



UNIVERSITA' DEGLI STUDI DI PADOVA

**DIPARTIMENTO DI SCIENZE ECONOMICHE ED AZIENDALI
"M. FANNO"**

DIPARTIMENTO DI DIRITTO PRIVATO E CRITICA DEL DIRITTO

**CORSO DI LAUREA MAGISTRALE IN ECONOMICS AND
FINANCE**

TESI DI LAUREA

TRADING VENUES ACCORDING TO MIFID II

RELATORE:

CH.MO PROF. Alberto Lupoi

LAUREANDO: Andrea Lorenzi

MATRICOLA N. 1138060

ANNO ACCADEMICO 2017 – 2018

Il candidato dichiara che il presente lavoro è originale e non è già stato sottoposto, in tutto o in parte, per il conseguimento di un titolo accademico in altre Università italiane o straniere.
Il candidato dichiara altresì che tutti i materiali utilizzati durante la preparazione dell'elaborato sono stati indicati nel testo e nella sezione "Riferimenti bibliografici" e che le eventuali citazioni testuali sono individuabili attraverso l'esplicito richiamo alla pubblicazione originale.

Firma dello studente

A rectangular box containing a handwritten signature in black ink. The signature is cursive and appears to be "Antonio Di".

INDEX

| | |
|--|-----------|
| ABSTRACT | I |
| 1. INTRODUCTION..... | 1 |
| 2. MIFID I..... | 4 |
| 2.1. Regulated Markets..... | 8 |
| 2.2 Multilateral Trading Facility (MTF) | 14 |
| 2.3 Systematic Internaliser (SI) | 17 |
| 2.4 Over The Counter (OTC)..... | 21 |
| 3. MIFID II | 25 |
| 3.1 Differences between MIFID I and MIFID II..... | 29 |
| 4. TRADING VENUES 2.0 | 31 |
| 4.1 Transparency for Trading venues..... | 34 |
| 4.2 Italian Scenario | 39 |
| 4.2.1 Borsa Italiana The Manager of Italian Financial Markets | 41 |
| 4.2.2 Mercato Telematico Azionario (MTA)..... | 44 |
| 4.3 Regulated Market | 46 |
| 4.4 Multilateral Trading Facility (MTF) | 56 |
| 4.5 Organised Trading Facility (OTF)..... | 64 |
| 4.6 Trading Venues Recap | 70 |
| 4.7 Overview on Systematic Internaliser (SI) and Over The Counter (OTC) | 72 |
| 4.7.1 Systematic internaliser (SI) | 72 |
| 4.7.2 Over the Counter (OTC) | 74 |
| 5 OVERVIEW OF AMERICAN REGULATION FOR FINANCIAL MARKETS..... | 76 |
| 5.1 American Trading Venues | 80 |

| | |
|---|-----------|
| 5.1.1 Exchange..... | 81 |
| 5.1.2 Alternative Trading System (ATS) | 81 |
| 5.1.3 Broker-Dealer | 82 |
| 5.2 Comparison between the European Regulation of Financial Markets and the American one | 83 |
| 6 CONCLUSIONS..... | 84 |
| APPENDIX | I |
| BIBLIOGRAPHY | VI |
| LAW INDEX..... | X |

LIST OF FIGURES

| | |
|--|----|
| Figure 1 Trading venues scheme | 8 |
| Figure 2 How a CCP works | 23 |
| Figure 3 Regulated markets managed by Borsa Italiana | 42 |
| Figure 4 MTFs managed by Borsa Italiana | 42 |
| Figure 5 Instruments traded on different trading venues | 71 |
| Figure 6 Path of cleared and non-cleared OTC IRS | 75 |
| Figure 7 Regulators of the US Financial Markets | 76 |

ABSTRACT

In this work is given a picture of how the regulation of financial markets is changed. First it was analysed the regulation, the market structure and the requirements for the market participants under MIFID I. With this directive trading venue were defined as regulated markets, multilateral trading facilities and systematic internalisers. Second it was deeply showed with the directive MIFID II how the market functions and its organisation. With MIFID II the definition of trading venue changed, now it's defined as regulated market, multilateral trading facility and organised trading facility. At this regard it's examined the structure and the regulation of an Italian trading venue (Mercato Telematico Azionario). At the end it's given an overview of the American regulation alongside with a comparison between the European regulation of financial markets and the American one.

1. INTRODUCTION

The concept of exchange has always been fundamental, from the beginning of the human life, when it was mainly based on barter, it was only a way to survive, obtaining what was needed, without thinking about getting richer (because the value of the object bartered wasn't recognisable and it wasn't important). Later the first currencies were introduced (first coins in China around 1100 B.C.) to make transactions easier and faster. The paper notes were introduced in Europe around the 1600 A.D. even if in Asian countries as China they were used since the 600 B.C.

Moreover, around the 15th and 16th century in Europe the first stock exchanges started to be developed¹ (1531 in Belgium and in the 1600's in the Netherlands, in the UK and in France). Then, thanks to the growth of the stock exchange² it started to be possible to exchange goods and assets all over the world, this new scenario changed the concept of exchange into the trade one (in the concept of trade the objects doesn't need to be of the same type differently from the exchange). Today we are able to trade also "intangible" assets, financial assets such as stock and bonds, using High Frequency Trading³ (HFT) which follows an algorithm to make buy and sell operations all over the world in just milliseconds. This new way of doing trading gave a boost to the flowing of money allowing us to do business with everyone, everywhere and at any time.

During the years and the centuries, the governments and the financial experts tried to shape the way to do exchange. To do so, they set rules, laws, regulations and directives with different aims:

- Try to avoid as much as possible the exchange of assets on the non-regulated market.
- Through the first point, they wanted to earn money with fees received from the operators in the regulated markets.
- Give protection to the clients of these markets.

Moreover, these directives and rules set by the regulators of the markets has been affected by continuous changes. Before the establishment of European Union and the settlement of common laws about international exchanges, every country was deciding and following their

¹ Fohlin, C. (2016). Frictions: Lessons from the History of Financial Market Microstructure. In: D. Chambers and E. Dimson, ed., *FINANCIAL MARKET HISTORY REFLECTIONS ON THE PAST FOR INVESTORS TODAY*. David Chambers and Elroy Dimson, pp.134-147.

² Neal, L. (2016). Frictions: The role of Stock Exchanges in Financial Globalization: A Historical Perspective. In: D. Chambers and E. Dimson, ed., *FINANCIAL MARKET HISTORY REFLECTIONS ON THE PAST FOR INVESTORS TODAY*. David Chambers and Elroy Dimson, pp. 118-130

³ Durbin, M. (2010). *All About High Frequency Trading*. The McGraw-Hill companies.

own ones. Focusing our attention on the Italian scenario, in the early '90 it was introduced the so called "obbligo di concentrazione" (concentration rule), which was settled by the law⁴ 2.1.1991 n. 1⁵. Through this law the intermediaries were forced to trade financial assets, exclusively on the official and regulated markets, where they were quoted⁶. The regulators decided to settle this law because the Italian financial market was characterized by permanent liquidity issues. This obligation was supposed to increase the exchanges on the regulated market giving a boost to the transparency on it, as well as protecting the weak side of the market.

On the other side, the Council of the European Communities with the Directive 93/22/CE⁷ was moving to the liberalisation of the trades Over the Counter (OTC), following an Anglo-Saxon mindset, leaving more responsibilities and duties to the Member States regulators. This liberalisation of the trades was possible thanks to the Home country control principle art. 14 Dir. 93/22/CE. The Consob was considering the "obbligo di concentrazione" a fundamental guarantee for the liquidity of the market, so it decided with the Dir. 23 July 1996 n. 415 to re-introduce the concentration rule.

This obligation has some waivers:

- Best execution⁸, when the investor previously authorizes the trades over the counter allowing him to have a better price.
- Block trading, when the countervalue of the assets are equal or higher than the one established for the blocks.
- Spezzatura⁹, when the total amount of assets doesn't reach the minimum value to be traded on the regulated market so they to be exchanged on the OTC to satisfy the small investors' needs.

The concentration rule was considered obsolete after the development of the so-called Electronic Communication Networks (ECN) and the Alternative/Automated Trading Systems (ATS)¹⁰. These mechanisms of trading were born to fulfil a liquidity and transparency need, while in the European union, they are characterized by the so-called trading after hours and by a continuous auction market.

⁴ User, S. (2018). CONCENTRAZIONE DEGLI SCAMBI.

⁵ Article abrogated by Article 66 Law 23/7/1996 n.415

⁶ Law 2.1.1991 n.1

⁷ Marin, F. (2018). VERSO LA CAPITAL MARKETS UNION: LE NUOVE TRADING VENUE NELLA MIFID II E NEL MIFIR. *RIVISTA TRIMESTRALE DI DIRITTO DELL'ECONOMIA*, (1), 63-93.

⁸ Faustini, E. (2008). *L'eliminazione dell'obbligo di concentrazione nella Direttiva Mifid*. Luiss Carlo Guidi.

⁹ User, S. (2018). CONCENTRAZIONE DEGLI SCAMBI

¹⁰ Faustini, E. (2008). *L'eliminazione dell'obbligo di concentrazione nella direttiva Mifid*. Ed. Luiss Guido Carli.

Thanks to the Dir. 93/22/EEC¹¹ more investors became more interested and active in doing business in the financial markets, to them were offered an even more complex and wide range of services. To trade more complex assets, it was required a higher level of protection and transparency to have a fair and a successful transaction on the regulated market. The European Parliament and the Council of the European Union at this point decided that it was time to replace the Dir. 93/22/EEC with a new one. This Directive was the Markets in Financial Instruments Directive which brought some changes that will be analysed later.

¹¹ Marin, F. (2018). VERSO LA CAPITAL MARKETS UNION: LE NUOVE TRADING VENUE NELLA MIFID II E NEL MIFIR. *RIVISTA TRIMESTRALE DI DIRITTO DELL'ECONOMIA* pag 67

2. MIFID I

The new Directive was the 2004/39/EC, commonly known as Markets in Financial Instruments Directive (MIFID I), wanted to build a level playing field¹² between the European Union and the financial intermediaries. MIFID I is based on the Lamfalussy method, approved by the European Council in 2001. This method shows four¹³ different levels of regulations and MIFID I is the first one which is followed by the Directive 2006/73/CE and the Regulation 1287/2006/CE. The Directive 2004/39/EC was referred to three macro categories¹⁴. The first one includes the intermediaries (banks and investment firms). The second category is formed by the so-called Trading Venues. These trading venues are divided in three sub-categories the regulated markets, the Multilateral Trading Facilities (MTF) and the Systematic Internaliser (SI) (MTF and SI are introduced by MIFID I). The last category is composed from the financial consultation providers.

With the introduction of the MIFID I new needs came out. The regulators recognised that it's appropriate to include in the list some financial instruments and some derivatives which are traded and constituted in a way to rise regulatory issues comparable to traditional financial instruments. It became necessary to establish¹⁵ a regime governing the execution of transaction in financial instruments, irrespective of the trading methods used to conclude those transaction, to ensure a high-quality execution of investors' transactions. A coherent and risk-sensitive framework to regulate the order-execution arrangement active in the European financial market should be provided.

With the quick expansion and development of the financial market the European parliament and Council understood the necessity of a new generation of organised trading systems¹⁶ alongside regulated markets which should be subjected to obligations designed to preserve the efficiency and the order of financial markets. These new systems got the name of Multilateral Trading Facility (MTF) and Systematic Internaliser (SI) defined at art.4. (15). and at art.4. (7) of the Directive 2004/39/EC. The definition should exclude bilateral¹⁷ systems where an investment firm enters into every trade on own account without being a riskless counterparty between the buyer and seller.

¹² Faustini, E. (2008). L'eliminazione dell'obbligo di concentrazione nella direttiva Mifid. Ed. Luiss Guido Carli.

¹³ European Council Stockholm, Conclusions of the Presidency. (2001). [Ebook].

¹⁴ Directive 2004/39/EC (2004).

¹⁵ Faustini, E. (2008). L'eliminazione dell'obbligo di concentrazione nella direttiva Mifid. Ed. Luiss Guido Carli.

¹⁶ Marin, F. (2018). VERSO LA CAPITAL MARKETS UNION: LE NUOVE TRADING VENUE NELLA MIFID II E NEL MIFIR. *RIVISTA TRIMESTRALE DI DIRITTO DELL'ECONOMIA*

¹⁷ Directive 2004/39/EC (6)

This Directive is not referred to every person. The references to persons should be understood as including both natural and legal ones.

The people who are not covered by the scope of this Directive are¹⁸:

- People that manage their assets and undertakings, who just deal on own account unless they're market makers or they do it outside a regulated market or an MTF on an organised, frequent and systemic basis.

- People who don't provide services for third parties but whose business consists in providing investment services only for their parent undertakings, subsidiaries.

- People who provide investment services only on an incidental basis during the professional activity.

- People who provide investment services consisting exclusively in the administration of employee-participation schemes and who therefore do not provide investment services for third parties.

- Central banks and other bodies performing similar functions as well as public bodies charged with or intervening in the management of the public debt.

- Collective investment undertakings and pension funds coordinated or not at Community level. The managers of such undertakings being subject to specific rules directly adapted to their activities.

There are some exceptions where someone from the above list starts to be covered by this Directive. This can happen when a person¹⁹ makes investment services and activities that were ancillary to his main business then they became its main one.

On the other side the person who are covered by this Directive²⁰, providing and performing investment services and activities, should be subjected to authorisation by their home Member States to protect investors and the stability of the financial system. In this case an investment firm authorised in its home Member State is able to provide or perform investment services and activities across the Community without the need of a separate authorisation from the Member State in which it wishes to do these services and activities. While credit institutions authorised with the Directive 2000/12/EC²¹ shouldn't need other authorisations. This Directive abolished

¹⁸ Directive 2004/39/EC (2004).

¹⁹ Recital 8 Directive 2004/39/EC

²⁰ Recital 7 Directive 2004/39/EC

²¹ Article 4 Title III Directive 2000/12/EC

the concentration rule²², for a more free and competitive financial market. This enhanced the possibility of conflict of interest between different investment firms. For this reason, also, the services should be provided at the initiative of the client.

MIFID I was introduced to solve some problems, to do that it settled some rules. The aims of the Directive 2004/39/EC are²³:

- Stronger Investor protection.
- Markets' integrity.
- More robust and efficient market structure.
- Increase supervisory powers and set a stricter framework for commodity derivatives markets.
- Taking into account the technological innovations.

Stronger investor protection: one of the goals of this Directive is the protection of the investors. There are different measures of protection, these should be adapted to the characteristics of each category on investors (retail, professional and counterparties). The investors' characteristics are obtained with the so-called MIFID questionnaire²⁴. Through this document the market operators, as banks, are able to know their clients in a deeper way. To the clients is asked:

- Their level of education.
- If they have been employed in the last 5 years in a position requiring financial ability and knowledge.
- If they know risk and characteristics of the product (government bonds, corporate bonds and shares).
- Which is their trading experience.
- The number of transactions they have done in the past 3 years.

With this information the market operator will be able to create a different investment project for every client. This project will be based on the information obtained through the questionnaire.

²² Orsi, G. (2018). L'Abolizione della Concentration Rule e la Competizione tra le Nuove Sedi di Esecuzione

²³ European Commission (2011). *Review of the Markets in Financial Instruments Directive*. Bruxelles.

²⁴ Zavaritt, A. (2007). Mifid, il questionario che le banche devono ancora fare. *Il Sole 24 Ore*.

The personal data of the investors, obtained by the market operators, has to be protected in accordance with the Directive 95/46/EC²⁵ of the European Parliament and of the Council.

