

GETCO EUROPE
Vintners Place
2nd Floor
68 Upper Thames Street
London EC4V 3BJ

+44 (0)20 7489 2200 MAIN
+44 (0)20 7489 2201 FAX

getcollc.com

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Maria Velentza
Head of Unit G3
DG Internal Market and Services
EU Commission

markt-consultations-mifid@ec.europa.eu



Dear Ms Velentza,

Please find enclosed GETCO's response to the public consultation by the EU Commission on Review of the Markets in Financial Instruments Directive (MiFID).

About GETCO

GETCO is a global market maker. GETCO was founded in Chicago in 1999, and opened European offices in 2003. The firm provides liquidity on over 50 markets in Europe, North and South America and Asia. The liquidity GETCO supplies allows individual and institutional investors to immediately transfer the risk often associated with financial instruments while saving money on trading costs. More details on the firm are in Annex 2. When considering our response we are guided by the following four overarching principles that drive GETCO's views on market structure and regulation:

- **Regulation.** GETCO believes well regulated markets provide stability, promote competition and create efficiencies – all of which contribute to investor confidence;
- **Transparency.** Efficient and fair markets are grounded in transparency. GETCO believes in the importance of transparent, public markets¹ across all asset classes;
- **Technology.** GETCO believes technology has made markets more efficient, competitive and innovative, and has driven changes in market structure. Given the increase in automated trading, it is critically important that regulators are aware of how technology is used to effect transactions; and
- **Competition.** Competition among markets is essential to driving innovation that benefits investors.

¹ Public markets in this context means organised trading venues, including Regulated Markets (RMs), MTFs and Systematic Internalisers (SIs) in Europe.

Summary

The scope of the MiFID Review is very wide. While many areas of the Review are of interest to GETCO as an intermediary and services provider to the financial sector, we have focused our response on those questions in the Commission consultation document where we think we are best placed to provide a particularly informed view. Full details of our views are to be found in Annex 1. The areas covered in our response are:

- Organised Trading Facilities;
- Systematic Internalisers;
- Automated trading;
- Post Trade Data;
- Alignment and Reinforcement of Organisational and Market Surveillance Requirements for MTFs and Regulated Markets;
- Best Execution; and
- Transaction Reporting.



A summary of our key points is set out below.

1. Automated trading

GETCO supports the Commission's proposed definition of automated trading. It is unclear to us, however, the purpose in defining "high frequency trading" as a subset of "automated trading." GETCO also supports the Commission's proposal to expand the scope of firms required to be authorised under MiFID, and to strengthen the requirements for liquidity provision, but believes both goals could be achieved without defining "high frequency trading". Thus, given the widely accepted difficulties in defining high frequency trading it is not evident why the Commission wishes, or needs to identify such a category.

Obligations of Market Makers

GETCO believes that regulators should address the role that market makers play in modern markets, including obligations to provide useful liquidity. Accordingly, we support stronger rules for liquidity provision.

We do not, however, believe that stronger rules for liquidity provision should apply to all firms engaging in so-called "high frequency trading." Not all firms who use high frequency tools pursue market making strategies. For example, firms that engage in statistical arbitrage trading should not be expected to provide passive liquidity to the markets on an ongoing basis.

Reducing risk

GETCO believes it is critical for the Commission to consider the relationship between low latency, risk management, and the quality of markets. For GETCO and other market

makers, reducing latency and increasing the speed with which orders can be sent and amended and market data can be processed is not for the purpose of executing a greater number of transactions. Instead, “speed” is an essential tool to manage risk by controlling how and when orders are placed and modified (*i.e.* the amount of time quotations remain on an exchange). For this reason, a “time-in-force” requirement would require participants to expose themselves to the risk of a market move for an artificial length of time. We believe this would increase risk in the system and cause providers of liquidity to adjust their pricing to reflect this additional risk of market moves during that period. Consequently, explicit trading costs for investors and institutions would increase unnecessarily.

Access to Markets

GETCO believes that MiFID should apply to all firms with direct access to the market, regardless of their size.

GETCO also believes that when a firm trades on a market through sponsored access, the broker providing such access should ensure their clients are subject to comparable systems and controls checks as regulated firms.



2. Broker Crossing Systems, Systematic Internalisers (SIs) and MTFs

Transparency

GETCO believes policymakers must strike the right balance in protecting the important role that public markets play in fostering price discovery, whilst recognising that “dark markets”, such as non-displayed trading on MTFs and crossing networks also provide tangible benefits to investors. We do not think that placing a “cap” on volume of trading that can be executed outside of regulated markets and MTFs would achieve this.

