



ESMA opinion on trading venue perimeter

ECB FX Contact Group

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Background – Why did we publish this opinion?

- **MiFID II review reports**
ESMA committed to publish an opinion clarifying the definition of multilateral system.
Guidance on the trading venue perimeter.
- **Objective of the opinion**
Clarify when certain systems qualify as multilateral and should seek authorisation as a trading venue.
Contribute to the consistency of supervisory practices and to consistent approaches throughout the Union.



ESMA opinion

- All multilateral systems need to be authorised as trading venues.
- Multilateral system “means any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system”

It is a system

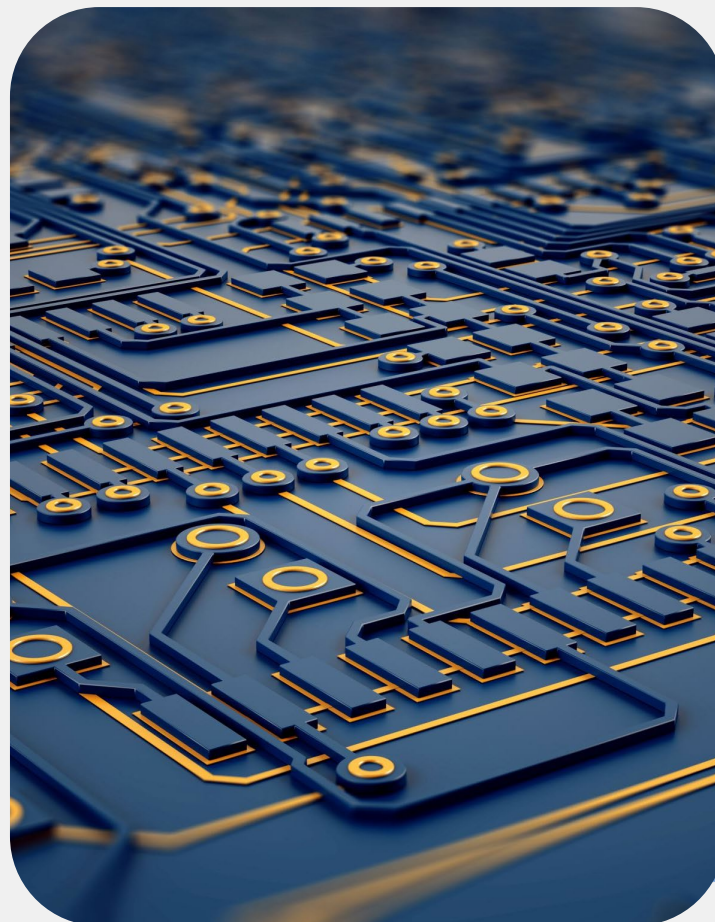
There are multiple third-party buying and selling interests

Those trading interests need to be able to interact

Financial instruments

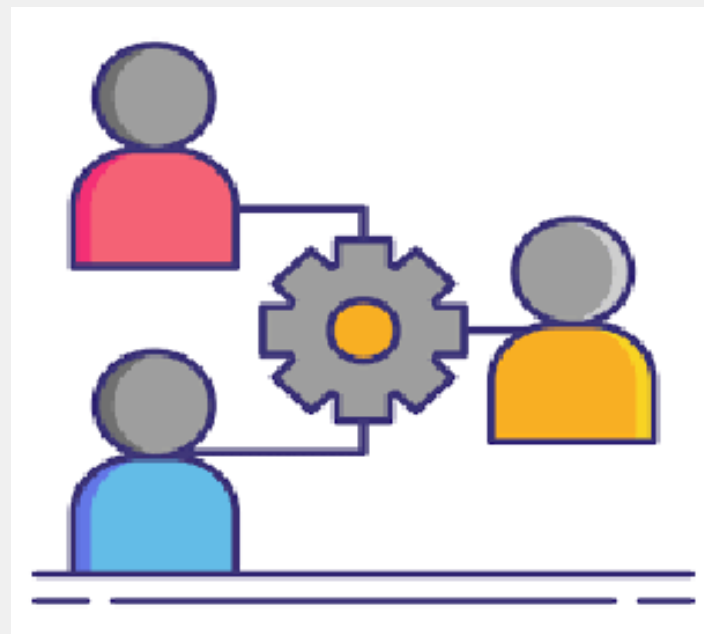
What is a system?

- Set of rules that governs how third-party trading interests interact.
- Rules must contain elements that concern the matching, arranging and/or negotiation of trading interests.
- Contractual arrangements or standard procedures that shape and facilitate the interaction of third-party trading interests.



Multiple third-party trading interests

- Persons other than the system operator, that are brought together in a transaction.
- ‘Multiple’ refers to the system allowing various trading interests to interact in the same system or facility.