To safeguard the traders on the regulated market, MTF and SI it's necessary to impose the "best execution"²⁶ obligation to ensure that the orders are executed in the most favourable way for the client²⁷. The increase of competition and the possibility to have an unfair playing field pushes the regulators to allow to the markets participants and investors to compare the prices that trading venues²⁸ (regulated market, MTF and SI) are forced to publish.

A way to get closer to reach this objective is to ensure that transparency of transaction is achieved and that the rules are applied to investment firms when they operate on the markets²⁹. In order to enable investors to assess at any time the terms of a transaction. Common rules should be established for the publication of completed transactions in shares and for the disclosure of current opportunities to trade in shares. These rules are needed to promote the efficiency of the overall price formation process for equity instruments and to assist the effective operation of "best execution" obligations.

An investment firm is obliged to quote a bid and offer price and to execute an order at the quoted price. This doesn't relieve the investment firm from the obligation to route to a different execution venue an order when such internalisation can prevent the firm from complying with the "best execution" obligations³⁰. In fact, a Member State could decide to apply the pre and post-trade transparency requirements written in this Directive to financial instruments. These requirements are different for the MTFs³¹ and the regulated markets³².

In that case those requirements should apply to all investment firms for which this Member State is the Home Member State for their operations within the territory of that Member State and those done cross-border thanks to the liberalisation of the transactions³³.

²⁵ Recital 30 Directive 95/46/EC Article 1 of the same directive

²⁶ Article 21 Directive 2004/39/EC

²⁷ It follows the principle settle by the article 19 (1) Directive 2004/39/EC "*when providing investment services an investment firm must act honestly, fairly and professionally in accordance with the best interests of its clients*".

²⁸ Recital 34 Directive 2004/39/EC

²⁹ Marin, F. (2018). VERSO LA CAPITAL MARKETS UNION: LE NUOVE TRADING VENUE NELLA MIFID II E NEL MIFIR. *RIVISTA TRIMESTRALE DI DIRITTO DELL'ECONOMIA*

³⁰ Recital 44 Directive 2004/39/EC.

³¹ Article 29 and 30 Directive 2004/39/EC (2004).

³² Article 44 and 45 Directive 2004/39/EC (2004)

³³ Recital 48 Directive 2004/39/EC

More robust and efficient market structure: one of the main aims of this directive was increase the competition into the financial markets³⁴. To do so the directive MIFID I keep abolished the concentration rule and introduce two new generations of organised trading systems alongside regulated markets which should be subjected to obligations designed to preserve the efficient and orderly functioning of financial markets. These two new trading systems are Multilateral Trading Facility (MTF) and Systematic Internaliser (SI) and with the regulated markets composed the so-called Trading Venues³⁵.

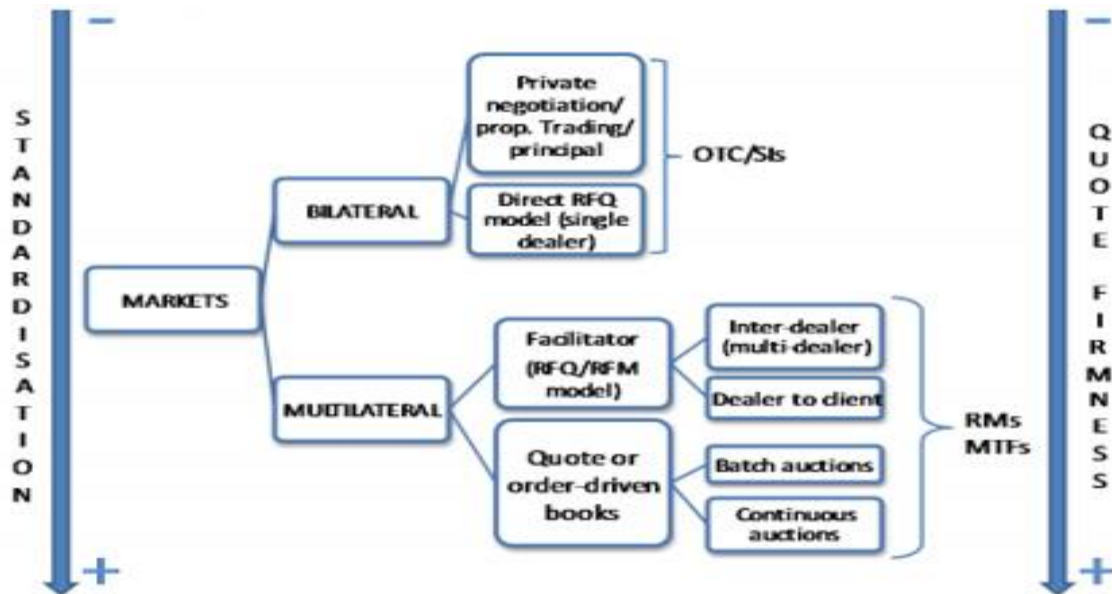


Figure 1 Trading venues scheme

2.1. Regulated Markets

The first components of the trading venues are the regulated markets. These were defined and regulated before MIFID I by the Directive 93/22/EEC.

Regulated market³⁶ is defined by the article 1.13 of Directive 93/22/EC (ISD). This market has to be identified as a regulated market from the home Member State, it has to be recognized as a regularly functioning market. A key role into the definition of regulated market is played by the competent authorities, they have to point out the requirements for the operation of the market, they have to settle the conditions to be admitted to the market, then they need to decide where the admission to official listing is possible (Directive 79/279/EEC). Moreover, they need

³⁴ Marin, F. (2018). VERSO LA CAPITAL MARKETS UNION: LE NUOVE TRADING VENUE NELLA MIFID II E NEL MIFIR. *RIVISTA TRIMESTRALE DI DIRITTO DELL'ECONOMIA*

³⁵Recital 34 Directive 2004/39/EC

³⁶ Article 1(13) Council Directive 93/22/EEC to have the legislator definition

to fix the conditions that must be respected by a financial instrument before it can be traded on the market. The last characteristic of regulated market according to ISD is that, it has to satisfy the transparency requirements and it has to report all the information needed to the competent authorities. These requirements are written on the article 20 and 21 of the ISD

Each Member State is forced to have an updated list of regulated markets authorised by it as Art.16 of Directive 93/22/EEC³⁷ said. This information has to be communicated to other Member States and the Commission. The commission is required to publish a list of regulated markets notified to it on a yearly basis.

With the introduction of the Directive 2004/39/EC³⁸ the definition and the regulations of the regulated markets changed. They are defined at Art.4 (14) “*Regulated market means a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its nondiscretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with provisions of Title III.*”

Obviously to operate a regulated market the activities need to be authorised. This authorisation³⁹ regards all activities that are directly related to the display, processing, execution, confirmation and reporting of orders from the point at which these orders are received by the regulated market (RM) to the point where they’re transmitted for subsequent finalisation and to activities related to the admission of financial instruments of trading.

To obtain this authorisation a regulated market needs at first to satisfy some capital requirements⁴⁰. It should consider the specific nature of the risks associated with such markets. The competent authority is satisfied when both the system of the regulated market and the market operator comply with the requirements of Title III of MIFID I⁴¹. When a regulated market is a legal person managed or operated by a market operator instead of the regulated market itself the Member States should decide how to differentiate the obligations between the regulated market and the market operator⁴². To follow the principle of the transparency the

³⁷ Article 16 Council Directive 93/22/EEC

³⁸ Article 4(14) title I Directive 2004/39/EC

³⁹ Recital 49 Directive 2004/39/EC

⁴⁰ Council Directive 93/6/EEC of 15th March 1993

⁴¹ Article 36 Directive 2004/39/EC

⁴² Article 36(1) Directive 2004/39/EC

regulated market's operator has to provide all the information and the organisational structure to the competent authority to show that it has established all the necessary arrangements to meet its obligations. Moreover, the Member States require from the operator of regulated markets to perform tasks relating to the organisation and operation of it under the supervision of the competent authority. The regulated market has to be controlled by the competent authorities⁴³.

A surveillance role is played by the Member States, they shall ensure that market operator is responsible for the regulated market that he manages, and he is entitled to exercise the rights that correspond to the regulated market⁴⁴.

In some cases, the authorisation can be withdrawn by the competent authority if⁴⁵:

- The regulated market doesn't use the authorisation within twelve months, it hasn't operated it in the last six months, it expressly renounces to the authorisation.
- To obtain the authorisation the regulated market has made false statements or by any other irregular means.
- The conditions under which the authorisation was given are no longer met by the regulated market.
- The regulated market has seriously infringed the disposition adopted pursuant to this Directive.
- Regulated market falls in any cases where the withdrawal of the authorisation is provided by the national law.

The entity that conducts the business and the operations of the regulated market needs to have a sufficiently good reputation. It also needs to be sufficiently experienced to ensure the sound, the safe management and the operations of the regulated market⁴⁶. In accordance with the transparency rule the identity and any subsequent changes of the persons who direct the business has to be notified to the competent authority. The Directive 2004/39/EC pointed out the requirements not only, as above, for the persons who manages the regulated market but also for the ones that are able to exercise a significant influence over the management of the RM⁴⁷.

⁴³ Article 36(2) Directive 2004/39/EC

⁴⁴ Article 36(3) Directive 2004/39/EC

⁴⁵ Article 36(5) Directive 2004/39/EC

⁴⁶ Article 37(1) Directive 2004/39/EC

⁴⁷ Article 37(2) Directive 2004/39/EC

The people⁴⁸ who can exercise, directly or indirectly, a significant influence over the management of the regulated market need to be suitable. The operator of the market has to provide to the competent authority the whole information about the persons able to exercise significant influence over the management (ownership of the regulated market, the identity and the scale of interests of any parties)⁴⁹. The competent authority needs to be public informed of any transfer of ownership which lead to a change in the identity of the persons influencing the operation of the regulated market. The authorities above mentioned have the power and the right to refuse or to approve the proposed changes to the controlling interest of the regulated market. A proposal of changes can be refused if there are objects and grounds for believing that they would cause a threat to the management of the regulated market⁵⁰. A regulated market is asked by Member States to have arrangements to clearly identify and manage the possible adverse consequences due to its operations and its participants and in case of any conflict of interests, in other words it needs to be resilient. The regulated market needs to manage the risk to which it's exposed, to identify these risks and to develop effective measures to mitigate those risks⁵¹.

Not all financial instruments can be traded on regulated markets. They need to be admitted to trading. The first step of these procedure has to be made by the regulated markets which is asked to have and to keep clear and transparent rules concerning the admission of financial instruments to trading⁵². These rules ensure that whole the financial instruments admitted to trading in a regulated market can be traded in a fair, orderly and efficient manner and are freely negotiable in the case of transferable securities. The issuer of the transferable securities admitted to trading on the regulated market should comply with their obligations under Community law about initial, ongoing or *ad hoc* disclosure obligations⁵³. A transferable security can be admitted to trading to multiple regulated markets, it can be subsequently admitted to trading on other regulated markets even without the consent of the issuer and in accordance with the relevant provisions of Directive 2003/71/EC⁵⁴. If an issuer's securities have been admitted to trading without its consent, he is not obliged to provide information. In case of derivatives, the rules set the design of the derivative contract for its orderly pricing as well as for the existence of effective settlement conditions.

⁴⁸ Article 38(1) Directive 2004/39/EC

⁴⁹ Article 38(2)(a) Directive 2004/39/EC

⁵⁰ Article 38(3) Directive 2004/39/EC

⁵¹ Article 39(a) and 39(b) Directive 2004/39/EC

⁵² Article 40(1) Directive 2004/39/EC

⁵³ Article 40(3) Directive 2004/39/EC

⁵⁴ Article 40(5) Directive 2004/39/EC

In order to have an equal and uniform application of the admission requirements to trading the Commission⁵⁵ should implement measures that:

- Specify the characteristics of different classes of instruments that a regulated market needs to take into account when assessing if an instrument is issued in accordance with the conditions for admission to trading on different market segments.
- Clarify the arrangements that the regulated market has to settle to facilitate its participants or members to obtain the access to information published under the Community law's conditions.

The operator (manager) of the regulated market can suspend or remove a financial instrument from trading, that no complies anymore with the rules of it, only if the suspension or the removal from trading of it will not cause significant damage to the investors' interests or the orderly functioning of the market⁵⁶. Differently from the operator of the regulated market a competent authority can only demand the suspension or the removal. Regulated market's operator who suspends or removes financial instrument from trading has to make public his decision and communicates it to the competent authority⁵⁷.

The competent authority shall inform the other Member States' competent authority. The regulated market is required to establish and maintain transparent and non-discriminatory rules while managing the access to or membership of the regulated market. Those rules⁵⁸ set obligations for members or participants arising from:

- Rules linked to transactions on the market.
- Procedures and rules for the settlement and the clearing of transactions concluded on the regulated market.
- Professional standards on the investment firms' or credit institutions' staff that are operating on the market.
- The constitution and administration of the regulated market.

To be a participant or a member of regulated markets investment firms and credit institutions need to fulfil the requirements settle by the directive 2000/12/EC Title II⁵⁹. The admission and the participation to the regulated market are not only allowed to investment firms

⁵⁵ Article 40(6) and 64(2) Directive 2004/39/EC

⁵⁶ Article 41(1) Directive 2004/39/EC

⁵⁷ Article 41(2) Directive 2004/39/EC

⁵⁸ Article 42(2) Directive 2004/39/EC

⁵⁹ Article 5 and 9 Directive 2000/12/EC

and credit institutions. Persons who have enough level of trading experience, who are fit and proper, who have adequate organisational arrangements, who have sufficient resources for the role they are to perform, considering the different financial arrangements that the regulate market may have established in order to guarantee the adequate settlement of transactions⁶⁰. Regulated markets from other Member States should be allowed by their Member State to provide arrangements on their territory to make the access easier and the trading on those markets by participants in their territory. Obviously, the Regulated market has to report to the competent authority of its Member State where it is intended to provide these arrangements⁶¹.

Regulated markets have to maintain effective arrangements and procedures to monitor the compliance by their members with their rules. Regulated markets⁶² shall also control the transactions done by their members or participants in order to find breaches on the rules. When a breach of the rules or disorderly trading conditions are founded they have to be reported to the competent authority of the regulated market⁶³. The operator of the regulated market is required to notify the information on time to the authority for the investigation and prosecution of market abuse and to aid in investigating and prosecuting market abuse occurred on or through the system of the regulated market.

To respect one of the main points of the Directive 2004/39/EC the regulated markets need to respect pre and post-trade requirements. Before the trade the regulated markets have to publish on a continuous basis, during the trading hours, the current bid and offer prices and the depth of trading interests at those prices that are advertised through their systems for shares admitted to trading. The competent authority can waive the obligation for regulated markets to publish the information on the market model or the type and size of orders⁶⁴. To provide a fair respect of these pre-trade rules the Commission should implement measures about the range of bid and offers prices or about the designed market-maker quotes, the depth of trading interest at those prices, to be made public. The size or type of orders and the market model for which pre-trade disclosure may be waived have to be enhanced⁶⁵.

Regulated markets have to publish post-trade, as they do pre-trade, the price, the time and the volume of the transactions executed of shares admitted to trading. Those transactions have to be published as close to time as possible and on a reasonable commercial basis. Competent

⁶⁰ Article 42(3) Directive 2004/39/EC

⁶¹ Article 42(6) Directive 2004/39/EC

⁶² Article 43(1) Directive 2004/39/EC

⁶³ Article 43(2) Directive 2004/39/EC

⁶⁴ Article 44(2) Directive 2004/39/EC

⁶⁵ Article 44(3) Directive 2004/39/EC

authorities can enable the deferred publication of transactions that are larger in scale compared to the normal size for that share or class of shares. Each Member State must draw up a list of regulated markets for which it's the home Member State and submit it to the other Member States and to the Commission⁶⁶. If the list is changed a similar communication is required. The Commission has to publish the list on the Official Journal of the European Union and on its website and update it at least once a year.