Rather, the suggestion that organised trading facilities should become pre trade transparent after reaching a certain volume threshold, along with the Commission proposal for venue reporting, will enable regulators to monitor the balance of trading between transparent and dark venues, and will ensure that clients continue to have flexibility and a choice about how and where to execute their orders.

Organised Trading Facilities

We support the introduction of the new “organised trading facilities” category. GETCO agrees with the Commission that certain activities undertaken by investment firms are not adequately regulated under their existing MiFID provisions. To the extent that activities of investment firms are more akin to “market” activities GETCO believes a new regulatory category is appropriate.

Systematic Internalisers

We agree with the view expressed by CESR, in its Technical Advice to the Commission, which found that the evidence suggests that the systematic internaliser regime has been largely unsuccessful in achieving its original goal of providing additional transparency and investor protection by increasing the number of transactions executed on public venues.

GETCO supports the Commission's goal of improving the systematic internaliser regime, but believe that to do so the Commission should clearly articulate the goals the regime is designed to achieve.

Although this is not specifically addressed in the consultation document, GETCO maintains that any systematic internaliser offering a service to retail, professional or eligible counterparties should be allowed to price improve on the quoted price. It is contradictory for a firm with clients to be required to abide by rules of best execution if the firm cannot price improve on quotes. The best execution requirement in the MiFID directive suggests that a broker should seek the best price – including an improved price where possible – for all client transactions.



3. Non-Equity Products

We have not provided detailed answers to the questions posed in the consultation document about the extension of the pre and post trade transparency regime in MiFID to non-equity products. Nevertheless we believe that this is something that the Commission should address in the MiFID review. In particular, we believe any expansion of the MiFID scope should focus on improving transparency and competition:

- **Transparency:** GETCO believes that any product traded by retail and professional investors should be subject to similar transparency requirements as shares admitted to trading on regulated markets or MTFs. In order for investors to ensure that orders have been executed in accordance with best execution requirements, pre and post trade pricing information must be available in a transparent, timely and accessible way to all market participants; and
- **Competition:** MiFID introduced competition within the equity markets; however EU non equity markets remain monopolistic with a silo structure. This structure prevents competition at both trading and clearing level, impairing innovation and keeping costs high for investors and other market participants.

We would welcome regulatory reform which seeks to address these issues.

GETCO appreciates the opportunity to submit these comments. Please do not hesitate to contact me, at +1 312 931 2200, or Jennifer Boneham, Head of European Regulatory Affairs at +44 7489 2200.

John A. McCarthy
General Counsel, GETCO Holding Company LLC

ANNEX 1: Consultation Question Responses:

Organised Trading Facilities:

Q2: What is your opinion on the introduction of, and suggested requirements for, a broad category of organised trading facility to apply to all organised trading functionalities outside the current range of trading venues recognised by MiFID? Please explain the reasons for your views.

Q3: What is your opinion on the proposed definition of an organised trading facility? what should be included and excluded?

We support the introduction of the new “organised trading facility” category. GETCO agrees with the Commission that certain activities undertaken by investment firms are not adequately regulated under their existing MiFID provisions. To the extent that activities of investment firms are more akin to “market” activities GETCO believes a new regulatory category is appropriate.



GETCO

Well-regulated markets provide stability and create efficiencies. GETCO believes all market participants and trading platforms should be appropriately and consistently regulated. The creation of a new regime for organised trading facilities could contribute to this if appropriately developed. However, we find that the details for such a regime lack clear objectives and should be further articulated. In general, GETCO believes the requirements suggested by the Commission in section 2.2.1 of the consultation document are appropriate for investment firms properly identified as engaging in “market” activities.

In addition, it is unclear to us the distinction intended between “pure OTC trading (*i.e.*, bilateral trades carried out on an ad hoc basis between counterparties and not under any organised facility or system)” and other facilities or systems that on an organised basis bring together buying and selling interests or orders relating to financial instruments. We are concerned that this distinction could lead to differing interpretations by market participants.

Regulation of broker crossing systems in the equity markets has been subject to much discussion among regulators and market participants, and was raised by CESR in its technical advice to the Commission, which recognised the need to regulate these activities to ensure there is no regulatory arbitrage. We would welcome further clarification from the Commission of the new objectives behind the category of “organised trading facility”.

Q4: What is your opinion about creating a separate investment service for operating an organised trading facility? Do you consider that such an operator could passport the facility?

To facilitate competition between service providers within the EU, services should be allowed to be offered on a pan European basis. Therefore, as with other investment services under MiFID, if the Commission decides to create a separate investment service

for operating an “organised trading facility”, GETCO believes the operator of such a facility should receive a passport for these services.