Interaction between trading interests

- Display of different trading interests not enough to be multilateral.
- Users need to be able to react to those trading interests – exchange information concerning those trading interests and match, arrange and/or negotiate essential terms of a transaction.
- Multilateral system definition does not require the legal conclusion of a contract.
- General advertising / aggregation of trading interests should not qualify as multilateral systems.



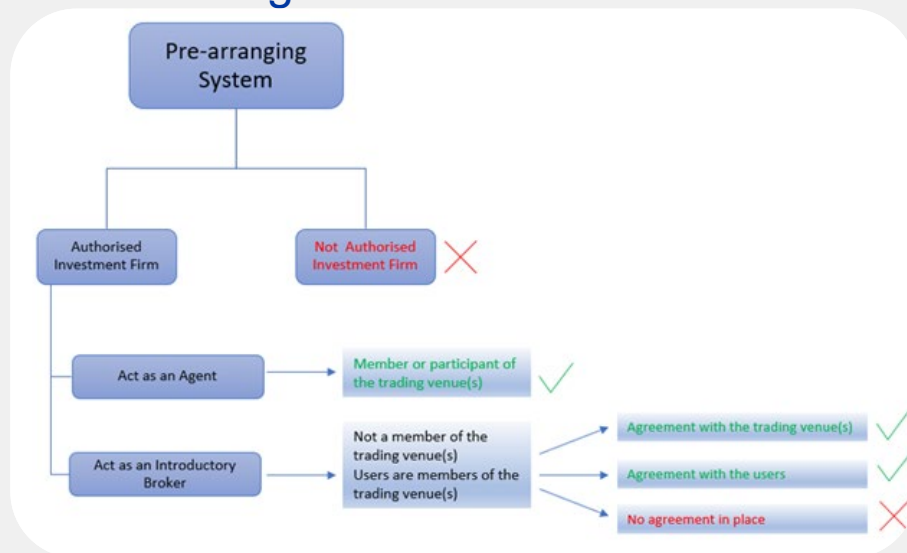
Financial instruments

- In scope of multilateral system are only those instruments specified in SECTION C of Annex I of MiFID II.
- **FX DERIVATIVES** included (C4)



Specific cases

- Technology providers (incl. bulleting boards and EMS)
 - Third party interaction
- Request-for-quote systems (RFQ)
 - Single dealer platform (SI vs trading venue)
- Pre-arranged transactions



Implications of the ESMA opinion

- Enhance supervisory convergence in the Union.
- Firms should assess their systems against the opinion and reflect whether they are operating under the appropriate authorisation.
- Ensure that firms operating a trading venue without the proper authorisation swiftly apply for authorisation.
- Opinion will require some firms that operate trading venues to be authorised as such.



Hedging exemption

- Some non-financial (corporate) companies currently use trading systems for their hedging activity.
- Corporate companies may be considered as members and participants of trading venues – authorisation as investment firms.
- Hedging exemption: authorisation not required if trading activity for hedging purposes.
- Risk that one single transaction which may not qualify as “hedging” would require investment firm authorisation.
- Disproportionate to require authorisation based on a single transaction.
- ESMA to work on additional guidance.



Any questions?

Potential questions for discussion:

- Do you see any impact of the opinion on FX markets?
- What to you see as the key challenges for the FX market?



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ECB FXCG 360T – Regulatory Considerations