2.2 Multilateral Trading Facility (MTF)

With the abolition of the concentration rule⁶⁷ with the Directive 2004/39/EC we saw a boost of the competition on the national and community markets. For this reason, the European parliament and the Council decide to recognise and institutionalize new systems of trading, one of these are the Multilateral Trading Facilities (MTF). The MTF are defined at the Art.4 (15) of the Directive 2004/39/EC “*Multilateral trading facility (MTF) means a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with the provision of Title II*”.

MIFID I underlines that the MTFs' function is more or less the same as the regulated markets' one⁶⁸. We understand it because the definition of regulated market is similar to the one of MTFs'. These first two components of the trading venues are both multilateral systems, they are both subjected to authorisations, they both follow non-discretionary rules and they follow the same transparency rules. After the definition of the MTF we find also some differences between regulated market and MTFs. In the regulated markets are traded only “regulated” financial instruments while into the MTF it is possible to trade also non-regulated ones⁶⁹. The main difference between these two branches of trading venues is that the MTF can be operated by market operator and investment firms while the regulated markets only by market operator⁷⁰.

Same as the regulated market also on the MTF the performance of investment activities or services on a professional basis should be previously authorised but the home Member State. It

⁶⁶ Article 45(2) Directive 2004/39/EC

⁶⁷ Marin, F. (2018). VERSO LA CAPITAL MARKETS UNION: LE NUOVE TRADING VENUE NELLA MIFID II E NEL MIFIR. *RIVISTA TRIMESTRALE DI DIRITTO DELL'ECONOMIA*

⁶⁸ Gresse, C. (2011). *Effects of the Competition between Multiple Trading Platforms on Market Liquidity: Evidence from the MiFID Experience*.

⁶⁹ Borsa Italiana (2006). *La comunicazione finanziaria alla luce delle nuove direttive comunitarie*.

⁷⁰ Article 4(14) and 4(15) Directive 2004/39/EC

shall also allow any market operator to operate an MTF subject to verification of their compliance⁷¹. All the investment firms have to be reported in a public accessible register, it has to contain information on the activities and services for which the investment firm is authorised. This register has to be updated on a regular basis⁷².

Any investment firm, which is a legal person, is required by its home Member State to have its head quarter in the same Member State of its registered office. On the other hand, any investment firm, that is not a legal person or it is a legal person but under its national law, that has no registered office it will have its head office in the Member State in which it carries on its business⁷³. An investment firm has to set policies and procedures to ensure compliance of the firm including its managers, employees and tied agents. It should maintain and operate effective organisational and administrative arrangements, it needs to ensure continuity and regularity in the performance of investment services and activities. For this purpose, the investment firm should employ proportionate and appropriate systems, procedures and resources⁷⁴. To avoid undue additional operational risk an investment firm, when it relies on a third party for performance of operational functions that are critical for the provision of continuous and satisfactory service to clients and the performance of investment activities, has to take reasonable steps⁷⁵.

The competent authority to monitor the investment firms' compliance to the Directive 2004/39/EC asks to them to arrange records of all transaction and services undertaken by it. To follow one of the main aims of the MIFID I, clients' protection, an investment firm, when holds clients' financial instruments, must make proper arrangements especially in the event of the investment firms' insolvency. These arrangements are useful to prevent the use of a client's instruments on own account without the client's express consent⁷⁶. Investment firms have to make adequate arrangements also when they hold clients' funds even in this case to safeguard the clients' rights and, except in the case of credit institutions, prevent the use of client funds for its own account.

Market operators and investment firms operating an MTF shall establish transparent and non-discretionary rules and procedures, to have fair and orderly trading. They are required from the Member State to establish objective criteria for efficient execution orders. The Member

⁷¹ Article 5(1) Directive 2004/39/EC

⁷² Article 5(3) Directive 2004/39/EC

⁷³ Article 5(4) Directive 2004/39/EC

⁷⁴ Article 13(3) and Article 13(4) Directive 2004/39/EC

⁷⁵ Article 18(1) Directive 2004/39/EC

⁷⁶ Article 13(7) Directive 2004/39/EC

States require also to the investments firms or market operators, operating an MTF, to settle rules about the criteria to determine the financial instruments which can be traded under its system. The operators of an MTF must provide enough information to enable its users to make their own investment judgement⁷⁷.

To respect the more transparent orientation of the European Union and Council the manager⁷⁸ of an MTF should establish and maintain transparent rules governing access to its facility. The users of an MTF need to be informed about investment firms' or market operators' responsibilities for the settlement of the transactions executed in that facility. When a transferable security, which is admitted to trading on a regulated market, is also traded on an MTF without the authorization of the issuer, the issuer should not be subject to any obligation to that MTF⁷⁹.

The competent authority, with the appropriate measures in place, should be able to monitor the activities of investment firms to guarantee that they act honestly, fairly and professionally and in a way to promote the integrity of the market⁸⁰. The data relating to all transactions in financial instruments which the investment firms have carried, whether on own account or on behalf of a client, have to be kept at disposal of the competent authority for at least five years. If the transactions are carried on behalf of the client, the records shall contain the identity, all the information, the details of clients and the information required by the Directive 91/308/EEC⁸¹ about the prevention of the use of financial system for the purpose of money laundering.

Investment firms, that run transactions in any financial instruments admitted to trading on a regulated market, have to report details of the transactions to the competent authorities as soon as possible. This obligation is applied whether the transactions were carried out on a regulated market⁸². The information obtained by the competent authorities shall be received by the competent authorities of the most relevant market in terms of liquidity for those financial instruments. The reports containing the information shall include names and numbers of the instruments bought or sold, the dates, the times of execution, the quantity, the prices and means of identifying the investment firms concerned⁸³.

⁷⁷ Article 14(1), Article 14(2) and Article 14(3) Directive 2004/39/EC

⁷⁸ Article 14(4) Directive 2004/39/EC should comply with the conditions in the Article 42(3)

⁷⁹ Article 14(5) and Article 14(6) Directive 2004/39/EC

⁸⁰ Article 16(2) and Article 25(1) Directive 2004/39/EC

⁸¹ Article 25(2) Directive 2004/39/EC linked with Article I and 2 Directive 91/308/EEC

⁸² Article 25(3) Directive 2004/39/EC

⁸³ Section 3 Article 25(4) Directive 2004/39/EC

Member States require that investment firms and market operators operating an MTF establish and maintain effectively procedures and arrangements, relevant to the MTF, to monitor the compliance by its users with its rules. The transactions undertaken by the MTF users must be monitored by the investment firms and market operators operating such MTF. This monitoring is needed in order to identify breaches of the rules, disorderly trading conditions or conduct that may involve market abuse⁸⁴.

In the case of significant breaches of the rules or disorderly trading condition the market operators and the investment firms have to report them. They are also required from the Member State to give information without delay to the authority competent for the investigation and prosecution of market abuse and to provide also full assistance in investigating and prosecuting market abuse occurring on or through its system⁸⁵.

Investment firms which, either on own account or on behalf of clients, conclude transaction in shares admitted to trading outside an MTF, have to publish the volume, the price and the time of such transactions. These information shall be published as close to real-time as possible in a way easily accessible to other market participants⁸⁶. Article 29 and article 30 of the Directive 2004/39/EC settle pre and post-trade transparency rules which are the same as the ones for the regulated markets. The difference is that the pre and post-trade transparency rules for MTFs have to be respected not only by market operators but also from investment firms.

2.3 Systematic Internaliser (SI)

The third and last component of the Trading Venues under MIFID I are the systematic internalisers that operate only on a bilateral basis.

Systematic internalisers are defined at the Art. 4(1)(7) of the Directive 2004/39/EC as “*Systematic internaliser means an investment firm which, on an organised, frequent and systematic basis, deals on own account by executing client orders outside a regulated market or an MTF*”

Thanks to the Regulation 1287/2006 we identify the criteria for determining when an investment firm is a systematic internaliser⁸⁷. The article 21 section 2 of this regulation affirms that when an investment firm deals on own account by executing clients’ orders outside a

⁸⁴ Article 26(1) Directive 2004/39/EC

⁸⁵ Article 26(2) Directive 2004/39/EC

⁸⁶ Article 28 Directive 2004/39/EC

⁸⁷ Parziale, A. La proposta di riforma MiFID II ed il suo impatto sulla disciplina delle trading venues. *Risi Dei Mercati Finanziari E Corporate Governance: Poteri Dei Soci E Tutela Del Risparmio*, 335.

regulated market or an MTF it must be treated as a systematic internaliser if it follows and respects some criteria showing that it performs an activity on an organised, frequent and systematic basis⁸⁸:

- The activity has a commercial role for the firm, it's carried according with non-discretionary rules and procedures;
- The activity is carried on by personnel, or by means of an automated technical system, assigned to that aim, without caring if those personnel or that system are used exclusively for that purpose;
- The activity is available to clients on a regular or a continuous basis.

If an investment firm doesn't carry on the activity specified above in respect of one or more shares it ceases to be a systematic internaliser in those shares⁸⁹. The investment firm has to announce in advance its intention to cease that activity using the same channels as it uses to publish its quotes if it's not possible using a channel that is identically accessible to its clients and other market participants.

The activity of dealing on own account executing client orders in some cases shall not be treated as performed on an organised, frequent and systematic basis:

- The activity is performed on an *ad hoc* and non-regular bilateral basis with the wholesale counterparties as part of the business relation which are characterised by dealing above standard market size;
- The transactions are carried outside the system usually used by the firm concerned for any business that it carries in the capacity of a systematic internaliser.

The competent authority shall make certain the maintenance and publication of a list of all systematic internaliser (S.I), in respect of the shares admitted to trading on a regulated market, which has to be authorised as investment firm. This list has to be reviewed at least annually⁹⁰.

An investment firm will constitute a systematic internaliser where it's proposing to execute a client order. Systematic internaliser can decide to give access to their quotes only to professional clients, only to retail clients, or to both. They shouldn't be able to discriminate with those categories of clients.

⁸⁸ Section 2 Article 21(1) Regulation 1287/2006/EC

⁸⁹ Article 21(2) Regulation 1287/2006/EC

⁹⁰ In accordance with Article 34(5) Regulation 1287/2006/EC

The Member States require systematic internalisers in shares to publish a firm quote in the shares admitted to trading on a regulated market for which they are systematic internalisers and for that there is a liquid market. These shares⁹¹ are considered to have a liquid market if the they are traded daily with a free float at least of EUR 500 million and not less than one of these conditions is satisfied:

- The average number of transactions in the share per day is not less than 500;
- The daily average turnover for the shares is at least EUR 2 million.

A share is not considered to have a liquid market if the estimate of the total market capitalisation for that share the first day of trading after the admission is less than EUR 500 million.

For each liquid share that a systematic internaliser is considered as it, this S.I should maintain quotes that are close in price to comparable quotes for the same share in other trading venues. Furthermore, it has to maintain a record of its quoted prices, which it shall retain for at least 12 months or more if it's considered appropriate. If there is not a liquid market for those shares, systematic internalisers shall disclosure quotes to their clients on request⁹².

In the article 27 of MIFID I the European parliament and council make a distinction between systematic internalisers that only deal in sizes above standard market size, which are not subject to the provisions of this article, and the ones who sometimes deal for sizes up to standard market size and in this case are subject to the provisions of this article. Systematic internalisers are authorized to decide the size or sizes at which they are going to quote. For a specific share each quote can include firm's bid and/or offer prices for sizes which could be up to standard market size for the class of shares to which the share belongs. These prices shall reflect the market conditions for that share. These shares are grouped in classes based on the average value of the orders executed in the market for those shares. These classes are defined, at least annually, by the competent authority of the most relevant market in terms of liquidity. This information has to be made public to all market participants⁹³. The systematic internalisers' quotes have to be published on a regular and continuous basis during trading hours. They need to be updated at any time and they can be withdrawn under exceptional market conditions.

⁹¹ Article 22(1)(a) and 22(1)(b) Regulation 1287/2006/EC

⁹² Article 27(1) Directive 2004/39/EC

⁹³ Article 27(2) Directive 2004/39/EC

They have to be published in an easy and accessible way for the other market participants on a reasonable commercial basis⁹⁴.

Systematic internaliser execute the orders they receive from their retail clients in relation to the shares for which they are systematic internaliser at the quoted prices at the time of the reception of the order. The number and the volume of orders has to be considered as exceeding the norm if a systematic internaliser cannot execute these orders without having undue risks. To find the orders' number and volume that can execute without undue risk a systematic internaliser shall maintain and implement as part of its risk management policy a non-discriminatory one that considers the volume of transactions, the capital that the firm has to cover the risk for that kind of trade and the prevailing conditions in the market in which the firm is operating. These orders have to be executed while complying with the obligations to execute orders on terms most favourable to the client⁹⁵.

For this purpose, the investment firms, authorized to trade, must execute their orders without missing any passage. The point to be considered are the price, the costs, the speed, the orders' chance to be executed and settled, the size, the nature and any other detail that can influence the execution of the order. Systematic internalisers can execute orders received from their professional clients at different prices than their quoted ones without having to comply with the rules, in respect of a transaction or orders that are subjected to conditions other than the current market price. A systematic internaliser, whose quote or higher quote is lower than the standard market size, receives an order from a client of a bigger size than its quotation size (lower than the standard market size) it can decide to execute the part of the order that exceed its quotation size, providing the execution at the quoted price⁹⁶.

Systematic internalisers decide, basing on their commercial policy and in an objective and non-discriminatory way, the investors to whom they give access to their quotes. They can refuse to start discontinuing or not business relationships with investors on the basis of commercial considerations (investors' credit status, the counterparty risk and the final settlement of the transaction). Systematic internalisers can limit the risk of being exposed to multiple transactions from the same client restricting in a non-discriminatory way the number of transactions from the same client. They can limit in a non-discriminatory way the total number of transactions

⁹⁴ Article 27(3) Directive 2004/39/EC

⁹⁵ Article 21 Directive 2004/39/EC

⁹⁶ Article 27(3) Directive 2004/39/EC

from different clients at the same time only where the number or/and volume of orders sought by clients exceeds considerably the norm⁹⁷.

Same as the other two components of the trading venues the systematic internalisers have to publish pre-trade information on a continuous basis during the trading hours. The pre and post-trading information linked with the transactions, taking place on trading venues and during the normal trading hours, shall be available as close as possible to the real time. The post-trade information has to be made available in any case within three minutes of the relevant transaction. In the case of transactions that take place on a trading venue outside the trading hours the post-trade information has to be made public before the opening of the next trading day of the trading venue where the transaction was made⁹⁸.

2.4 Over The Counter (OTC)

Not all the financial instruments are traded on the trading venues, if one of them is traded outside the exchange we can say that it's traded on the Over The Counter (OTC). An OTC market has some characteristics: high level of customisation this means that the financial products are made basing on the willingness of clients, lack of transparency because the price of a transaction is made public only after that the transaction is over and lack of regulation because on these markets the counterparties trade with another one without having intermediaries.

In over the counter markets, an investor who wants to sell or to buy have to look for a counterparty. Therefore, when two counterparties meet, their relationship is only strategic. Prices are set with a bargaining process that represents each investors' or market-makers' alternatives to immediate trade⁹⁹. The advantage of the OTC market is that a transaction can be tailored to meet the precise needs of the end-user. Even if the OTC derivatives didn't cause the financial crisis in 2008, but have been blamed for increasing systemic risk, after it the weak structure of the OTC derivatives markets was shown. OTC derivatives benefit financial markets and the wider economy by improving the pricing of risk, adding to liquidity, and helping market participants to manage their respective risks¹⁰⁰. Regarding the OTC the previous regulations, as MIFID I, didn't treat its regulation neither its transparency requirements.