In addition, as with the current MTF permission, an operator of an “organised trading facility” should be permitted to operate multiple organised trading facilities, without seeking the need for additional regulatory approval from its home authority. This concept is particularly important if the definition of “organised trading facility” encompasses a wide range of business models.

Q5: What is your opinion about converting all alternative organised trading facilities to MTFs after reaching a specific threshold? How should this threshold be calculated, e.g. assessing the volume of trading per facility/venue compared with the global volume of trading per asset class/financial instrument? Should the activity outside regulated markets and MTFs be capped globally? Please explain the reasons for your views.

Whilst GETCO is a market maker on transparent markets in Europe, the firm also believes that non-displayed pools of liquidity are beneficial and serve legitimate functions. The co-existence of “dark” and “transparent” markets is not a new market phenomenon. Internalisation of client orders (whether firms assume the risk as principal or arrange the transaction with another client) has always occurred and has long been present in some form in financial markets.



GETCO

We do not believe it is feasible to require an “organised trading facility” to convert to an MTF after reaching a specific threshold because, by definition, a multilateral trading facility and a broker crossing network operate different business models, therefore cannot be distinguished between merely by their size. The Commission recognises this fact in proposing to clarify that “if orders are entered into a crossing system not only by the operator but also by any third party this would transform the system into an MTF.” We believe this clarification implies that broker crossing systems would only include systems where two client orders are entered and crossed by the broker. Requiring such a facility to become a multilateral trading facility after reaching a threshold size would effectively deny it the ability to continue with its existing business model. We believe firms should continue to be permitted to offer their clients a range of execution alternatives.

The Commission’s proposal to require an “organised trading facility” to convert to an MTF would effectively place a “cap” on the volume of activity that can be undertaken on an “organised trading facility” and reduce market participants’ choice on how best to execute their orders. As an alternative, to the Commission’s proposal, GETCO believes that the Commission could achieve its goals by requiring an “organised trading facility” over a certain size threshold¹ to be pre-and post-trade transparent, unless an applicable waiver criteria applies (e.g. for equity markets, those which are set out in the existing MiFID Implementing Regulations). Such transparency requirements would integrate trading of large “organised trading facilities” into the price formation process in the public transparent markets.

¹ GETCO believes that any threshold must be calculated based on volume or market share at an individual security level. By applying volume thresholds in this manner, this would ensure that the volume of dark trading does not impact on the price formation process. If thresholds are based on volume of trading at asset class level, there could be circumstances in which an “organised trading facility” has a particularly high concentration of trading in one or a few number of securities, but additional requirements are not triggered because the aggregate position falls below the threshold

In addition to maintain the importance of price discovery on the public markets, we believe that transactions on non-displayed venues should be held to the prices displayed on the public markets. Transactions should not be allowed to occur outside the public transparent market for that product, unless specific exemptions apply, for example for large block orders. However, at the discretion of the executing broker, client trades should be allowed to occur at any price at or better than the European Best Bid and Offer (EBBO). We believe these measures would ensure that price discovery remains in the public markets, while allowing firms to offer discretion and best execution to client order flow.

GETCO notes that because the consultation proposes that an “organised trading facility” be required to have transparent and clear rules for taking on clients it is unnecessary for discriminatory access criteria.



GETCO

In summary, GETCO believes policymakers must strike the right balance in protecting the important role that public markets play in fostering price discovery, whilst recognising the interests served by ‘dark markets’, such as non-displayed trading on MTFs and crossing networks. We do not think that placing a ‘cap’ on volume of trading that can be executed outside of regulated markets and MTF would achieve this balance.

Rather, we suggest that an “organised trading facility” be required to become pre- and post-trade transparent after reaching a certain volume threshold. Such a requirement, along with the Commission proposal for venue reporting (see Q109), will enable regulators to monitor the balance of trading between transparent and dark venues, and allow clients to continue to have flexibility and a choice about how and where to execute their orders.

Q6: What is your opinion on the introduction of, and suggested requirements for, a new sub-regime for crossing networks? Please explain the reasons for your views.

GETCO supports the Commission’s goal to increase post trade transparency through identification of a crossing systems’ activity. GETCO believes that public aggregated transaction information at the end of each day would accomplish the goal of allowing market participants to reliably identify the volume of execution in particular products on each crossing network.

This requirement would ensure that regulators and market participants understand where transactions are being executed when this takes place away from the public market. In contrast, real time, trade-by-trade identification of a crossing systems’ activity would subject client orders to potential information leakage and could be misused by other participants to the disadvantage of the client.

In addition, we believe that the creation of sub categories of regimes (*e.g.* broker crossing networks, and platforms for trading standardised OTC derivatives, as suggested in the consultation document) should not be defined in level 1 directive text, but should be the responsibility of ESMA. A broker crossing network, and swap execution facility are different venues, which will require different regulatory standards. This approach would ensure flexibility to create new sub categories over time (if required), and ensure that

regulatory standards can be discussed between regulators and industry, to ensure that any requirements are focussed on capturing appropriate risks.

