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AFG comments on the draft report on “Regulation of trading in financial instruments – ‘dark pools’ etc.”

The Association Française de la Gestion financière (AFG)¹ welcomes Kay Swinburne’s draft report on “Regulation of trading in financial instruments – ‘dark pools’ etc.” and takes this opportunity to express its comments on the subject.

The MIF Directive was conceived as a pillar within the regulatory initiative that aimed towards organising a harmonised European securities market. We were always of the opinion that it carried the danger of fragmenting the markets, leading to increased costs and to a weakening of their depth and the accuracy of the price discovery process. So, we rejoice that the time to activate the review clause in order to assess the achievements and failures in the post Mifid space has come and in our view Kay Swinburne’s report asks good questions. An in-depth assessment and thinking must take place to address failures and further enquire shadow areas in the post Mifid markets organisation.

As stated in the French regulator’s “Report of the Working Group on the MiFID Review”², we, as representative of the buy-side, acknowledge three areas of priorities for the Mifid amendment:

¹ The Association Française de la Gestion financière (AFG) represents the France-based investment management industry, both for collective and discretionary individual portfolio managements.

Our members include 411 management companies. They are entrepreneurial or belong to French or foreign asset management, banking or insurance groups.

AFG members are managing 2600 billion euros in the field of investment management, making in particular the French industry the leader in Europe in terms of financial management location for collective investments (with nearly 1600 billion euros managed from France, i.e. 23% of all EU investment funds assets under management), wherever the funds are domiciled in the EU, and second at worldwide level after the US. In the field of collective investment, our industry includes – beside UCITS – the employee savings schemes and products such as regulated hedge funds/funds of hedge funds as well as a significant part of private equity funds and real estate funds. AFG is of course an active member of the European Fund and Asset Management Association (EFAMA) and of the European Federation for Retirement Provision (EFRP). AFG is also an active member of the International Investment Funds Association (IIFA).

- **Improve transparency** by the means of de-fragmentation, as post-Mifid market fragmentation comes at a cost in terms of transparency and integrity in the price discovery process.

An effective regulation on financial markets should seek to obtain the ultimate consumers' protection in a well-functioning market. Transparency of the order books and transactions, equitable competition between execution venues are key to maintain confidence in the market.

The collective asset management industry has a specific feature which is the **valuation obligation**. The reference to a fair market price is of highest importance. Liquidity is offered on a price formed in a process that respects market integrity and that permits performance analysis and fund comparison.

The decrease in unit trade size is not by itself a problem and does not justify in our opinion a change in waivers for large in scale orders. The limits were set taking into account the potential market impact depending on the security's liquidity and this has not changed.

- **Ensure fair competition among trading venues** by aligning as much as possible the type of constraints and requirements between types of venues.

We agree with the provisions related to SIs and BCNs.

Dark pools: in a way, they access to price references available elsewhere without contributing to the price formation. Which is the volume split between dark and light that ensures that price formation is not degraded?

- **Identify technological developments in markets** as technological advances in electronic trading towards lower latency make up a constitutive feature in the reshaped equity markets' architecture.

Venues should ensure everyone gets trading data at the same time, with the same priority and at the same level of access.

Some market practices and uses may need to be better grasped, especially if these techniques have deviated from their initial role (flash orders, massive order cancelling, unjustified high volumes of dark trading, "naked" sponsored access, etc.)

The rules for accessing co-location should be equitable. Regulators should ensure that all market participants have access to co-location services on equal terms and that this does not become a closed member club. Limited space for co-location and monopoly pricing may be an issue.

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Sincerely Yours,

(signed)

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² « Rapport sur la révision de la directive MIF »
http://www.amf-france.org/documents/general/9452_1.pdf