⁹⁷ Article 27(5) and Article 27(6) Directive 2004/39/EC

⁹⁸ Article 28 Directive 2004/39/EC

⁹⁹ Duffie, D., Garleanu, N. and Pedersen, L. (2005). Over-the-counter markets. *Econometrica*, (Volume 73 N.6), p.1815.

¹⁰⁰ G-20 Leaders (2010). *Implementing OTC Derivatives Market Reforms*. Financial Stability Board.

As revealed by the recital 53 of the Directive 2004/39/EC “*it’s not the intention of this Directive to require the application of pre-trade transparency rules to transactions carried out on an OTC basis, the characteristics of which include that they are ad-hoc and irregular and are carried out with the wholesale counterparties and are part of a business relationship which is itself characterised by dealings above standard market size, and where the deals are carried out outside the system usually used by the firm concerned for its business as a systematic internaliser*”¹⁰¹.

As said before the crisis showed lacks into this market. The limited transparency of the market increased the risk-taking because regulators did not have a clear picture of how OTC derivatives were traded. On the other hand, if this particular market is used responsibly it can provide liquidity and risk management benefits to the financial system¹⁰².

Now we are going to have a look of how a transaction on the OTC works. An OTC trade is negotiated between buyer and seller. The aspect of it is that the two parties can decide if they want to make the transaction using a central counterparty which will assume responsibilities for the trade. Over-the-Counter trades are centrally cleared if both the parties accept to give the trade to a central counterparty (CCP), obviously the CCP has the right to refuse this allocation. To reduce risks, the regulators have increased the use of CCP for OTC derivatives trades. The traders on the OTC can incur into losses through two ways: if the performance of the underlying assets doesn’t respect the predictions or if the counterparty makes default¹⁰³. Here any loss of the counterparty is the gain of the other. Moreover, every counterparty is exposed to the default of the other.

The level of systemic risk is reached by the counterparty credit risk when the failure of a market participant might trigger large unexpected losses on its derivatives trades, that could damage the financial condition of one or more of its counterparties.

Another scenario of systematic risk can happen when a large OTC derivatives market participant fail, this can lead to a “fire sale”¹⁰⁴ that brings to a higher price volatility or price distortion. This risk can be reduced receiving the guarantee by a central counterparty, usually

¹⁰¹ Recital 53 Directive 2004/39/EC

¹⁰² Duffie, D., Li, A. and Lubke, T. (2010). *Federal Reserve Bank of New York Staff Reports*. Policy Perspective on OTC Derivatives Market Infrastructure. p.4.

¹⁰³ Duffie, D., Li, A. and Lubke, T. (2010). *Federal Reserve Bank of New York Staff Reports*. Policy Perspective on OTC Derivatives Market Infrastructure. P 7-8

¹⁰⁴ Fire sale= sales of goods at a very discounted price

called a clearing house. The CCP is in between the two original counterparties, acting as the seller and the buyer.

CCP being exposed to the risks due to transactions has to be able to manage them also in hard situations in other words it has to be resilient.

Clearing trades through a Central Counterparty

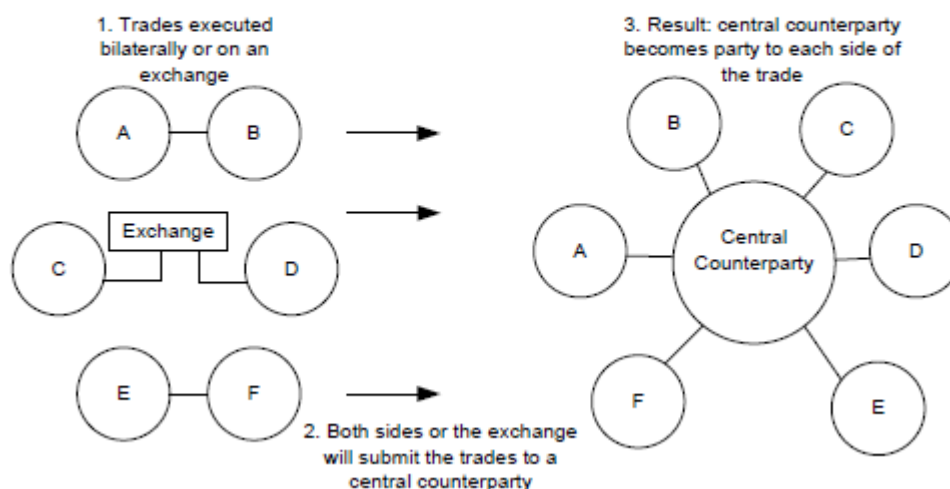


Figure 2 How a CCP works

To be financially resilient a CCP depends on a stringent membership access, a robust margining¹⁰⁵ regime, a clear default management procedure and on a significant financial resource that back its performance. All the members of a CCP have to provide capital to a pooled CCP fund. This fund is an additional level of protection, after the initial margin, to cover losses caused by the failure or bankruptcy of a member to perform on a cleared derivative. Although the OTC derivatives markets are not regulated and they increase the systemic risk, their cancellation would lead more harm than good.

OTC needs to exist because it allows the existence of derivatives that are not actively traded and also it give a wide choice to investors and operating companies. Further, large companies rely on OTC derivatives to hedge their risks that do not have a close match available on organized exchanges, and as we know remaining unhedged can be costly¹⁰⁶.

¹⁰⁵ In order to effecting new securities transactions and commitments, the costumer shall be required to deposit margin in cash and/or securities in the account which will follow a regime settled by the counterparties.

¹⁰⁶ Duffie, D., Li, A. and Lubke, T. (2010). *Federal Reserve Bank of New York Staff Reports*. Policy Perspective on OTC Derivatives Market Infrastructure. P.9-10-13

At this point knowing the importance of the OTC derivatives markets in 2009 the world financial leaders set a meeting, the G20 Finance ministers and Central Bank Governors, in Pittsburgh to discuss about an OTC derivatives markets reform. The aim of this meeting was to improve over-the-counter derivatives market. Before the end of 2012 the standardized contracts have to be traded on the trading venues or electronic trading platforms, when it's suitable. Moreover, they have to be cleared via CCP. Further, the contracts that are not standardized has to be reported to trade repositories.

Another kind of contract the non-centrally cleared must fulfil higher capital requirements. Going on it was asked to FSB and its members to improve transparency in the derivatives markets, to reduce systemic risk and to improve the protection against the market abuses¹⁰⁷. Trying to do this the G20 meeting in Pittsburgh fixed at the top of their agenda five points¹⁰⁸ to work on:

- **Try to bring all OTC derivative contracts to trade repositories¹⁰⁹**: this point can be reached in two different ways. One is requiring to market participants to report all the needed information on their OTC derivatives portfolio to the competent authority. The other one is forcing the market participants to point out the information regarding their OTC derivatives portfolio to a trade repository.
- **Take all standardised OTC derivative contracts on exchange**: to do so there two possible policy options. The first one can be ordering the publication of aggregate position information. The second one is to give both aggregate and individual position information.
- **Improving transparency through central counterparties¹¹⁰**:for this purpose, we need to increase the use of CCPs clearing. This objective is reachable with different options. First basing on the existing initiatives and incentives to improve the use of CCPs clearing. Moreover, obtain additional industry obligations to use the CCPs clearing. At last set as mandatory the use of CCPs clearing for OTC derivatives that respect predefined criteria.
- **Setting higher capital requirements for non-centralized cleared contracts**
- **Control regularly where these previous measures are enough to enhance market transparency, mitigate systemic risk and protect against market abuse**

¹⁰⁷ Leaders' Statement- The Pittsburgh Summit, G20, 2009, pp. 8-9

¹⁰⁸ European central Bank (2016). *Looking back at OTC derivative reforms – objectives, progress and gaps*. p.3.

¹⁰⁹ European Commission (2010). *Impact Assessment*. Brussels, p.35.

¹¹⁰ European Commission (2010). *Impact Assessment*. Brussels, p.35

3. MIFID II

After the burst of the real subprime bubble in the 2007-2008 the European parliament and council was inevitably forced to start a “legislation cascade” oriented to increase to regulation of banking and financial industry. The president of the European Commission Jean-Claude Juncker¹¹¹ said that the European regulation for the bank’s sector has to be renewed exploiting the Capital Markets Union (CMU). To increase the economy’s financing the capital markets shall be developed moreover, it needs to be integrated with the object of making simpler and less expensive the collection of funds mainly for the small medium enterprises (SME).¹¹²

With his speech the president wanted to do another step to reach the Capital Markets Union. The European Commission immediately accepted this challenge and in the 2015 they published to so called green book titled “Building a Capital Markets Union” to be reached into 2019¹¹³. The European Securities and Markets Authority (ESMA) agreed immediately with the proposal of the European Commission saying that a CMU is the natural evolution of a free market¹¹⁴. Doing a step backwards in May 15th, 2014 the Directive 2014/65/EU (Markets in Financial Instruments Directive II – MIFID II) and the Regulation 600/2014/EU were published. This Directive and this Regulation were the second step to reach the CMU (the first step was the Directive 2004/39/EU MIFID I). The new Directive MIFID II¹¹⁵ is a middle way between the previous one MIFID I and a new version introducing a re-modelling topic already regulated.

The recital 7 of the Directive 2014/65/EU the European Parliament and the Council affirmed that this new Directive and the Regulation 600/2014/EU are going to replaced partially the old fashioned MIFID I this recital said “*Directive 2004/39/EC should therefore now partly be recast as this Directive and partly replaced by Regulation (EU) No 600/2014 of the European Parliament and the Council. Together, both legal instruments should form the legal framework governing the requirements applicable to investment firms, regulated markets, data*

¹¹¹ Marin, F. (2018). VERSO LA CAPITAL MARKETS UNION: LE NUOVE TRADING VENUE NELLA MIFID II E NEL MIFIR. *RIVISTA TRIMESTRALE DI DIRITTO DELL'ECONOMIA*

¹¹² Juncker, J. (2014). *A new start for Europe*. European Commission. Retrieved from http://europa.eu/rapid/press-release_SPEECH-14-567_en.htm

¹¹³ Marin, F. (2018). VERSO LA CAPITAL MARKETS UNION: LE NUOVE TRADING VENUE NELLA MIFID II E NEL MIFIR. *RIVISTA TRIMESTRALE DI DIRITTO DELL'ECONOMIA*

¹¹⁴ European Securities and Markets Authority. (2015). *ESMA publishes response to Capital Markets Union Green Paper*.

¹¹⁵ Giappichelli. *Finalità e contenuti della direttiva 2014/65/UE (MiFID II) e del regolamento (UE) n. 600/2014 (MiFIR)* [Ebook].

*reporting services providers and third country firms providing investment services or activities in the Union. This Directive should therefore be read together with that Regulation....*¹¹⁶

MIFID II is a complex regulatory “package” made by articles following the Lamfalussy scheme, and by technical standards issued by the European Commission, proposed by the ESMA. These technical standards set the new structure of MIFID II and of its new measures. These new standards show a system that is evolving continuously, thanks to them the regulator doesn’t need to intervene on the pillars of the regulations, in case that these standards will leave some breaches on the regulation of some aspects it’s due to ESMA and to the National competent authorities fulfil these breaches¹¹⁷.

MIFID II goes alongside with the detailed Regulation 600/2014/EU (MIFIR) the technical standards are founded also into this regulation. MIFIR is not the only regulation which needs to be looked at to better understand and to have full picture of the European Commission’s plan. MIFID II is linked also with the European Market Infrastructure Regulation 648/2012/EU (EMIR) and the Packaged Retail and Insurance-based Investment Products regulation (PRIIPs).

MIFID II keeps the division between financial services in one side and on the other the trading venues. Obviously respect to the Directive 2004/39/EC the new package of regulation introduced with MIFID II made some changes and analyse deeper some aspects. This new directive wants to be straighter, so the rules are more prescribed and more focus on every detail¹¹⁸.

The Directive 2014/65/EU was at first supposed to be incorporated into national law by 3rd July 2017 but because of the huge changes that this operation required with the Directive 2016/1034/EU¹¹⁹ this application was postponed by one year. *“In light of the exceptional circumstances and in order to enable ESMA, NCAs and stakeholder to complete the operational implementation, it is appropriate to defer the date by which the Member States need to apply the measures transposing Directive 2014/65/EU and the date by which the repeal of Directive 2004/39/EC is to take effect by 12 months until 3rd January 2018. Reposts and reviews should be deferred accordingly. It is also appropriate to defer the date by which the Member States need to transpose Directive 2014/65/EU to 3rd July 2017”* with this paragraph the Directive

¹¹⁶ Recital 7 Directive 2014/65/EU

¹¹⁷ Annunziata, F. (2018). IL RECEPIMENTO DI MiFID II: UNO SGUARDO DI INSIEME, TRA CONTINUITÀ E DISCONTINUITÀ. In *Rivista delle Società* page 3.

¹¹⁸ Annunziata, F. (2018). IL RECEPIMENTO DI MiFID II: UNO SGUARDO DI INSIEME, TRA CONTINUITÀ E DISCONTINUITÀ. In *Rivista delle Società* page 4

¹¹⁹ Recital 11 Directive 2016/1034/EU

2016/1034/EU was affirming the defer of the application of MIFID II. Finally, the Directive 2014/65/EU applies January the 3rd 2018, it's incorporated into the national laws of 31 countries (28 from the European Union plus Iceland, Liechtenstein and Norway).

As seen before MIFID II and MIFIR were introduced because the crisis of 2008 shown some breaches into the previous directive. These two measures taken by the European Commission faced the lacks in three main fields:

1. The transparency rules have to be applied to instruments similar to capital instruments, to instruments different from capital instruments and to the market operator that were partially or not regulated so far.
2. Market integrity: changes are introduced to guarantee equal conditions between the different trading venues taking into account the technologic development.
3. The investors' protection is strengthened mainly through incentives, introducing measures to protect the clients and rules about the product governance.

To fulfil the lacks into the three breaches above MIFID II has been introduced with the aims of¹²⁰:

- **Ensuring that organised trading takes place on regulated platforms**, the objective is to close loopholes in the financial markets' structure. A new regulated trading platform is settled to capture a maximum of unregulated trades. This is the so-called Organised Trading Facility (OTF) that will exist alongside the regulated markets and the multilateral trading facility. The OTF will substitute the Systematic Internaliser into the definition of trading venues¹²¹.

- **Improving the transparency and oversight of financial markets-including derivatives markets- and addressing some shortcomings in commodity derivatives markets**, the transparency requirements that apply before and after the trade of a financial instrument are strengthen, for example when market participants have to publish information on the prices of financial instruments¹²².

- **Limiting speculation on commodities**, speculation on commodities is reduced with the introduction of a harmonised EU system which sets limits on the position held in commodity derivatives¹²³.

¹²⁰ Investment services and regulated markets - Markets in financial instruments directive (MiFID). (2018). ESMA

¹²¹ Better regulated and transparent financial markets. (2017). Eur-lex

¹²² Better regulated and transparent financial markets. (2017). Eur-lex

¹²³ Better regulated and transparent financial markets. (2017). Eur-lex

- **Introducing rules on algorithmic and high frequency trading**, controls must be established for trading activities which are done electronically at a high speed, the so-called ‘high frequency trading’ (HFT). The increased use of technology lead to potential risks that can be mitigated by a combination of rules to ensure that these trading techniques do not create disorder into the market¹²⁴.