Q7: What is your opinion on the suggested clarification that if a crossing system is executing its own proprietary share orders against client orders in the system then it would prima facie be treated as being a systematic internaliser and that if more than one firm is able to enter orders into a system it would be prima facie be treated as a MTF? Please explain the reasons for your views.

GETCO is supportive of the Commission's intention to clarify the definitions of systematic internaliser and MTF. However, in its technical advice to the Commission, CESR "recognises that it may be necessary for a more fundamental consideration of the overall regulatory intention of the systematic internaliser regime." We believe the Commission should provide further clarification on this issue to ensure regulators and market participants have a strong understanding of the differences between each regulatory category, and what each category is designed to cover.



The Commission proposed that a system that executes orders against its own proprietary orders would be a systematic internaliser. GETCO maintains that any systematic internaliser offering a service to retail, professional or eligible counterparties should be allowed to price improve on the quoted price. Article 21 of MiFID states that investment firms should take all reasonable steps to obtain "the best possible result for their clients". GETCO believes it is contradictory for a firm with clients to try to abide by rules of best execution if they cannot price improve on quotes. GETCO believes that price improvement for clients should therefore be permitted under the systematic internaliser regime, as the wording of the best execution requirement suggests that if a broker can improve on the price of a clients transaction then they should.

Systematic Internalisers:

Q21: What is your opinion about clarifying the criteria for determining when a firm is a SI? If you are in favour of quantitative thresholds, how could these be articulated? Please explain the reasons for your views.

GETCO is supportive of the Commission's intention to clarify the criteria for determining whether a firm is a systematic internaliser. More objective and quantitative criteria will ensure trading firms that operate a systematic internaliser business will be appropriately regulated. The current subjective drafting of "material commercial relevance" does not achieve this, in particular for large firms who run many different lines of business, for which a systematic internaliser business may not be material on an aggregated basis.

We also believe the Commission should clarify the "non discretionary" criteria for systematic internalisers, by allowing firms to price improve.

Q22: What is your opinion about requiring SIs to publish two sided quotes and about establishing a minimum quote size? Please explain the reasons for your views.



GETCO

GETCO is supportive of the Commission's proposal to require systematic internalisers to maintain quotes to both buy and sell. These quotes should be published to clients of the system so they are aware of the price that can be achieved if they execute an order with the systematic internaliser.

GETCO believes the Commission should clarify the objective of the current requirement for SI's to publish meaningful quotes. It is unclear the purpose of systematic internalisers being required to publish the size, in addition to the price of their quotes when only clients of the systematic internaliser can trade against these quotes. For this reason, GETCO does not believe there would be any value in introducing a minimum quote size of 10% of the standard market size of any liquid share in which a systematic internaliser quotes.

Finally, we believe the wording in the current MiFID, which requires systematic internalisers "make public their quotes on a regular and continuous basis during normal trading hours", should be maintained.

Automated Trading:

Q13: Is the definition of automated and high frequency trading provided above appropriate?

GETCO agrees with the Commission's definition of "automated trading." As noted, today most market participants use automation or algorithms in their order executions.

However, GETCO is unclear how the Commission distinguishes what it considers the subset of automated trading it calls "high frequency trading" from other types of automated trading. Nor is it clear why it is necessary to define a subset of automated trading as "high frequency trading" to address the concerns identified by the Commission. The majority of risk controls proposed in the consultation document would apply to all forms of automated trading. As discussed in our responses to Q14 and Q19 GETCO believes that these risk controls the Commission proposes to apply to so called "high frequency trading" would be more appropriately applied to a differently defined group of market participants. Accordingly, given the widely accepted difficulties in defining "high frequency trading" it is not clear why the Commission wishes to propose a definition.



GETCO

Nevertheless if the Commission considers that firms who access the market on a *frequent* basis pose additional risks that call for additional regulatory requirements, GETCO believes a workable approach would be to establish a quantitative threshold - *e.g.* firms who send X orders a day - above which certain such additional regulations would apply. This approach would avoid the need to define "high frequency trading" which we note in is difficult.

Q14: What is your opinion of the suggestion that all high frequency traders over a specified minimum quantitative threshold would be required to be authorised?

The Commission expresses concern that not all high frequency traders are required to be authorised under MiFID. GETCO believes that MiFID should apply to all firms with direct access to the market, ensuring they are fully regulated by a competent authority. Unregulated market participants with direct access to markets pose greater risks than fully-regulated investment firms, as they are not directly subject to the systems and controls rules set out in MiFID. Thus, firms that make use of the proprietary trading exemption in Article 2(1)(d), and hence are not subject to systems and controls requirements, should not be allowed to become direct members of trading platforms.

