

Committee on Economic and Monetary Affairs
The Chair

Mr Valdis Dombrovskis
Vice-President for the Euro and Social
Dialogue, also in charge of Financial Stability,
Financial Services and Capital Markets Union
European Commission
Rue de la Loi, 200
B – 1049 Bruxelles

D 303051 24.02.2017

Subject: MiFID II – SIs operating broker crossing networks

Dear Vice-President,

We are writing to you on behalf of the European Parliament's Negotiating Team for Directive 2014/65/EU (MiFID II) and Regulation (EU) No 600/2014 (MiFIR) with reference to the letter by the ESMA Chair, Steven Maijoor, to the Director General of DG FISMA, Olivier Guersent, of 1 February 2017. In that letter, ESMA raises concerns regarding the potential establishment of networks of systematic internalisers (SIs) and of other liquidity providers which might circumvent certain MiFID II obligations, in particular concerning the trading of shares.

As you know, the market structure framework that was introduced by MiFID II was meant to close loopholes identified under MiFID I and to move, where appropriate, trading in financial instruments to regulated platforms. MiFID II also provides that investment firms that operate internal matching systems for matching client orders on a multilateral basis have to be authorised as trading venues. Moreover, SIs are not allowed to bring together third party buying and selling interests in functionally the same way as a trading venue (cf. Recital 17 of MiFID II).

The Negotiating Team has previously raised concerns about possible circumvention of these rules, writing in a letter to the Commission on 25 June 2015 that *"we would recommend to introduce a clarification ... that matched principal trading ... that has the effect of being multilateral trading of systematic internalisers is not permitted by MiFID II"*. The Commission took this point on board in the final MiFID II Delegated Regulation, adding in a new Recital 19 which stated that *"a systematic internaliser should not be allowed to bring together third party buying and selling interests in functionally the same way as a trading venue"* and that *"a systematic internaliser should not consist of an internal matching system which executes client orders on a multilateral basis, an activity which requires authorisation as a multilateral trading facility."*

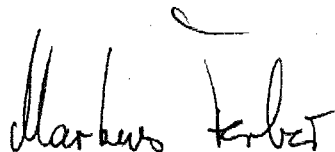
In this context, the Negotiation Team shares ESMA's concerns over the observation that certain investment firms including those who previously operated broker crossing networks as well as new market entrants may be setting up interconnected SIs to cross third party buying and selling interest via matched principal trading, or other types of back-to-back transactions. This could potentially circumvent obligations under MiFID II and go against the spirit of MiFID II.

The Negotiating Team would like to add our concerns to those of ESMA and request the Commission to examine whether it agrees that the market practices referred to above raise concern as regards their compatibility with the letter and the spirit of the MiFID II framework and to inform the Negotiating Team of its findings. Should the Commission conclude that there are issues that need to be addressed, we would like to know which actions the Commission is considering to take or suggest. We are looking forward to hearing from you soon on this important matter.

Yours sincerely,



Roberto Gualtieri



Markus Ferber, MEP, MiFID Rapporteur

cc: Ambassador Marlene Bonnici, Chair of COREPER II
Olivier Guersent, Director General, DG FISMA
Steven Maijoor, ESMA Chair