- **Enhancing investor protection and improving conduct of business rules as well as conditions for competition in the trading and clearing of financial instruments**, investment firms shall act in accordance with the clients’ best interests while providing them investment services. These firms should safeguard the assets of their clients and be sure that the products they intend to launch are designed to meet the need of final clients. Investor shall receive increased information on services and products offered or sold to them. The investment firms have to ensure that staff remuneration and performance assessments are not organised in a way that goes against the interests of the clients. This can happen when performance targets and remunerations provide an incentive for staff to recommend a financial product instead of another that would meet the clients’ needs in a better way¹²⁵.

MIFID II, as said before and affirmed by itself, goes alongside with the Regulation 600/2014/EU (MIFIR). MIFIR, being introduced at the same time and for the same reason, has the same objectives of MIFID II. It regulates pre and post-trade transparency in relation to competent authorities and investors, the requirements and obligations of data service providers, establishes the obligation to negotiate derivatives in trading centres and certain supervisory action.¹²⁶ This Regulation sets requirements on¹²⁷:

- Disclosure of data on trading activity to the public.
- Disclosure of transaction data to regulators and supervisors.
- Mandatory trading of derivatives on organised venues.
- Removal of barriers between trading venues and providers of clearing services to ensure more competition.
- Specific supervisory actions regarding financial instruments and positions in derivatives.

The other Regulation that we can find alongside MIFID II and MIFIR is the EMIR. It is about the OTC derivatives, central counterparties and trade repositories. As it is written in

¹²⁴ Better regulated and transparent financial markets. (2017). Eur-lex

¹²⁵ Better regulated and transparent financial markets. (2017). Eur-lex

¹²⁶ Comision Nacional Del Mercado De Valores. (2018). CNMV - MiFID II - MiFIR.

¹²⁷ ESMA. (2018). Investment services and regulated markets - Markets in financial instruments directive (MiFID).

the recital 10 of this Regulation its scope is to safeguard the stability of financial markets in during emergency situations.¹²⁸ This Regulation sets out the criteria for determining whether or not different classes of OTC derivative contracts should be subject to a clearing obligations¹²⁹. The last Regulation that goes alongside MIFID II and MIFIR is the Regulation 1286/2014/EU on key information documents for packaged retail and insurance-based investment products. The aim of this Regulation is to settle uniform rules on the format and content of the key information document to be drawn up by PRIIP manufacturers¹³⁰.

3.1 Differences between MIFID I and MIFID II

Then the combination of this Directive and these three Regulations were supposed to give a protection and a regulation as close as possible to the full one. The International organisation of securities markets supervisors (IOSCO) recognize the key aim of the Directive as “protecting the investors” and “ensuring that markets are fair, efficient and transparent”¹³¹.

To protect the investor in the best way possible MIFID II was directed also to the activity of financial consulting, for the first time it became mandatory, for the financial consultants, informing the clients on the financial activity they were doing. So MIFID II settled rules about the different procedures and the different services offered¹³². MIFID II introduced measures of product governance and product intervention. This mechanism was introduced to protect the investors and to help them in choosing the financial products¹³³. This new way of relating with the clients underlines a change into the regulation which is now finalised to optimize the offered service. This happen because the changes into the legislation have modified the relationship between the investor and the consultant who is not a seller of a product anymore, but its role is to help the clients providing a service (giving personalised recommendations).

MIFID I lasting only a decade is a recognition that it leaned too much towards market efficiency, but not sufficiently towards market integrity. MIFID I through the introduction of Trading Venues increased the competition into the market but at the cost of transparency. Thereafter MIFID II extended the pre and post-trade transparency rules to the non-equity products to improve the price discovery. To avoid that these requirements are waived MIFID

¹²⁸ Recital 10 Regulation 648/2014/EU

¹²⁹ Recital 16 Regulation 648/2014/EU

¹³⁰ Article 1 Regulation 1286/2014/EU

¹³¹ Lannoo, K. (2017). *MiFID II and the new market conduct rules for financial intermediaries: Will complexity bring transparency?* Bruxelles: European Capital Markets Institute pag.6

¹³² Giappichelli. *Finalità e contenuti della direttiva 2014/65/UE (MiFID II) e del regolamento (UE) n. 600/2014 (MiFIR)*

¹³³ Capriglione, F. (2015). Prime riflessioni sulla MiFID II (tra aspettative degli investitori e realtà normativa). *Rivista Trimestrale Di Diritto Dell'economia*, (2), 88.

II created a centralised system for data consolidation and tightened the operational and governance requirements for market intermediaries¹³⁴. Further MIFID II obtained a main international role about the financial regulation for the Member States, most important it introduced a unique regime of access, to the markets of the European Union, for subjects having their head offices in third countries. This regime is based on an evaluation made by the European Commission about extra-border services and investment activities with retail investors and qualified counterparties¹³⁵.

Another change brought by MIFID II regards regulated markets and investment firms, from MIFID I the length and the scope are grown exponentially. The investment firms' business rules have been greatly extended¹³⁶. New provisions were introduced about the high-frequency trading (HFT) and also regarding the Organised trading Facilities (OTFs). Obviously, the implementation and the adaptation of the system to the new and modified provisions introduced by MIFID II needs lot of time. Furthermore, it was necessary to collect and store a huge amount of data to guarantee the best execution in a broader set of market segments. MIFID II has some longer-term objectives regarding the banks and the trading venues. For what concern the banks MIFID II want to change structurally the universal banks, and the way in which banks fund research. The banks will be forced to change the way they finance analysts to be able to meet the requirement to create research accounts. Moreover, MIFID II, as above, will bring changes also to the trading venues landscape. The scope for MTFs will be widened, a new component of the trading venues will be introduced, and it will replace the systematic internaliser. This component is the called organized trading facility (OTF). Besides MIFID II will lead to a reduced attractiveness of the over the counter (OTC) markets. New trading platforms for bonds and derivatives will emerge further to the new price transparency requirements.

¹³⁴ Lannoo, K. (2017). *MiFID II and the new market conduct rules for financial intermediaries: Will complexity bring transparency?* Brussels: European Capital Markets Institute pag.7

¹³⁵ Article 46 Regulation 600/2014/EU

¹³⁶ Lannoo, K. (2017). *MiFID II and the new market conduct rules for financial intermediaries: Will complexity bring transparency?* Brussels: European Capital Markets Institute pag.8

4. TRADING VENUES 2.0

Differently from its previous version MIFID II gave a definition of trading venue. “*Trading venue means a regulated market, an MTFs or an OTFs*”¹³⁷ with this article (Art. 4(24)) the European Parliament and the Council wanted to give a clear and a finite picture of what a trading venue is to set properly what is not an OTC.

Trading venues were subjected to some changes with the introduction of MIFID II. First of all, this new Directive added the Organised Trading Facilities (OTFs) as trading venues alongside regulated markets and Multilateral Trading Facilities (MTFs). Then, the systematic internalisers were downgraded, thus means they were part of the concept of trading venues anymore. However, these systematic internaliser obtained an expansion of their facilities becoming able to also trade non-equity products. The MTFs with MIFID II have been taken up as the regime for alternative trading platforms, as competition to the main regulated markets, but also for the secondary markets of the traditional exchanges¹³⁸.

The OTFs were created after the G-20 which decided to bring all OTC standardized contracts on exchange. Moreover, the OTFs can execute orders on a discretionary basis, they were introduced to reduce dark pools, to tackle the fragmentation of order flow and to bring systematic internalisers and some activities of broker crossing network into the open. MIFID II in certain way re-introduce the concentration rule linked with the trading venues. It makes a distinction between equity instruments and derivatives. The equity instruments have to be negotiated only on regulated markets, MTFs, systematic internaliser or on a third country trading venues. For what concern the derivatives they need to be negotiated on regulated markets, MTFs and OTFs¹³⁹¹⁴⁰. For all the three components of trading venues (regulated markets, MTFs and OTFs) the platform’s operator (market operator or an investment firm) is neutral, this means that for them it’s forbidden to trade against their own proprietary capital (the pro-tradeing). Furthermore, it’s still possible for a systematic internaliser to organise trading. A systematic internaliser is able to execute client transactions against its own proprietary capital, this is possible because the SI doesn’t bring together third party buying and selling interests as regulated markets, MTFs and OTFs do.

¹³⁷ Article 4(24) Directive 2014/65/EU

¹³⁸ Lannoo, K. (2017). *MiFID II and the new market conduct rules for financial intermediaries: Will complexity bring transparency?* Bruxelles: European Capital Markets Institute pag.11-13

¹³⁹ Marin, F. (2018). *VERSO LA CAPITAL MARKETS UNION: LE NUOVE TRADING VENUE NELLA MIFID II E NEL MIFIR. RIVISTA TRIMESTRALE DI DIRITTO DELL'ECONOMIA* pag.66

¹⁴⁰ Article 23-28 Regulation 600/2014/EU

To do business on regulated markets, MTFs, OTFs and systematic internaliser the supervisory authority has to approve their businesses, therefore this supervisory authority has the role to continuously supervise the firms and their activities. Even if they get this authorisation from the competent authority a transaction is considered to be executed on a Trading Venues only when the buying and selling interest of two parties is brought together by the Trading venue either on a discretionary or non-discretionary basis or, when the buying and selling interest of two parties is not brought together by the trading venue either on a discretionary or non-discretionary way, but the transaction is nonetheless subject to the rules of that Trading Venue and is executed in compliance with those rules¹⁴¹.

Knowing the importance of these financial firms, the supervisor focuses its attention on financial stability, risk management, business plan and it has to ensure that fit and proper standards are set for shareholders and boards of directors¹⁴². As we know the definitions of the three kinds of trading venues are very close to each other, however the general regulatory approach is different in some aspects.

Into regulated markets the first need is to regulate this type of market for issuing and trading in equities. In here the market operator is forced to match orders that traders put in the trading system without the obligation of best execution, this makes the market neutral. The traditional regulation of stock exchanges has focused on the exchanges' rights and duties to establish membership and trading rules, disclosure obligations for issuers listed on the market and, in part, market surveillance¹⁴³.

On the other hand, the starting point for the operation of a MTFs and an OTFs is that investment firms can provide plenty of investment services and one of them is trading facility. Investment firms' main business is to advise clients and trade on their best interest and on their behalf, this creates a relationship between the firm and its clients. Therefore, it's important that the investment firms ensure to: act honestly, fairly, professionally and for the best interest of the clients, that any conflicts of interest are identified and prevented and that investment firms provide clients adequate and relevant information to enable them to make informed investment decisions and to assess investments' risk¹⁴⁴.

¹⁴¹ ESMA (2016). Transaction reporting, order record keeping and clock synchronization under MIFID II. p.23.

¹⁴² Clausen, N., & Sørensen, K. (2012). Reforming the Regulation of Trading Venues in the EU under the Proposed MiFID II - Levelling the Playing Field and Overcoming Market Fragmentation? In *Nordic & European Company Law Working Paper Series* (p. 285). Mette Neville and Karsten Engsig Sørensen 285-286

¹⁴³ Article 47 Directive 2014/65/EU

¹⁴⁴ Iris H-Y Chiu, 'Securities intermediaries in the Internet Age and the Traditional Principal-Agent Model of Regulation: Some Observations from European Union

For an investment firm running a MTF or an OTF activities can be an ancillary activity and can therefore be influenced by the principal-agent relationship¹⁴⁵. Moreover, the regulation of regulated markets seems to be more detailed and more focused on the integrity of the market conversely to the one of MTFs and OTFs that is focused on the best interest of clients and the obligation of best execution¹⁴⁶. Further, the authorisation to operate a MTF or an OTF requires a detailed description of the functioning of the market, rules and procedures for a fair and orderly trading and also the criteria for the efficient execution orders. Additionally, MTFs and OTFs must give enough public information to enable traders and investors to make informed investment decisions¹⁴⁷. Also, the duty to monitor compliance with the rules of the market and report breaches to the supervisory authorities is the same for all three kinds of trading venues. This duty has the odd of adding expenses in running a MTF or an OTF and this caused a decrease into the volume of trading compared to the one on the regulated markets¹⁴⁸.

Rules of governing access to the market are based on objective criteria. Although only regulated markets are obliged to give all investment firms access to the market directly or becoming remote member¹⁴⁹. Most importantly the three kind of trading venues differ regarding the trading rules and the financial instruments that they trade. As the definitions of regulated markets and MTFs suggest they both have non-discretionary and predetermined rules for the execution of orders in their system. They are forced to have and to follow these rules. On the other hand, OTFs, always following the best execution principle and the OTFs own trading rules, may match traders' orders discretionarily¹⁵⁰.

With MIFID II the transparency requirements have the priority for the Commission. These requirements are founded into the MIFIR which applies the same pre and post-transparency ones to the three kinds of trading venues. The transparency requirements are different basing on the type of financial instruments and the type of trading¹⁵¹. MIFID II after setting the principles regarding how to do business on the Trading Venues and which rules the market operators and investment firms need to follow. European Council introducing this Directive tried, always looking forward to improve the clients' protection, to ensure that if a

Securities Regulation', 2 Virginia Law & Business Review, 2007, p. 307.

¹⁴⁵ Article 14 Regulation 600/2014/EU

¹⁴⁶ Jerry W. Markham & Daniel J. Harty, 'For Whom the Bell Tolls: The Demise of Exchange Trading Floors and the Growth of ECNs', 33 Journal of Corporation Law, 2007–2008, p. 865, at p. 911

¹⁴⁷ Article 18(2) Directive 2014/65/EU

¹⁴⁸ Article 32 and 56 Directive 2014/65/EU

¹⁴⁹ Article 38 Directive 2014/65/EU

¹⁵⁰ Clausen, N., & Sørensen, K. (2012). *Reforming the Regulation of Trading Venues in the EU under the Proposed MiFID II - Levelling the Playing Field and Overcoming Market Fragmentation? In Nordic & European Company Law Working Paper Series* (p. 285). Mette Neville and Karsten Engsig Sørensen 292

¹⁵¹ Recital 14 Regulation 600/2014/EU

regulated market; a MTF or an OTF suspends or removes a financial instrument from trading, it should communicate this to other trading venue and to the competent authority. If the removal or the suspension is caused by the non-disclosure of information about the issuer or regarding the financial instrument, other trading venues will also be obliged to suspend or remove the financial instrument, unless this will cause significant damage to investors' interests or the orderly functioning of the market¹⁵².

4.1 Transparency for Trading venues

One the main point on which the MIFID II and the MIFIR are focus are the transparency requirements. We can find these requirements in the Title II of the Regulation 600/2014/EU. In the MIFIR we find a very clear distinction between the transparency regarding the equity instruments and one regarding the non-equity instruments. To make it clear when we talk about equity instrument we are talking about shares, depositary receipts, ETFs, certificates and other similar financial instruments.

The Article 3 of MIFIR sets the pre-trade transparency requirements for trading venues in respect of equity instruments. It shows that market operators and investment firms operating a trading venue have to make public their current bid and offer prices and also the depth of trading interests at those prices. Further, these investment firms and market operators working on a trading venue should make those information public on a continuous basis during normal trading hours. Obviously these requirements are balanced basing on the types of trading system including hybrid and periodic auction trading system. The arrangements employed by market operators and investment firms, operating a trading venue, needs to be accessible, on reasonable commercial terms and on a non-discriminatory basis¹⁵³.

In contrast there are some exceptional cases in which the competent authorities are able to postpone the obligations, regarding the publication of the information above mentioned, for market operators and investment firms operating a trading venue. These obligations are waived usually when¹⁵⁴:

- The system matching the orders based on a trading method in which the price of the equity instruments is set from the trading venue where those equity instruments were first admitted to trading or the most relevant market in term of liquidity, where the

¹⁵² Article 32-33 and Article 53 Directive 2014/65/EU

¹⁵³ Article 3 Title II Regulation 600/2014/EU

¹⁵⁴ Article 4 Regulation 600/2014/EU. To have deeper look of the pre-trade transparency waivers “Questions and Answers on MIFID II and MIFIR transparency topics”

reference price is published and is considered by market participants as a reliable reference price.