In addition, any firm providing sponsored access to a Regulated Market or MTF should be required to subject their clients to comparable systems and controls checks as regulated members of the market. Currently, some firms are clients of regulated firms and access regulated markets and MTFs through "naked" sponsored access arrangement, whereby there are no pre-trade controls by the regulated firm to monitor client orders. GETCO believes that such arrangements introduce unnecessary risks into the marketplace and should not be permitted. Instead, any market participant with the ability to directly enter orders onto a market should be subject to the same pre-trade risk management and supervisory procedures as regulated investment firms.

The suggestion that “all high frequency traders over a specified minimum quantitative threshold would be required to be authorised” implies that smaller market participants pose fewer risks to the orderly functioning of markets than larger ones. GETCO believes this is not the case. We therefore believe the Commission’s focus should be to ensure that there are appropriate access requirements to the markets, rather than on the size of a market participant.

Q15: What is your opinion of the suggestions to require specific risk controls to be put in place by firms engaged in automated trading or by firms who allow their systems to be used by other traders?

The consultation suggests that “firms involved in automated trading would notify their competent authority of the computer algorithm(s) they employ, including an explanation of its design, purpose and functioning”. GETCO supports regulators need to understand the types of trading strategies firms use, (for example market making, VWAP, or statistical arbitrage), and in which asset classes, and trading venues. However, it is important that any notification requirement be crafted in a way that provides useful information to competent authorities, and is not overly burdensome to firms that use automated trading.



GETCO

GETCO agrees with the Commission’s recommendation that the framework directive introduce new specific organisational requirements for firms engaging in automated trading or who provide “sponsored access” to automated traders. Authorised firms engaging in automated trading should have in place robust risk controls. In addition, as discussed in the response to Q14, GETCO believes any firm trading through sponsored access on a Regulated Market or MTF should be subject to comparable obligations as regulated members of the market.

Q16: What is your opinion of the suggestion for risk controls (such as circuit breakers) to be put in place by trading venues?

The market events of 6th May in the U.S. exposed shortcomings of the current U.S. securities and futures market structure. These events raised questions to EU regulators and market participants about the adequacy of market infrastructure to cope with severe market volatility. It also re-ignited the debate in the U.S. and Europe regarding the impact of increased electronic trading and the emergence of so-called high frequency trading firms on market structure.

It is important to note that there are meaningful differences between the European and US market structures. For example, European markets are not linked, unlike in the US where the national market system operates (under Regulation NMS). In addition, most European exchanges have circuit breaker type mechanisms in the form of intraday auctions triggered by high volatility, which act as a “speed bump,” and allow market participants to digest information and bring in additional liquidity.

GETCO, nevertheless, agrees that it is important for the Commission to examine the controls European market operators have in place to ensure that trading continues in a fair and orderly manner if a disruptive event occurs. The Commission should apply the highest standards of controls consistently across European markets to further reduce the impact of a potentially disruptive trading event.

Q17: What is your opinion about co-location facilities needing to be offered on a non-discriminatory basis?

GETCO believes that co-location is a positive development for the market because it equalises access for participants who wish to be near the centre of price discovery. In simple terms, co-location is a new manifestation of a centuries old principle: being as close to where price discovery happens as possible. Indeed certain traders have always sought proximity to the centre of trading, whether it is through purchasing a “seat” at an exchange to receive privileged access to an exchange’s trading floor or, in today’s market, buying space in an exchange’s data centre. Just as anyone could make the business decision to purchase an exchange seat, any market participant that determines that speed is an essential component to its trading strategy or risk management, can invest in co-location.

To ensure that co-location actually equalises access to price discovery, GETCO supports the intention that there be regulatory requirements designed to ensure equal, non-discriminatory access to a co-location facility and any ancillary product offerings.

Q18: Is it necessary that minimum tick sizes are prescribed? Please explain why.

GETCO believes that there are optimal tick sizes for securities, which are not always the same as the narrowest tick size. Optimal tick size is important to fostering price discovery in the public market and promoting efficient markets. Tick sizes should also be harmonised across markets trading the same securities.

In the US, the minimum tick size, which is set at 1c for all securities above \$1, has created inefficiencies in the market place and detrimentally affected the public price discovery process. The current minimum tick size incentivises internalisation and trading in dark venues, particularly in very low priced securities.

