transparency.

In this respect the calibration of the deferrals play a key role. We welcome the idea of setting in the level 1 some maximum time limits for the publication of prices and volumes. Within those limits set by the level 1, we can then assess the optimal time delay for post-trade publications based on the capacity for market participants to hedge their positions. It will be for ESMA to determine such appropriate calibration. I believe this approach makes the rules more flexible and agile while at the same time fulfilling the objective of co-legislators to end national discretion in that field. More generally, I often find it sensible to transfer the technical features of the rulebook to the Level 2, wherever possible, and MiFIR contains many such examples of quantitative calibrations which would fit better in an RTS, under a high-level mandate set out in Level 1.

Continuing in the non-equity space, let me say a few words on derivatives and the concept of “Traded on a Trading Venue”, or ToTV, on which MiFIR relies. This concept aims at defining which transactions in derivatives concluded outside of trading venues are subject to the transaction reporting and transparency requirements. In 2017, ESMA published an opinion in order to clarify this concept. However, in practice the ToTV concept remains complex. Some will say that it is too large and encompasses some derivatives transactions which do not bring a lot of information. Others consider that too many derivatives are excluded by the ESMA opinion and that the concept should be extended to all derivatives.

There are many pro and cons, but what matters most to us, at AMF, is that the definition of the ToTv be undisputable and, above all, useful for all market participants. This is why we would tend prefer to limit the scope of the ToTV concept to specific derivatives such as for instance those which are cleared.

Finally, let me end these introductory remarks with a few words on financial research. MIFID2 strongly impacted the financial research environment in Europe. One of its effects was to accentuate the emergence of what we call ‘sponsored financial research’. Some market participants may view this type of research as less relevant due to its inherent conflict of interests, but we have seen that the alternative that SMEs face in practice is either sponsored research or nothing!

In this respect, there has been a notable achievement in France with the adoption of the Best Practice Charter for sponsored research which was published last summer by French trade associations. The goal of the charter is to establish a framework applicable in France to research that is entirely or partially paid for by issuers.

The Charter sets out a number of specific commitments by all parties involved (research providers, issuers and trade associations) to ensure that the analysis is carried out under conditions that provide minimal guarantees for independence, like for instance the contract’s minimum duration [*at least 24 months with an automatic renewal period of 12 months*] or the upfront payment by the issuer [*at least 50% of the annual remuneration provided for in the contract at the time of its signature and then at each anniversary date*]. The goal of the Charter is to ensure that sponsored research is independent and as such no longer considered as a marketing material, and this is why we believe it is worthwhile to promote it at the European level.

So, in conclusion, we still have a lot of work ahead of us, as you see. There are plenty of ongoing texts under discussion, but also new areas for action for the end of the current legislative mandate and beyond.

In this regard, we are particularly appreciative of the initiatives that an association like AFME and its members may take to explore new ideas and come up with new solutions. I noted that most recently, interesting proposals were published by AFME on the topic of "T+1 settlement", a challenging subject that certainly entails significant benefits for the EU.

This, and other initiatives from AFME, will no doubt fuel policy-makers and regulators discussions for the years ahead, and I look forward to continued engagement with you on such visionary ideas.

Thank you for your attention.

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