March 2023

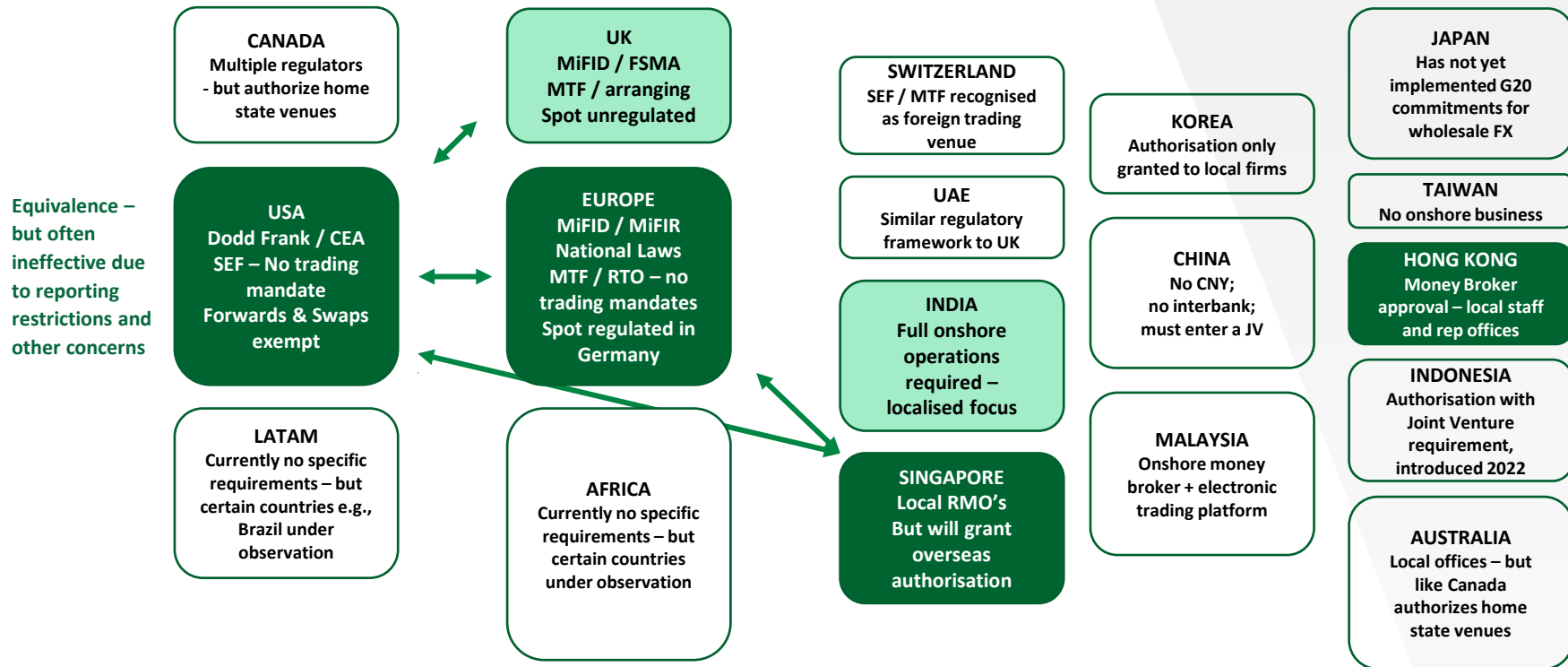
AGENDA

- **Regulatory complexity**
- **Regulatory evolution – a view**
- **Focus on Europe – ESMA paper**



A map of burgeoning regulatory and logistical complexity

In 2003 wholesale FX firms mostly operated globally from their home state. In 2023 it looks like this, ...



Regulatory evolution today, as we perceived it

Regulatory evolution has many components: OTC vs. MTF; regulatory fragmentation & de-globalization

Where we came from....

- Regulatory evolution over last years
 - Introduction of SEFs and MTFs
 - Equivalence concept introduced
 - Regulated OTC market
 - Under RTO / Arranging
- Compliant MDPs providing safe, integrated & regulated venues on a global scale
- SDPs also covered by global regulations
- Transparency and compliance improved

...where we stand today...

- SEF and MTF regimes exist
- OTC markets significant
- ESMA increases guidance to NCAs
- Brexit impact finally being felt
- Costs escalating for all involved across different regulatory set ups – venues, LPs, Clients etc.
- Equivalence patchy
- MTF perimeter currently porous
- Regulatory fragmentation and de-globalization trends accelerating
 - E.g., UK, India,...
 - Split liquidity

... now what's the future?

- Trend of global regulatory fragmentation and de-globalization to continue?
 - High negative impact on established Global FX market
 - Liquidity fragmentation
 - Equivalence will not be delivered
 - Inefficient localization of markets
 - Different legal structures
 - Costs escalate, netting-, credit-transparency – decreased execution efficiency / prices, ...
- Hurdle to new entrants huge, reducing choice and innovation

Focus on Europe: ESMA push to bring FX OTC on MTF

ESMA Report on Trading Venue Perimeter (Feb 2023) – areas for discussion

Push for EU unification on MTFs ...

- ESMA's view on market development and dynamics
 - Report providing guidance on delineation of bi- and multilateral sphere; leaving room for interpretation (to be filled by NCAs);
 - Further guidance on service of 'receipt and transmission of orders (RTO)' to be provided by ESMA at a later stage, leaving perimeter porous
 - ESMA guidance to be pushed by consistent enforcement and monitoring by NCAs; regulatory arbitrage and FX markets returning OTC/off-shore to be avoided
- International coordination? FX markets are global – e.g., UK developments: FCA has consulted on trading venue perimeter as part of WMR



... driving need for clarifications on status!

- Corporates
 - Strong concern from 360T Client Base about impact of changes
 - Accessing MTFs without IF status
- Cross EU-UK border impact on credit and netting
 - Fund Managers accessing both EU and UK Market Making entities
- Urgent need for proper equivalency solutions to ensure functioning global FX market
 - EU LPs to UK MTFs and vice versa
- Timeline for implementation by NCAs
 - Years?

Thank you.

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