An example of this can be seen in Citigroup, which is a low priced, but highly liquid stock in the US. A firm’s profit from trading against its client orders in Citigroup—a \$5 stock with a 1 cent / 20 basis point spread—are significantly higher than the profits made from internalising a client’s order in Microsoft—a \$30 stock with a 1 cent / 3 basis point spread. As a result of an inappropriately large tick size, the Citigroup orders – as with other low priced, high volume securities - are less likely to be traded on the public transparent markets.

We believe the Commission should learn from the experience in the US and ensure that minimum tick sizes are correlated appropriately to the share price of the security.

Q19: What is your opinion of the suggestion that high frequency traders might be required to provide liquidity on an ongoing basis where they actively trade in a financial instrument under similar conditions as apply to market makers? Under what conditions should this be required?

The Commission notes that some investors suggest that HFTs, unlike registered market makers, have no obligations to continue to provide liquidity and can withdraw liquidity at any time. Historically, market makers were physically present on a trading floor.



GETCO

Because the trading floor was the centre of price discovery, market makers had an informational advantage over other market participants. In return for these advantages, market makers had affirmative obligations to provide liquidity and maintain fair and orderly markets. Overtime, as markets have become more electronic, traditional market making programs have become less prevalent, and very few trading platforms in Europe offer liquidity provision schemes in liquid securities.

GETCO believes that regulators should address the role market makers play in modern markets, including obligations to provide useful liquidity, and would support stronger rules for liquidity provision. We believe there should be a distinction between market making as a regulatory term (*e.g.* in the proposed EU Short Selling Regulation), and liquidity provision schemes operated by exchanges (*e.g.* schemes to encourage liquidity in a new contract in the derivatives markets, or in a range of illiquid securities), which are primarily operated for commercial reasons.

We note however that even the most stringent market maker scheme available today and historically, do not require its participants to maintain continuous two sided quotes 100% of the time. If the objective behind the Commission's proposal is to mitigate against severe market shocks, market making obligations must be part of a range of controls in place, for example, ensuring consistent use of circuit breakers across all trading platforms in the EU.



GETCO

Finally, the consultation document recognises that high frequency trading is not a strategy. Rather it is a tool that can be used to execute a wide range of trading strategies (see also Q13). Not all participants who use high frequency tools are executing market making strategies. Firms that execute statistical arbitrage strategies do so when they perceive there are discrepancies in pricing across correlated securities or trading platforms. Such firms may do so using high frequency tools, but they should not be required to provide liquidity on an ongoing basis.

Q20: What is your opinion about requiring orders to rest on the order book for a minimum period of time? How should the minimum period be prescribed? What is your opinion of the alternative, namely of introducing requirements to limit the ratio of orders to transactions executed by any given participant? What would be the impact on market efficiency of such a requirement?

There is much discussion by market participants on latency, the speed in which trading occurs and the increased volume of trading in today's markets. For GETCO and other market makers, reducing latency and increasing the speed that orders can be sent and amended, and that market data can be processed is not for the purpose of executing a greater number of transactions. Our focus as a market maker is on providing liquidity and helping market participants transfer their risk.

"Speed" is an essential tool for market makers to manage risk by controlling how and when orders are placed and modified (*i.e.*, the amount of time their quotations remain on an exchange). This is commonly referred to as exposure time. For every quotation that a market maker provides, they are exposed to risk for that quote until the cancellation or modification is processed following a market move, or a move in a related instrument. The faster a market maker can react to market data and trading conditions, the lower the time between when new information is received and the time such

information is incorporated into prices. For any particular order, the value of this fraction of a second exposure is very low. However, this exposure across the full range of securities on a market venue adds up to very large numbers for the market maker.

Market makers therefore focus on achieving the fastest “round trip” time, *i.e.*, the time between when an instruction is sent to the market and when the confirmation is received. When trading platforms offer a fast round trip time, it enables market makers to manage their risk better and therefore they are willing to offer better, more competitively priced and larger-sized quotes. The relationship between speed, spread and liquidity is evident on many exchanges and clearly adds value to all participants.

While speed is important to market makers because it allows them to better control their risks, speed may be valued for different reasons by market participants that employ other high frequency trading strategies. For example, speed of access to displayed quotations allows arbitrageurs to more quickly take advantage of pricing disparities between the same or related products. Trading strategies based on trading against displayed quotations also benefit from being able to access those quotations more quickly than other participants trying to trade with the same displayed quotes.



GETCO

It is GETCO’s belief that the ability to rapidly incorporate market information into quotes provides better pricing for investors, better risk control mechanisms for market makers, and therefore a marketplace with greater stability and resilience. Nevertheless, to the extent that policymakers have reservations about the application of technology in trading, such concerns would be better addressed by exchange rules or regulatory guidelines establishing a “message-to-fill ratio”, rather than a “time-in-force” requirement. Message per fill ratios would provide market participants with a common understanding regarding what regulators consider to be reasonable message rates, while preserving the essential objective of the modification process *i.e.* greater control over risk exposure and more informed pricing for the market overall.