- Orders that are large in scale compared with normal size.
- Orders held in an order management facility of the trading venue pending disclosure.

Moreover, the competent authorities before conceding a waiver shall notify to ESMA and to other competent authorities the use of each waiver and give an explanation about its functioning, including the details of the trading venue where the reference price is established. Notification of the willingness to grant a waiver shall be done not less than four months before the waiver is intended to take place. In the scenario where a competent authority of another Member State disagrees, the matter has to be referred to ESMA which should act following the powers received thanks to article 19 Regulation 1095/2010¹⁵⁵.

A waiver once is granted if it is used in a way that deviates from the original purpose set by the competent authority, which granted it, it can be withdrawn. To do not unduly damage price formation trading under these waivers lead to some restriction of trading: the percentage of trading in a financial instrument run on a trading venue under these waivers has to be limited to 4% of the total amount of trading in this financial instrument on all trading venues into the Union over the previous 12 months.

Widening our picture, the overall Union trading in a financial instrument carried out under those waivers should be limited to 8% of the total in that financial instrument on all trading venues across the Union over the previous 12 months¹⁵⁶. If a trading venue overtake the amount of trading in a financial instrument (4% and overall Union 8%) the competent authority that authorised the use of these waivers by that trading venue may within two working days stop their use on that venue in that financial instrument for a period of 6 months. To make the monitoring easier for ESMA the trading made under those waivers and for determining whether the limits (4% and overall Union 8%) have been exceeded, the operators of trading venue are obliged to have systems and procedures to: allow the identification of all trades that have taken place on its venue under those waivers; and to ensure that it doesn't exceed the permitted percentage of trading allowed under those waivers (4% and overall Union 8%)¹⁵⁷.

¹⁵⁵ Article 4(4) Regulation 600/2014/EU. Article 19 Regulation 1095/2010 Settlement of disagreements between competent authorities in cross-border situations.

¹⁵⁶ Article 5(1) Regulation 600/2014

¹⁵⁷ Article 5(7) Regulation 600/2014

The Regulation doesn't only settle pre-trade transparency requirements in fact in the article 6 it shows them. The investment firms and market operators running a trading venue have to publish the price, the volume and the time of the transactions done in respect of equity instruments or similar financial instruments traded on that trading venue. These publications have to be made as close as possible to the real time¹⁵⁸. Furthermore, the market operators and the investment firms are forced to allow the access, on fair commercial terms and on a non-discretionary basis, to the dispositions they employ to publish the post-trade information. However, in some cases it's possible to obtain the authorisation of deferred publication.

This deferred publication can be allowed by the competent authority regarding transactions that are larger in scale compared with the normal size for that share¹⁵⁹. In some cases, competent authorities from different Member State disagree and the matter is brought to ESMA that can decide how to manage it, behaving accordingly with the powers received by Article 19 Regulation 1095/2010. Then, Article 64 of MIFID II requires the publication of some information, at this regard ESMA develops regulatory technical standards to enable this publication. About this the details of transaction of equity instruments that market operators operating a trading venues and investment firms operating a trading and a systematic internaliser have had done needs to be made public.

In chapter two of MIFIR we found the transparency requirements for non-equity instruments. To obtain the pre-trade transparency requirements for non-equity instruments the operators of a trading venue need to publish their bid and offer prices and the depth of their trading interest. They also have to make this information available and public on a continuous basis. Additionally, the arrangements employed by the trading venue's operators have to be accessible on commercial term. If and only if a waiver is granted the market operators and the investment firms operating a trading venue are obliged at least to publish their pre-trade bid and offer price as close as possible to the final price¹⁶⁰. The obligation, to publish the information above mentioned, required to the operators of trading venue can be waived by the competent authority.

¹⁵⁸ Article 6(1) Regulation 600/2014/EU

¹⁵⁹ Article 7 Regulation 600/2014/EU

¹⁶⁰ Article 8 Regulation 600/2014/EU

The obligation is waived when¹⁶¹:

- Derivatives that are not concern to the trading obligation exploited by the Article 28 and other financial instruments without a liquid market;
- There is larger order in scale respect to the normal market size;
- Signals of interest in request-for-quote and voice trading systems that are above a size specific to the financial instrument, that could expose liquidity providers to undue risk and takes into account whether the relevant market participants are retail or wholesale investors.
- Package orders that follow some conditions as: one component at least is bigger in scale respect to the normal market size, unless a liquid market for the package order exists; at least a component, a financial instrument, doesn't have a liquid market unless the whole order has a liquid market; all components are accomplished on a request-for-quote and overtake the specific size for the instrument.

The package orders not always have a liquid market¹⁶². To have a liquid market they need to have some characteristics: it must have at maximum four components, all of them belong to the same asset class and finally not all the components are above the LIS-threshold¹⁶³.

Before a waiver is granted, the competent authority has to make aware the ESMA and the other competent authorities regarding the use intended for each waiver and it has to explain about their functioning. The intention of conceding a waiver has to be notified not less than four months before and ESMA within two months has to give its opinion and to assess the compatibility of the waiver with the requirements above mentioned.

When another competent authority disagrees with granting a waiver from that competent authority this issue can be brought to the ESMA that will act in accordance with the article 19 Regulation 1095/2010¹⁶⁴ and it will decide how to try to solve it. If the waiver is being used in a different way from the original one the competent authorities can withdraw it on their initiative or on request of other competent authorities. This withdrawal has to be notified to ESMA before it happens giving all the reason why it happened.

¹⁶¹ Article 9(1) Regulation 600/2014/EU

¹⁶² European Securities and Markets Authority (2017). *Final Report Draft RTS on package orders for which there is a liquid market*. p.9.

¹⁶³ LIS threshold= Large In Scale threshold

¹⁶⁴ Article 19 Regulation 1095/2010/EU Settlement of disagreements between component authorities in cross-border situation

Furthermore, the supervising competent authority has the power to suspend the post-trade obligations if the liquidity of the non-equity instruments, traded on the supervised trading venues, falls below a threshold defined on objective criteria specific to the market for the financial instrument concerned¹⁶⁵. This suspension is temporary and it cannot last more than three months at the first sight, it can be renewed for a period again no longer than three months. Before doing this, suspending or renewing the suspension, the competent authority has to notify its intention to the ESMA alongside a detailed explanation. ESMA has the duty to comment it. The threshold is calculated following parameters and methods set in a way that if the threshold will be reached it will show a significant decline in liquidity across all venues¹⁶⁶.

Likewise, the trading venues that trade equity instruments also the ones which trade non-equity need to respect their post-trade transparency requirements. At this regard the operators of a trading venue must publish the price, the volume and the time of the transactions done in respect to non-equity instruments. All the details of those transactions have to be reported public as close to real time as possible. Moreover, investment firms and market operators have to concede the access on a non-discriminatory basis to the arrangements used to publish the information¹⁶⁷.

The authorisation of deferred publication for trading venue that trades non-equity instruments has to be given by the competent authority. It can authorize the deferred publication regarding transactions that: are larger in scale respect to the normal market size of that financial instrument traded on a trading venue; are related to financial instruments without a liquid market¹⁶⁸. To defer the publication the trading venues' operators need to receive the approval from the competent authority. Further, the obligation of publications for trading venues managing non-equity instruments can be suspended. This happens when the liquidity of those financial instruments' class goes under a threshold defined on objective criteria.

The suspension cannot be longer than three months however it can be suspended or renewed again for three months. The intention of suspending or renewing the suspension has to be notified to ESMA which has to issue its opinion to the competent authority as soon as possible. The competent authorities with an authorisation of deferred

¹⁶⁵ Article 9(4) Regulation 600/2014/EU

¹⁶⁶ Article 9(5) Regulation 600/2014/EU

¹⁶⁷ Article 10 Regulation 600/2014/EU

¹⁶⁸ Article 11(1) Regulation 600/2014/EU

publication can ask for the publication of limited details of a transaction, allow the omission of the publication of the volume of an individual transaction during a period of deferral. Then they can allow the aggregated publication of different transactions regarding non-equity instruments which are not sovereign debt. On the other hand, about the sovereign debt instruments the competent authority can allow the publication of several transactions in an aggregated form for an indefinite period¹⁶⁹.

4.2 Italian Scenario

Before going into a deep analysis of the trading venues remodelled by MIFID II we will have an overview of how Italian financial market is regulated and which are its main points. This market is regulated by the TUF (Testo Unico della Finanza) and by the CONSOB (Commissione Nazionale per le Società e la Borsa). The TUF was subjected to some modifications with the introduction of MIFID II. The article 63 of TUF confirms that every multilateral system it will act as a regulated market, MTF or OTF, obviously the requirements for them are different, we first will have a look of the one for the regulated markets¹⁷⁰.

In the first section Title II of TUF is reported that the management and the operating duties in a regulated market are done by Limited companies including the ones without making money orientation. The market operator needs to meet the requirements underlined at the article 64 TUF, it has to give financial services, to control and ensure that the requirements are respected. CONSOB which works alongside TUF has the role to find all the activities that can be run by the market operator, it also sets the organisational requirements for the market operator. Moreover, it shall verify if a market operator of a regulated market can manage and make business also on a MTF or on an OTF. Following one of the main principles enhanced by MIFID II the market operators of a regulated market have to notify and make public the information regarding the owner and the ones who can have a significant influence on the market to the CONSOB. Market operator to obtain the authorisation to operate as a regulated market has to make aware the CONSOB of information regarding the activities they are going to do, the rules of the market, their organizational structure and others¹⁷¹.

¹⁶⁹ Article 11 Regulation 600/2014/EU

¹⁷⁰ Article 63 TUF

¹⁷¹ Article 20(1) a-z Regolamento mercati Adottato con delibera n.20249 28/12/2017

The article 64-quinquies of TUF sets the cases when CONSOB can withdraw the authorisation to the regulated market. This can happen when: the authorisation is obtained providing false information, the conditions to have the authorisation are not satisfied anymore, the regulated market is no longer working for six months¹⁷². The market operator has to communicate to CONSOB, the changes in the board and what the administrators has to do. Further, the market operator must report annually to CONSOB the composition of the board and a summary of the duties gave to each administrator¹⁷³. A regulated market to exist must have some organisational requirements, about this the article 65 of TUF gave a list of them¹⁷⁴ i.e. the regulated market has measures to clearly identify and manage the possible negative consequences, transparency rules and non-discretionary procedures which guarantee a fair and an orderly playing field. Obviously the CONSOB is supposed to receive all the information about it from the entity that manages the regulated market¹⁷⁵.

Talking about the MTFs and OTFs instead their operators (investment firms and market operators) have different requirements as rules and transparent procedures guarantying correct and order transactions moreover, there should be at least three active clients or participants, each of them having the chance to interact with the others regarding the price formation. Before starting to do business then the operators of MTFs and OTFs must notify to CONSOB not only what is required by the Regulation 824/2016 but also what is required by the Article 20 of Regolamento dei Mercati¹⁷⁶. The operators of MTFs and OTFs following the article 65-bis of TUF use the necessary measures to have a fair regulation of the controlled trading system, therefore, they shall clearly inform the members or the clients concerning their responsibilities¹⁷⁷. The articles 65-ter and the 65-quarter show specific requirements for MTFs and OTFs. Specially managers of OTFs, always considering what is written into the Regulation 824/2016, shall inform CONSOB about: the reason why the system cannot be a regulated market, a MTF or a systematic internaliser; the way in which he will operate on a discretionary basis and also a deep description of the future uses of the matched principal¹⁷⁸.

¹⁷² Article 64-quinquies TUF

¹⁷³ Article 24 Regolamento mercati Adottato con delibera n.20249 28/12/2017

¹⁷⁴ Article 65 TUF

¹⁷⁵ Article 25 Regolamento mercati Adottato con delibera n.20249 28/12/2017

¹⁷⁶ Information that have to be notified to CONSOB Art. 20 letters a, b, I, and m-z

¹⁷⁷ Article 65-bis TUF

¹⁷⁸ Matched principal trading= it's a transaction with a facilitator who interposes himself between the buyer and the seller without being exposed to market risk. Article 4(38) Directive 2004/65/EU

Another difference between the kinds of trading venues is about the general criteria to be admitted to trade. The regulated markets have clear and transparent rules regarding the admission of financial instruments to trade, they must have and keep efficient mechanism to check that the characteristics of the trade respect the European Union requirements that are about continuous and ad-hoc information.

Conversely MTFs' and OTFs' managers have to set transparent rules concerning the criteria to decide the financial instrument that can be traded, moreover, they give and make sure that sufficient information to help the client to make his investment choice are available easily¹⁷⁹. On the other hand, the three kinds of trading venues also have common requirements, they have to be resilient, they shall operate on a continuous basis and they should guarantee fair and order negotiation during hard market situations. Their systems and mechanism are asked to meet some requirements (see Art.65(2)-sexies TUF).

Trading venues are obliged to send to CONSOB before March every year a self-rating document following the instruction of article 2 Regulation 584/2017 about: governance, pre and post-trade controls, own trading system capacity and competences of the workers¹⁸⁰. The market operators working into regulated markets, MTFs and OTFs and the investment firms operating the multilateral trading systems to respect the transparency principal they have to notify to CONSOB and to Bank of Italy the concluded agreement with counterparties after 45 working days. Notified information are: terms of the agreement, links between counterparties and regulated markets, or MTFs or OTFs and the conditions to guarantee the efficiency of the concluded operations¹⁸¹. Additionally, the trading venues inform CONSOB about eventual changes on procedures and criteria for the activity of due diligence, a description of suitability trials given to the clients, an analysis regarding the members' algorithm and the procedures used to give the authorisation to access¹⁸².

4.2.1 Borsa Italiana The Manager of Italian Financial Markets

The most important operator of the Italian financial market is the Borsa Italiana S.p.a. Borsa Italiana is a limited company making part of the London Stock Exchange Group. Borsa Italiana is an operator of several regulated markets and MTFs, obviously it can

¹⁷⁹ Article 66 TUF

¹⁸⁰ Article 37 Regolamento dei mercati Adottato con delibera n.20249 28/12/2017

¹⁸¹ Article 46 Regolamento dei mercati Adottato con delibera n.20249 28/12/2017

¹⁸² Article 47 Regolamento dei mercati Adottato con delibera n.20249 28/12/2017 for a deeper and more exhaustive lists Article 7; 9(4); 10(2); 22 of Regulation 584/2017/EU

manage the ones which are previously authorised by the CONSOB. Borsa Italiana has the right to set the minimum amount tradeable for each financial instrument and for each market taking into account the functionality of the market and set an easier way to access to the market¹⁸³

| | | |
|--------------------|---|------|
| BORSA ITALIANA SPA | Mercato Telematico Azionario ("MTA") | MTAA |
| | Mercato telematico degli ETF, degli OICR aperti e degli strumenti finanziari derivati cartolarizzati ("ETFplus") | ETFP |
| | Mercato telematico delle obbligazioni ("MOT") | MOTX |
| | Mercato telematico degli investment vehicles ("MIV") | MIVX |
| | Mercato degli strumenti derivati ("IDEM") per la negoziazione degli strumenti finanziari previsti dall'art. 1, comma 2, lettere f) e i), del d.lgs. 24 febbraio 1998, n. 58 | XDMI |

Figure 3 Regulated markets managed by Borsa Italiana

| | | |
|--------------------|--|------|
| BORSA ITALIANA SPA | AIM Italia/Mercato Alternativo del Capitale ⁽¹⁾ | XAIM |
| | ExtraMOT | XMOT |
| | Mercato Borsa Italiana Equity MTF | MTAH |
| | Mercato SeDeX | SEDX |
| | Mercato ATFund | ATFX |

Figure 4 MTFs managed by Borsa Italiana

First, we need to identify who is admitted to trading on Borsa Italiana. It has its own regulation, at the article 3.1.1 of it, it's shown that can trade on Borsa Italiana the ones authorised by law subject to trade¹⁸⁴. The list of operators that can trade after the introduction of MIFID II had some changes. The article 25 and 67 of TUF in the modified version after the Directive 2014/65/EU report that SIM (società di intermediazione mobiliare) and Italian banks,

¹⁸³Article 4.1.1 Borsa Italiana S.p.a. (2018). *Regolamento dei Mercati organizzati e gestiti da Borsa Italiana S.p.A*

¹⁸⁴Borsa Italiana S.p.a. (2018). *Regolamento dei Mercati organizzati e gestiti da Borsa Italiana S.p.A.* (pp. 109-111).

previous authorisation from CONSOB, can trade in the Member States and in the no EU countries.

