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MiFID II / MiFIR Review
AMAFI's position on the Establishment of a European Consolidated Tape

Nearly three years after the entry into force of MiFID II, a Consolidated tape provider matching the criteria set in the regulatory framework's definition is yet to emerge. In its report on market data and the consolidated tape for equity instruments, ESMA, along with market participants, identified three main reasons for the lack of a CT for equity instruments. The first reason identified in the CP was the lack of a business case and limited rewards of providing an equity CT. Secondly, ESMA noted that the MiFID II strict regulatory requirements made the creation of a CT challenging. Lastly a CT would also face competition from non-regulated entities, such as data vendors, who have in ESMA's view significant competitive advantages by not being subject to the same regulatory framework.

Still a growing consensus has emerged among European market participants about the necessity of a consolidated view of market data across Europe. In this context the EC mandated the consultancy Market Structure Partners to work on a study on the creation of an EU consolidated tape. The Study was published in September 2020 and addresses some key issues that had been little explored so far. Through a series of large-scale interviews with market participants, the report provides a unique and comprehensive analysis of the actual demand for different use cases of a European CT.

At a time where the EC is in the process of elaborating its impact assessment, through this paper AMAFI is keen to highlight the characteristics it considers essential to ensure the effectiveness and sustainability of a CT.

1. Use Cases

In the absence of a tape, all needs to access data by market participants in the EU will continue to be met by the market data licences commercialised by trading venues, APAs and unregulated data vendors. We hence see some merit in some of the use cases put forward by the Market Structure Partner's report.

Still, while the creation of a CT would certainly be beneficial to market users, we believe that some sophisticated demands, pertaining notably to depth of book or low latency feeds will continue to be met by direct feeds from trading venues and APAs.

AMAFI recently observed an increasing demand for the creation of a consolidated tape among its members and is of the view that the advent of a CT, though not a silver bullet, would contribute to addressing the issue of fragmentation of market data resulting from the post-MiFID II fragmented trading landscape in the EU secondary markets and be part of the key initiatives necessary to strengthen the EU's capital markets. Based on this premise, and in light of the identified use cases, **most AMAFI members are in favour of the creation of a real time post-trade CT for equity instruments and for bonds[1],** in this order of priority and with a phased-in approach. They also consider a pre-trade CT for equity instruments should be factored in from the start for a legislative approach[2].

[1] At least for liquid bonds.
[2] As a reminder, current provisions in MiFID II / MiFIR related to CTPs only require consolidating post-trade data.

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2. Scope of consolidation

For a CT to be fully operational, it should cover all in-scope instruments and 100% of reporting entities. This requirement was again recalled in ESMA's review report on market data and the creation of an equity consolidated tape. This is justified by the necessity to provide a complete overview of market activity and to avoid an uneven playing field that would result from the exclusion of certain venues, APAs or in-scope instruments from consolidation.

Meanwhile, it is crucial that industry members and especially supervisors continue to work on data quality issues. It is indeed essential to radically improve practices in terms of data completeness, accuracy and timeliness of reporting, as well as establishing standardised practices in the flagging of trades and granularity of time stamps across all data sources. It is paramount that this type of work be headed by an independent and neutral body, such as ESMA. Key measures include expanding the use of data standards to all industry members, harmonising flagging practices and specifying reporting fields for bonds.

Finally, it should be noted that while the CT will be *in fine* required to cover all trading venues, APAs and Ifs, users should be able to adjust their level of consumption of the tape and choose the level of aggregation according to their operational needs for market data especially in accordance with best execution principles. For instance, an investment firm having defined its best execution policy on the ground of its access to 10 different venues should be able to aggregate data from these 10 venues, and only these 10 venues, through the CT.

3. Appointing a CT through public procurement

Taking into account the complex structure of the market for market data in the EU, and in line with article 90(2) of MiFID II, we are of the view that the European Commission should require ESMA to launch a negotiated procedure for the appointment through a public procurement process of an exclusive commercial entity operating a consolidated tape for 5 to 7 years. Considering the "public good" nature of the CT, and the fact that the provider will operate a de facto monopoly, supervisors should ensure the entity responsible for operating the CT has no conflicting interests.