Several exchanges already have “message-to-fill ratios” requirements and charge fees if a participant’s ratio breaches a pre-determined threshold.

These thresholds are set in advance by exchanges to allow participants to monitor their activity and ensure they trade within these established parameters. Exchanges set such message-to-fill ratios to manage the impact of message rates on the operation of their trading systems, and insure that their systems are able to handle the flow of market data.

While the goal of proposing a “time-in-force” requirement is the same as instituting a “message-to-fill ratio”, *i.e.*, to limit the amount of messaging and order modifications, the potential for negative market impact is far greater. Requiring participants to expose themselves to the risk of a market move for an artificial length of time would cause providers of liquidity to adjust their pricing to accommodate the uncertainty of market moves during that period, which would raise explicit trading costs for investors and institutions unnecessarily.

Post trade data – Transparency and Data Consolidation:

Q32: What is your opinion about the suggestions for reducing delays in the publication of trade data? Please explain the reasons for your views.

GETCO believes that there must be clear, embedded standards for post-trade reporting. These standards should include a shorter time period for reporting, cancelling and amending trades under the delayed publication regime, and additional flagging requirements to increase the transparency of OTC trading. We therefore support the proposal in the consultation document to reduce the delays in the publication of trade data.

Q51: What is your opinion of the suggestion for the introduction of a European Consolidated Tape for post-trade transparency? Please explain the reasons for your views, including the advantages and disadvantages you see in introducing a consolidated tape.



GETCO believes that post trade transparency is critical to ensuring efficient price formation and participant confidence in markets. Timely and accurate post trade information is essential for regulators and market participants to effectively analyse trading activity. Accordingly, GETCO is supportive of the Commission's proposals to ensure an accurate and consolidated post trade record exists.

Q52: If a post-trade consolidated tape was to be introduced which option (A, B or C) do you consider most appropriate regarding how a consolidated tape should be operated and who should operate it? Please explain the reasons for your view.

GETCO strongly believes that competition is essential to drive innovations and efficiencies that benefit all market participants. Therefore we recognise the assessment of the benefits that a model of multiple, competing consolidated data providers (model C) provides. However, GETCO believes that unless steps are taken to ensure providers offer the same consolidated information, the benefits of a consolidated tape would be undermined.

Currently, under the European market led multiple provider model, data providers have not achieved a consistent consolidated tape. Without a consistent tape of record, the Commission's objectives to improve post trade transparency cannot be achieved. To see tangible improvements to post trade data in Europe, we believe the model of single commercial provider of post trade data (model B), would – at least in the short term – be a more preferable.

Regardless of the Commission's final decision on how data should be consolidated, some participants may choose to receive data directly from trading participants. For others, a consolidated tape will be meet for their needs. GETCO believes the Commission should maintain and enforce a 'reasonable cost' provision for all post trade data, with clear responsibility with either securities regulators or competition regulators to ensure this provision is met. Without an effective cost structure, the benefits of post trade reporting will not be fully realised.

Alignment and reinforcement of organisational and market surveillance requirements for MTFs and regulated markets:

Q23: What is your opinion of the suggestions to further align organisational requirements for regulated markets and MTFs? Please explain the reasons for your views.

GETCO supports the proposal to align organisational requirements for Regulated Markets and MTFs.

Some Member States, in particular the UK, already require entities that present the same risks to meet the same standards. Aligning the directive language applying to regulated markets and that applying to MTFs would remove any perception that they have different obligations. The only distinction between regulated markets and MTFs would then be that regulated markets also operate as primary market listing venues.

Q24: What is your opinion of the suggestion to require regulated markets, MTFs and organised trading facilities trading the same financial instruments to cooperate in an immediate manner on market surveillance, including informing one another on trade disruptions, suspensions and conduct involving market abuse?



GETCO

GETCO supports proposals to improve the co-ordination among entities that trade the same financial instruments and to require such entities to cooperate and exchange information to strengthen market surveillance.

Information on regulatory decisions to suspend or remove a financial instrument from trading, of a system disruption including the triggering of a circuit breaker, and of disorderly trading conditions should be disseminated by the venue concerned to all market participants, as well as to other venues which trade the same financial instrument. GETCO believes this dissemination should be achieved through use of codes in electronic market data, which would ensure these situations can be identified immediately.

A technical outage on a trading platform should be differentiated in electronic market data codes from regulatory decisions to suspend trading. This differentiation is important because market participants will respond differently to technical outages on a trading platform, and may – unlike under a regulatory suspension – choose to trade a product elsewhere.