On the other hand, the community banks and investment firms can trade on the Italian regulated markets and MTFs. The operators admitted to trade are divided in macro-categories: investment firms, community and Italian banks; no EU banks and investment firms with branches in Italy, they are put into the register of third countries firms held by ESMA; entities different from banks and investment firms authorised according to TUF¹⁸⁵. During the procedure of admission to trade operators have to send the request to Borsa Italiana, after one month after the reception of the request Borsa Italian will make a valuation of the operator.

Borsa Italiana have to control if: the number of professional operators is sufficient, enough measures of guarantee liquidation, adequate internal procedures to control the trading activity, have the ability to suspend the trading flow, to cancel orders and if the technological system is good enough for trading considering the amount and the size of the transactions¹⁸⁶. Moreover, MIFID II introduces new requirements for the operators to obtain the authorisation to trade, these requirements need to be fulfilled on a continuous basis. The new requirements to be fulfilled by the operators are: do controls pre and post-trade; the operators need to be professional of trading; the kill functionality¹⁸⁷ is needed and a discipline on the Direct Electronic Access. Even if regulation of Borsa Italiana was already close to MIFID II regarding the participation requirements, the new Directive brought some integrations.

With the development of the society also the way to trade changed, nowadays many traders trade using the algo trading. At this point MIFID II introduced requirements about it and Borsa Italiana added them to its sample. The operators who trade using the algo-trading have to announce their activity as algo traders, they need to test their algorithm and they have to point out the identification code of the algorithm. There is a branch of algo-trading the so-called High-Frequency-Trading (HFT) with the new Directive the operators using this way to trading have to notify it¹⁸⁸. Besides MIFID II enhanced the regulation of Borsa Italiana about the cancellation of orders. The obligation of having policies used to specify when it's possible to cancel an order and also to notify if the technical procedure to cancel orders are available into the operators' systems.

¹⁸⁵ Borsa Italiana. (2018). *MIFID II Modifiche del Regolamento dei mercati di Borsa Italiana*.

¹⁸⁶ Article 3.13(3) Borsa Italiana S.p.a. (2018). *Regolamento dei Mercati organizzati e gestiti da Borsa Italiana S.p.A*

¹⁸⁷ Kill functionality it's a policy for the cancellation of the executed orders.

¹⁸⁸ Article 4(1) (40) Directive 2014/65/EU and article 19 Regulation 565/2017

In its regulation book Borsa Italiana specifies how the trades are done. There are two different ways one is an auction and the other one is on continuous basis¹⁸⁹. The phases of the negotiations are four: in the first one the open price auction is decided, the second is the negotiation on a continuous basis, in third one the closed auction priced is set and in the last one we have the negotiation at the closed price auction¹⁹⁰

Then there are two kinds of proposals of negotiation, it is based on the operator. If the operator is a specialist, then the proposal has to be done in a non-anonymous way on the opposite with an operator who is not a specialist the propose has to be anonymous. These proposals include information about the type of financial instrument to trade, its quantity, the type of transaction, the way of execution and, they need to specify when they come from an algorithm. Moreover, they contain parameters based on the time and other information to allow to Borsa Italiana to respect Regulation 580/2017/EU.

4.2.2 Mercato Telematico Azionario (MTA)

Mercato Telematico Azionario is the main Italian equity market for mid and large size capitalized companies that meet the highest standards. Into this market are traded shares, convertible bonds, warrants and options. Thanks to high international standards, it's possible to attract professional and private investors¹⁹¹.

First of all, to be listed on MTA is required to authorization from Borsa Italiana. The authorization is given if some requirements are respected i.e. a minimum capitalization of EUR 40 mln is needed then it's required a free float of at least 25%. Furthermore, the companies which want to be listed into MTA has to be have a strategic vision, a good financial situation, a good competitive orientation and they are supposed to act in the best way possible to increase the chances to enhance value for the shareholders.

Until June 28th 2010 the MTA was divided into three segments, this division was based on the dimension of the companies and on the satisfied requirements. The first segment was the Blue Chip, this was for the companies with more than 1 bln capitalization. Then there was the

¹⁸⁹ Article 4.3.3 and 4.3.4 Borsa Italiana S.p.a. (2018). *Regolamento dei Mercati organizzati e gestiti da Borsa Italiana S.p.A*

phases of these two types of trade

¹⁹⁰ Article 4.3.1 Borsa Italiana S.p.a. (2018). *Regolamento dei Mercati organizzati e gestiti da Borsa Italiana S.p.A*

¹⁹¹ London Stock Exchange Group. (2018). *STAR*. [online]

Star for mid-size companies with a capitalization between Eur 40 mln and Eur 1 bln, the characteristic of this segment was that these companies must satisfy specific duty regarding transparency, liquidity and corporate governance. The last branch was the Standard Segment for the companies with a capitalization between Eur 40 mln and Eur 1 bln but without the need to respects requirements as strict as the one for the Star segment¹⁹². As said before this was the MTA's form until the 28th of June because after that day Borsa Italiana, to make a simple segmentation of it, it was decided to take off the segment Blue chip and Standard.

At first in Italy was introduced FTSE¹⁹³ Italia, this index was already making a distinction of the shares basing on capitalization and liquidity. The main detected categories were Large-cap, mid-cap, small-cap. On the other side the Star segment was still alive and it was introduced the MTA International alongside it¹⁹⁴. Star segment as we saw is for the companies with a capitalization between Eur 40 mln and Eur 1 bln, the companies belonging to this segment must have other characteristics and also have to respect high quality requirements. They must keep a high level of transparency and a well develop willingness to communicate, they are required to have at least 35% of free float (high liquidity) at IPO then at least 20%, then a corporate governance aligned with international standards. The transparency requirements consist in having available information on their websites also in English¹⁹⁵. Regarding the governance requirements, the presence in the board of directors of an independent direct is needed then these companies should provide incentives to the top managements. Thanks to this availability to respect the requirements set by the MTA to get accepted to the Star segment, the SME, being part of Standard segment, benefit of a high visibility given by Borsa Italiana. The instruments traded on the Star segment are shares, convertible bonds, pre-emptive rights and warrant.

The other segment was introduced in July 2007 in the MTA International segment in which are traded only shares. This segment is used by the MTA to trade more liquid assets across EU keeping the Italian prices and ways. In addition, into this segment it can be traded non-Italian assets issued by foreign companies already quoted in other EU markets. Moreover, Borsa Italiana in 2016 decided to change the kind of trading venues, in fact from regulated market it became a MTF¹⁹⁶. If a company wants to be part of this market it has to send the

¹⁹² Borsa Italiana (2014). *Italian Equity Markets: Liquidity, transparency, efficiency*.

¹⁹³ FTSE is an Italian acronym which is checked every three months in order to put the company in the right segment. This index wants to show the performances of the Italian firms listed in Borsa Italiana, this give to the investors a full sample of index that measures the performances in the main industrial sectors.

¹⁹⁴ Borsa Italiana

¹⁹⁵ Borsaitaliana.it. (2018). *Requisiti STAR - Borsa Italiana*. [online]

¹⁹⁶ Borsaitaliana.it. (2016). *Il nuovo MTA International - Borsa Italiana*. [online]

request or it can be sent by an intermediary. To be admitted to this segment shares need to be already listed in a EU market for at least 18 months. Then the shares traded on MTA international cannot be included in any of Borsa Italiana's indexes¹⁹⁷. Additionally, in this segment is required the presence of two specialists for every share, this is a way to guarantee the liquidity of the financial instruments.

As the article 4.3.1 of Regolamento dei Mercati organizzati e gestiti da Borsa Italiana affirms the negotiations on the MTA are based on a mechanism of auction followed by a continuous negotiation until another auction to end the negotiation¹⁹⁸. Obviously this mechanism has to follow a schedule during the trading hours: from 8 a.m. to 9 a.m. there is the opening auction (pre-auction, confirmation, opening phase and the conclusion of contracts); from 9 a.m. to 5:25 p.m. continuous trading; from 5:25 p.m. to 5:30 p.m. it's time for the closing auction (pre-auction, validation, closing phase and the conclusion of contracts); closing the trading day from 5:30 p.m. to 5:40 p.m. there the trades at the closing auction price (order entry phase and the trading phase)¹⁹⁹. In this market there are different prices one the so-called price of reference that is based on the closing auction price, then there is the official price that is equal to the weighted average for each asset traded during the day, there is also the static price that is the one of the day before and further there is the dynamic one that is the price of the last concluded contract during the current trading day²⁰⁰. To make the transactions and the negotiations easier for the operators into the market, Borsa Italiana shares the information useful for the negotiations using its channels as quick as possible. Moreover, Borsa Italiana give the information about the market conditions and every operation done by the operators²⁰¹.

4.3 Regulated Market²⁰²

Before starting with a deeper analysis it's useful to give a definition of multilateral system which is the main pillar of the definitions of the three types of trading venues. A multilateral system is defined as "*any system of facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system*"²⁰³. Thanks to this definition it's possible to understand the goal of the European Parliament and Council, through these multilateral systems they wanted to allow the competition on the markets and the free but

¹⁹⁷ London Stock Exchange Group. (2014). *MTA*.

¹⁹⁸ Article 4.3.1 *Regolamento dei Mercati organizzati e gestiti da Borsa Italiana*

¹⁹⁹ Further and more detailed explanations article 4.3.3-4.3.4 *Regolamento dei Mercati organizzati e gestiti da Borsa Italiana*

²⁰⁰ Article 4.3.8- 4.3.11 *Regolamento dei Mercati organizzati e gestiti da Borsa Italiana*

²⁰¹ Article 4.5.2- 4.6.2 *Regolamento dei Mercati organizzati e gestiti da Borsa Italiana*

²⁰² Appendix I

²⁰³ Article 4(1)(19) Directive 2014/65/EU

regulated trading of financial instruments. It is important to know the definition of multilateral system because it is the point in common of the three types of trading venues. Through the definition of the types of trading venues as multilateral system the concept of bilateral system it's excluded. A bilateral system is where an investment firm is involved in every trade on its own account, also as a riskless counterparty between the buyer and the seller²⁰⁴.

We now focus our attention on the regulated markets the older kind of trading venues. By MIFID II²⁰⁵ they are defined in the same way as the one in Directive 2004/39/EC. Now we will analyze the different parts into the definition. Regulated market is at first defined as a multilateral system which is operated by a market operator, with this sentence and accordingly to recital 7 of MIFIR the bilateral systems²⁰⁶ are excluded²⁰⁷. Then this multilateral system has the duty to bring together buying and selling interests of multiple trading parties, these interests have to be brought together in a way that it will finish in a contract to buy or sell a financial instrument. The creation of a contract happens only if these interests are together under the rules of the system. Additionally, these interests have to be taken together under non-discretionary rules. These rules leave the market operator of regulated markets with no discretion on how those buying and selling interests will interact. As we saw from the definition regulated markets can be operated and managed only by a market operator

According to the article 44 Title III of MIFID II we see that a market operator intended to act as a regulated market needs to receive an authorization from the Member States. This authorization has to be obtained also from the systems of the regulated market. First of all, respecting the transparency principle the market operator after to receive the authorization has to provide all information, containing a schedule of his operations, the kind of businesses and the organizational structure. This information has to show to the competent authority that the regulated market has all the requirements to meet its obligations²⁰⁸. To keep its authorization, the market operator has to respect requirements regarding the organization and operation of the regulated market being supervised by the competent authority. Also, this competent authority has to review and keep under control the compliance of regulated market with Title III. Not only the competent authority has to check that the regulated market complies with the requirements in that title, this is also a duty that the market operator that manages or operates

²⁰⁴ Kumpan, C. and Muller-Lankow, H. (2017). *The multilateral single-dealer system - an oxymoron under MiFID II?*

²⁰⁵ Article 4(1) (21) Directive 2014/65/EU

²⁰⁶ Bilateral System is a system in which an investment firm enters into every trade on own account, even as a riskless counterparty interposed between the buyer and the seller.

²⁰⁷ Busch, D. (2017). *MIFID II and MIFIR: stricter rules for the EU financial markets.*

²⁰⁸ Article 44(1) Directive 2014/65/EU

the market has. Moreover, the market operator has the possibility to use the rights corresponding to the regulated market that he manages²⁰⁹. Obviously once that the authorization is obtained it can be withdrawn by the competent authority if: the regulated market doesn't use the authorization for 12 months, it clearly renounces to it or it didn't use it for the previous six months. Another possibility that will lead to the withdrawn is when the authorization is obtained through false statements or doing something irregular. If the conditions under which the authorization was given are not meet anymore the authorization is withdrawn²¹⁰.

Market operators are made by more than one "body", at this regard the managers (bodies) of market operator are required to have a good reputation and to have sufficient knowledge, skills and experience to do their duties. As same as for the market operators also the management bodies have to fulfil different requirements: they should spend enough time performing their functions in the market operator, then market operators should spend enough resources to ensure that the management bodies will be prepared²¹¹. In order to have an effective management of a regulated market and to prevent also conflict of interest the management bodies of a market operator has to be aware of the implementation of the governance arrangements. These management bodies have also another duty that is to control the efficiency of the arrangements made by the market operators' governance, doing this they want to repair some breaches²¹². Also, in this case the authorization can be withdrawn from the competent authority. this can happen when the management bodies of the market operator do not have a good reputation, do not have enough knowledge, experience, skills and do not spend sufficient time to do their duties.

Market operators have to do also one more task, they have to report the identity of the members of its management body or any changes of it to the competent authority²¹³. ESMA should issue few guidelines regarding some aspects as the notion of sufficient time commitment of a member of the management body to do the members' functions²¹⁴. At the article 46 of MIFID II we find the third kind of person who needs to fulfil requirements to be linked with the market operators or the regulated market, these are the persons who exercise significant influence over the management of the regulated market.

²⁰⁹ Article 44(3) Directive 2014/65/EU

²¹⁰ Article 44(5) Directive 2014/65/EU

²¹¹ Article 45(2) Directive 2014/65/EU

²¹² Article 45(6) Directive 2014/65/EU

²¹³ Article 45(8) Directive 2014/65/EU

²¹⁴ Article 45(9) Directive 2014/65/EU

These persons obviously must be suitable it's a task that the Member States have to do. Further, operator of regulated market must notify to competent authority, then publish, information about the holder of regulated market and of the market operator, most important the identity of any parties that can influence the management have to be reported²¹⁵. After the requirements for the persons involved into the regulated market at the article 47 of MIFID II the Member States set the requirements for the regulated market itself.