In order to ensure the viability of the CT, all EU TVs, SIs and APAs should be required to contribute their trade data to the tape. In light of the supervision-related challenges discussed above, the CT should be empowered to determine harmonised data standards and enforce its own rules. A smooth operation of the CT requires the entity to be able to put in place controls and penalty mechanisms for members not complying with the standards set by the CT or breaching the contractual ties linking them to the latter.

For the sake of a balanced governance, the leadership body of the CT should ensure the representation of all types of stakeholders (data providers and users) in the decision-making process. This role could be fulfilled through the appointment of an advisory committee that would accompany the development phase of the CT from a technical standpoint and pursue a meaningful contribution to the decision-making during the operation of the CT (Data validation, architecture of the CT…).

As for the supervision of the CT, we suggest amending MiFID II to empower ESMA with direct supervision powers through a dedicated team. This would help address reporting issues and ensure a centralised and neutral oversight of the CTP regardless of its home member state[3].

4. Costs and funding of the CT

When it comes to the potential costs of a CT, they should be limited to the running of the infrastructure. The contribution of data by trading venues, APAs and SI should be mandatory and free of charge. In practice,

[3] Having ESMA to directly supervise the CT may require that the public procurement process is run at European Commission's level.

users would not have to licence with each individual trading venue, APA and SI for the defined use cases[4]. Indeed, if the CT were to charge to its users the cost of data on top of its own running costs, it would never be competitive nor attractive for market participants. On the other hand, a revenue sharing mechanism should be put in place in order to reward the real-time data contributors (trading venues, APAs, IFs) of the CT. Revenue not injected in the functioning or investment expenses of the CT would be shared between data contributors depending on the quality and the size of their reported feeds.

In any case the viability of the business model of a potential CT relies on a large enrolment rate of market participants. In order to benefit from economies of scale, the CT funding should be shared between all EU investment firms and asset managers notably[5]. In order to take into account the situation of smaller entities, it can be envisaged to create different fee categories depending on the investment services provided by each IF.

Mandatory membership for all investment firms would be initiated with a one-off "entry fee" aiming at covering the set-up costs, then an annual membership fee defined by the entity running the CT.

5. AMAFI's proposals to amend MiFID II

The current legislative framework is not suited for the establishment of a self-regulated entity supervised by ESMA to run the CT. Additionally, many pre-conditions to the establishment of a CT cannot be met under the current MiFID II framework. In light of the upcoming MiFID II review, we recommend introducing several level 1 and level 2 amendments:

1- Currently, MiFID II requires CTs to put in place adequate policies and arrangements to collect post-trade data. We recommend amending article 65 of MiFID II to require TVs, APAs and firms acting as aggregators to have policies and arrangements to report the relevant data directly to the CT.
2- The current MiFID II framework empowers NCAs to monitor CTs. We propose to amend the current regime to i) empower ESMA to supervise the CT and ii) to ensure it fulfils its objectives. This would mean amending article 65 of MiFID II as well as level 2 provisions pertaining to that article, notably in delegated regulation (EU) 2017/571. As a side effect, article 92 should be amended for the public procurement to be run by the European Commission rather than by ESMA as originally planned.
3- The current framework does not include a clear reference to historical data and the requirement for its storage. We recommend amending MiFID II to specify the requirements for the CT to collect and store historical data.
4- Changes to MiFID II are required to drive a bond CT to collect and publish more data on bonds.
5- To make possible the implementation of a pre trade CT for equity, an amendment would be needed since there is no requirement under MiFID II to consolidate pre-trade data[6].

About AMAFI
Association française des marchés financiers *(AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI's members operate for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives, including commodities. Nearly one-third of members are subsidiaries or branches of non-French institutions.*

[4] Some of our members believe that where the real-time data is used as part of commercial data product/service offerings (such as the creation, computation, and dissemination of indexes) , there would still be a place for licensing with the contributors of the data.
[5] As a reminder, rough estimates from ESMA's register for investment firms indicate that more than 6400 investment firms, 1200 UCITS management companies and 2200 AIFMs could be eligible to enrol in the tape.
[6] Some AMAFI members do not support this approach.