Best Execution:

Q109: What is your opinion about requesting execution venues to publish data on execution quality concerning financial instruments they trade? What kind of information would be useful for firms executing client orders in order to facilitate compliance with best execution obligations? Please explain the reasons for your views.

GETCO agrees with the Commission that the requirements concerning the content of execution policies and usability of information should be strengthened. However, based on our experience of producing such reports in the US, it is important that the Commission or ESMA sets clear guidance on how these reports will work in practice. For example, in the absence of an EBBO, what will the reports be benchmarked against? Will firms be allowed to self select benchmarking (with disclosure) or will it be set by ESMA?

It is also important that clients understand what is and is not included in reporting requirements. For example, in the US, the benchmarking (Section 605/606 reports) don't take into account fees. In Europe, where the cost of clearing and settlement is still very high, GETCO believes fees should be included in any reports.



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Transaction reporting:

Q 72: What is your opinion of an obligation for regulated markets, MTFs and other alternative trading venues to report the transactions of non-authorized members or participants under MiFID? Please explain the reasons for your views.

GETCO is supportive of regulators receiving transaction data from non-authorized members or participants. Such data would provide regulators with information on transactions executed by firms that are not currently required to report transactions, which would aid in detecting trading that may be inconsistent with the Market Abuse Directive.

GETCO believes that a firm should be able to choose how transaction reports are made, e.g. through a Regulated Market, MTF or third party, who would report to the regulators on the firm's behalf. Providing firms with such a choice would be consistent with the current approach for authorized firms. Any revision to MiFID should allow non-authorized members and participants the same choice of reporting venue.

Q77: What is your opinion on the introduction of an obligation to transmit required details of orders when not subject to a reporting obligation? Please explain the reasons for your views.

GETCO notes the Commission's acknowledgement that the Market Abuse Directive will be extended to capture attempted markets abuse, which will not just be limited to the transactions in financial instruments but also the orders.

Whilst GETCO is fully supportive of the Commission's objective for regulators to have increased transparency into the orders placed in financial instruments for market abuse purposes. We ask however that further details and guidance be provided on the requirement to submit order information to receiving investment firms.

Furthermore, we understand that whilst regulators have access to order information from regulated markets and MTFs, often the data is not stored or formatted consistently. It appears that the intention of the Commission and EEA regulators is to capture order information in a systemic and consolidated way to detect for potential market abuse in EEA issued financial instruments.

Q79: What is your opinion on the introduction of a separate trader ID? Please explain the reasons for your views.

GETCO is supportive of the standardisation of the content of transaction reports, and recognises that information on the investment decision to execute the trade would be of interest to the regulator. However, GETCO would encourage the Commission to consider that standards relating to transaction reports be coordinated by ESMA. Allowing ESMA to establish these standards would ensure that issues relating to having a trader ID are identified (i.e., if the investment decision is by an automated system or a hybrid of both a trader and automated system).



ANNEX 2: About GETCO:

GETCO is a global market maker. GETCO was founded in Chicago in 1999, and opened European offices in 2003. The firm now employs over 300 people worldwide, with 50 in Europe. The firm provides liquidity on over 50 markets in Europe, North and South America and Asia. The liquidity GETCO supplies allows individual and institutional investors to immediately transfer the risk often associated with financial instruments while saving money on trading costs. As a market maker, we do this by:

- increasing liquidity;
- reducing market volatility;
- facilitating price discovery; and
- promoting competition among market centres and liquidity providers.



In these ways, GETCO plays an important role in making financial markets more efficient, lowering the cost of capital for businesses and reducing trading costs for investors. Our strategy is to align our business with the values we believe best serve the market and investors: efficiency, transparency, reliability and competition. GETCO maintains a long-term view on the markets, which means that we understand the importance of stable, well-regulated markets.

From offices in London, Chicago, New York and Singapore, the firm transacts business in cash, futures and options products across four asset classes: equities, fixed income, currencies and commodities.

In Europe GETCO is routinely one of the top 5 liquidity providers across European trading platforms with approximately 80% of the firm's executed volume a result of providing passive liquidity, *i.e.*, other market participants choose to trade with our displayed orders in the market place. GETCO Europe is a full-scope MiFID investment firm that is authorised and regulated by the UK's Financial Services Authority (FSA).

GETCO Europe is a direct member of the following European exchanges and multilateral trading facilities (MTFs): LSE, NYSE Euronext, Xetra, Borsa Italiana, Oslo Bors, Chi-x, BATS, Eurex, MEFF, Euronext LIFFE and MEFF. GETCO Europe also offers our European clients an efficient way to access the deep liquidity of our electronic market making business through our GETCO Execution Services (GES) business.