At first the regulated market is asked to be resilient, this means that it should be able to manage conflict of interests between the parties involved into the regulated market, it has to be able to identify these risks that can damage its owner, its market operator and they can threaten the sound functioning of the market. Additionally, the regulated market is required to know how to face and manage the risks at which it is exposed and to take the measures to smooth these risks. Furthermore, the market must have dispositions for the sound management of the operation of the system, one of them should be the settlement of dispositions to cope with the risks of system disruptions. Then, as we know from the definition the regulated market must have non-discretionary rules and procedures to have a fair and ordered trading. Going on, to make the finalization of the transactions done under its system's rules easier the regulated market is required to have useful and effective arrangements. The last requirement is to have enough financial resources, to make its functioning easier, when the authorization is obtained and for the future times²¹⁶.

To respect one of the aims of this Directive for the market operators is forbidden to execute client orders against proprietary capital. There are different situations and risks into the market, to face and manage them the regulated market should have available an effective system, it should use dispositions and procedures to make its trading system resilient, it must be able to manage peak order and big volumes of messages, following one of the goals of the Directive it has to ensure an orderly trading field when hard times and conditions on the market come and finally it is tested to make sure that it can keep these conditions also when there is a failure of its trading system.

Knowing also that a regulated market cannot be managed by investment firms, the market has to make written agreements with the investment firms trying to attain a market maker strategy on it. These agreements have to specify which are the investment firms' duties relating to the provision of liquidity also if the regulated market offers incentives in terms of discounts

²¹⁵ Article 46 Directive 2014/65/EU

²¹⁶ Article 47 Directive 2014/65/EU

to investments firms if they will provide liquidity to the market on a regular basis²¹⁷. These agreements are required to have a minimum number of participating investment firms, they are asked to post firm quotes at competitive price with the aim of bringing liquidity to the market regularly and on a foreseeable basis²¹⁸. The respect of these written agreements from the investment firms has to be monitored by the regulated market which has to notify and make aware the competent authority regarding what is inside these agreements. Moreover, under a specific request they are obliged to provide more detailed information to the competent authority needed to satisfy itself of compliance by the regulated market.

For the safety of the trades and traders regulated markets have to recognize and reject, through effective systems and procedures, orders that ex-ante are above the pre-determined volume and price or are simply made in a wrong way. Additionally, regulated markets are required by Member States to be able to stop or constraint trading where the price of a financial instrument was subject to a significant movement on the market or on a related one in a short period of time. In some cases, the regulated market can cancel, change or correct any transactions²¹⁹. The parameters for halting trading must be appropriately calibrated considering the different liquidity of the asset classes and sub-classes, it is taken into account also the market models' nature alongside the kinds of users. The Members States force the regulated market to notify to the competent authority not only the parameters for halting trading but also every change of them. Then the competent authorities have to inform ESMA of these changes.

When a regulated market halts trading on a financial instrument being liquid, that trading venue is asked by the Member States to have the necessary system and dispositions to notify to competent authorities to allow them to set a response and decide whether it's correct halt trading also on other trading venues where the financial instrument is traded until the trading is resumed on the original market²²⁰.

With the introduction of MIFID II the European Council wanted to regulate also the algo trading a form of trading introduce with the development of technologies. At this purpose the regulated market is asked by the Member States to have systems, dispositions and to require to members to test algorithms in order to be sure that the algorithmic trading system will not cause or participate in chaotic trading conditions, furthermore, regulated market has to know how manage the disorderly trading conditions raised from these algorithmic trading systems.

²¹⁷ Article 48(1)-48(2) Directive 2014/65/EU

²¹⁸ Article 48(3) Directive 2014/65/EU

²¹⁹ Article 48(5) Directive 2014/65/EU

²²⁰ Article 48(5) Directive 2014/65/EU

Regulated market has also to limit and enhance the minimum tick size that may be executed on the market²²¹.

Obviously regulated market to make transactions get paid through a fee which comprehend execution fee and ancillary fee, these fees are transparent, fair, non-discriminatory and they to do set incentives to place, modify or cancel orders that can cause disorder into trading or market abuse. These fees are adjusted by regulated market considering if the orders got cancelled, if an order is placed and in a second moment is cancelled, if the participants place a high ratio of cancelled orders or if they do high-frequency trading technique in order to reflect the additional burden on system capacity²²².

The algorithms produce orders that have to be recognized by the regulated market, moreover, the market shall be able to discover which algorithms are used to create the orders. Additionally, competent authorities must be allowed by the regulated market to check the order book. To understand deeper and better at the article 48(12) ESMA develop draft technical standards to specify²²³: what is needed by a regulated market to surely have a resilient trading system which is also able to adequate capacity, it also clarifies that fee structures are fair, non-discriminatory and most important they do not boost disorderly trading conditions or market abuse, these technical standards also want to determine when a regulated market in liquid for a specific financial instrument. ESMA developing these standards wanted to specify also the requirements to decide and to be sure that market making²²⁴ schemes are fair and non-discriminatory also to set the minimum market making obligations²²⁵.

In the article 48 we saw that regulated market has to control the tick sizes, in the article 49 the regulator says that regulated markets must use tick size regime in shares and other financial instruments for which are developed some technical regular standards. These tick size regimes are characterized by a calibration in accordance with the liquidity profile of the financial instrument in different markets and with the bid-ask spread. The setting of the bid-ask spread is done considering how much is desirable having reasonably stable prices with no unduly constraining further narrowing of spreads, furthermore these regimes should be able to manage the tick size differently for every financial instrument always in an appropriate way²²⁶.

²²¹ Article 48(6) Directive 2014/65/EU

²²² Article 48(9) Directive 2014/65/EU

²²³ These regulatory technical standards are the RTS 7; RTS 8; RTS 9; RTS 10; RTS 12 from the delegated regulations 2017/584; 2017/578; 2017/566; 2017/573; 2017/570

²²⁴ Article 4(7) Directive 2014/65/EU

²²⁵ Article 48(12) Directive 2014/65/EU

²²⁶ Article 49(2) Directive 2014/65/EU

ESMA again has the role to draw and develop regulatory technical standards²²⁷ in order to specify the minimum tick size or to have an orderly functioning market, it can draw these standards to specify the tick size regimes for shares or other financial instruments. Then, these regulatory technical standards are sent to the Commission which is empowered to adopt them in accordance with Regulation 1095/2010/EU²²⁸.

Nowadays being able to trade around the world using technologies there will be trades done at different time because of the jet lag, at this purpose the Member States want all trading venues with their members and participants to synchronize their business clocks used to notify and report the date and the time of any important event. Regarding this requirement ESMA again has to develop draft regulatory technical standards specifying the accuracy of the clocks' synchronization on line with the international standards, then these technical standards are sent to the Commission which has the duty of adopting them according with Regulation 1095/2010/EU article 10 to 14²²⁹.

So far this first set of requirements underlined: what is needed to get the authorization to be considered a regulated market, what it is required for regulated market operators and for management bodies to operate their duties in the best way possible, which are the organizational requirements and how are managed the system resilience, the circuit breakers and electronic trading.

The European Parliament and the Council at article 51 of MIFID II set the admission requirements of financial instruments to trading. The first requirement that regulated markets are asked to fulfil is to have transparent and clear rules about the way to allow a financial instrument to be traded on a regulated market, those rules have to ensure the fair, ordered and efficient trade of financial instrument, when there is a transferable security it has also to be freely negotiable. There is also the possibility to trade derivatives, in this case it's specified by the article 51(2) that the way how a derivative contract is set should make easier pricing orderly²³⁰.

Moreover, regarding transferable securities regulated markets are asked to have dispositions to check if the issuers of these transferable securities after being admitted to trading on regulated market is compliant with the obligations about initial, ongoing or *ad hoc* disclosure

²²⁷ Regulatory technical standard 11 Delegated regulation 2017/588

²²⁸ Article 49(4) Directive 2014/65/EU

²²⁹ Article 50 Directive 2014/65/EU regulatory technical standard 25 delegated regulation 2017/574

²³⁰ Article 51 Directive 2014/65/EU

obligations. Since this admission to regulated market can be withdrawn once that regulated markets gave it they are supposed to have dispositions to control that the admission requirements of the financial instruments admitted to trading are fulfilled. The transferable securities aren't forced to be traded only on a regulated market, they can be admitted to trade in more than one also without the permit of the issuer but according to the Directive 2003/71/EC.

Clearly even if the consent of the issuer is not needed it has to be informed by the regulated market about his transferable security traded on another regulated market, further since he wasn't aware of this admission to trading on another regulated market he is not obliged to give information about its compliance with the obligations under Union law²³¹. Here again ESMA comes into play with its duty if drawing draft regulatory technical standards, regarding the admission to trading these drafts should define clearly the different characteristics of financial instruments considered by the regulated market when it assesses with which conditions it has to deal. Additionally, the regulated market must make the dispositions, that want to verify that the issuer of the transferable security respects its obligations under Union Law, clear. Then, also in this case ESMA has to provide these drafts regulatory technical standards to the Commission which will adopt them according to Regulation 1095/2010/EU²³².

As said before the admission to trading it has to be maintained because if the requirements are not respected the financial instrument can be suspended or removed from trading on a regulated market. The market operator can suspend or remove the financial instrument from trading if it doesn't respect the regulated market's rules unless this operation of suspension or removal will lead to damage to the investors or to the functioning of the market. If a financial instrument is suspended or removed from trading the regulated market which has done it and it has to suspend or remove the derivatives linked with the financial instruments, the market operator has to publish and notify to the competent authority the decision of suspension or removal of the financial instrument or of any linked derivative²³³ if this suspension or removal will not cause damage to the investors and to the functioning of the market.

Being possible that a financial instrument can be traded on other trading venues a competent authority, in whose jurisdiction the removal or suspension is done, can ask for the suspension or the removal of this financial instrument from trading on all the trading venues on which it is

²³¹ Article 51(5) Directive 2014/65/EU

²³² Article 51(6) Directive 2014/65/EU

²³³ Article 52(1) Directive 2014/65/EU

traded if the suspension or removal is due to market abuse, inside information about the issuer or it's against the Regulation 596/2014/EU. In respect of the transparency principles and rules the competent authority has to notify its decision to ESMA and to the other competent authorities, in case it decided to not suspend or remove a financial instrument from trading it has also to give an explanation. In the case of a suspended or removed derivative traded on more than one trading venues it has to be suspended or removed from trading from all the trading venues on which is traded. To have a fair and a proper use of the right to suspend or remove from trading a financial instrument ESMA is supposed to set draft regulatory technical standards²³⁴, another reason why these standards are done is to check if the link between a derivative and a suspended or removed financial instrument implies also the suspension or the removal of the derivative²³⁵.

After a financial instrument is admitted to trading it still need the access to the regulated market. First the regulated market has to manage the access through transparent and non-discriminatory rules, these rules have to established then implemented. These rules must set the path that has to be followed by members or participant of the regulated market, they set the administration of the regulated market, they decide the rules regarding the transactions done on the market and also the procedures for the clearing and settlement of transactions concluded on the regulated market²³⁶.

The entities admitted as participants or members of a regulated market have to be aligned with the Directive 2013/36/EU in the case they are credit institutions or investment firms. Moreover, can get the access to regulated market only persons good reputé, that have skill, competences and experience into trading and also persons that have enough resources to fulfil the duties given by the role they perform considering the different financial dispositions established by regulated market looking forward to guaranteeing the settlement of transactions. Obviously, the regulated market from other Member States is obliged to inform the home competent authority about its intention to access to trading in other trading venues. This information has to accessible to ESMA in accordance with regulation 1095/2010/EU²³⁷.

Maintaining the access to a regulated market or a trading venue in general is not something obvious, to keep having this privilege the rules of the regulated market have to followed and respected. These are not the only rules that a regulated market has, it is required by the Member

²³⁴ Delegated regulation 569/2017/EU regulatory technical standard 25

²³⁵ Article 52(2) Directive 2014/65/EU

²³⁶ Article 53 Directive 2014/65/EU

²³⁷ Article 53(6) Directive 2014/65/EU

States to have efficient dispositions and procedures comprehending the needed resources for the monitoring of the compliance by their members or participants with its rules. In order to do a more clear surveillance, to identify infringements of these rules or to check when conditions of disorder trading are presents regulated markets monitor sent orders also the cancelled transaction done by its member or participants under its trading system²³⁸.

The regulated market not being the main regulator the market operators working into it have to notify to its competent authorities as soon as possible when rules are not respected, when disorderly trading is caused, and a forbidden behavior is taken in accordance with Regulation 596/2014/EU. This is only the first step of communication in case of issues, in fact the competent authorities linked with the regulated market have to inform ESMA and the competent authorities of other Member States, this happens only when the competent authority is completely sure that the forbidden behavior took place. To make this communication process easier the regulated market is asked from the Member States to inform on time and without undue delay the authority having the duties to investigate and in case prosecute market abuse on regulated market. Regulated market has also to completely collaborate in latter investigations and prosecutions of market abuse²³⁹.

One of the main goals of MIFID II was to try to have a more “regulated” OTC derivatives market, to do so the CCPs were introduced as intermediaries into the OTC market. Regarding this the article 55 of MIFID II sets some dispositions about the connections between regulated markets and CCPs²⁴⁰. Always looking for having a clear settlement regulated markets cannot be forbidden to do business in a right way with a CCP and a settlement system of another Member States. Moreover, the competent authority of a regulated market cannot disagree about the use of CCP, clearing houses and settlement systems in other Member States.

The competent authority can oppose to this use only when it is necessary do not allow this use to maintain the orderly functioning of that regulated market, also the competent authority should monitor the clearing and the settlement system²⁴¹. To know which the authorized regulated markets are each Member State has the duty of writing a list of the regulated markets for which it is the home Member State and send this list and any changes to ESMA and to other

²³⁸ Article 54 Directive 2014/65/EU focus on Regulation 596/2014/EU regarding the forbidden behaviour

²³⁹ Article 54(4) Directive 2014/65/EU

²⁴⁰ Without prejudice to Titles III, IV and V of Regulation 648/2014/EU

²⁴¹ Article 55 Directive 2014/65/EU

Member States. Further, ESMA while publishing has to keep this list update. This list has to contain information regulated market written in article 65 of Regulation 600/2014/EU²⁴².

4.4 Multilateral Trading Facility (MTF)

The second kind of trading venue is the Multilateral Trading Facility (MTF), it was introduced by MIFID I and re-modelled by MIFID II. The definition of MTF is given by MIFID II in the article 4(1)(22), its definition is very close to the regulated market one. They are both defined as multilateral system that brings together multiple third-party buying and selling interests under non-discriminatory rules. Multilateral system is defined as a system or facility where third-parties can trade and interact in the system²⁴³. According to recital 7 of MIFIR when these interests are brought together they result in contract, moreover the same recital affirms that defining this system as a multilateral one should exclude bilateral system²⁴⁴.

The difference between these two trading venues is that the MTF can be operated not only by market operator, as the regulated market, it can be operated also by an investment firm²⁴⁵. Investment firms is defined at article 4(1)(1) as any legal person having as regular business providing one or more investment services²⁴⁶ to third parties and performing investment activities on a professional basis. Further, it can be included into the definition of investment firm also the no legal persons if their legal status provides the same level of protection as a legal person for thirds parties interests additionally this no legal person has to be subjected to the same prudential supervision of a legal one. The last step to be considered a legal person being a natural one who holds third party interests is to not infringe the requirements and rules imposed by MIFID II, MIFIR and Directive 2013/36/EU and to respect some conditions reported in the article 4(1)(1) of MIFID II.

As we saw for market operator into regulated markets also investment firms to operate a MTF need an authorization which has to be given by the Member State competent authority. Following the transparency principle and to help the regulators to have a better picture of the market all the investment firms have to be registered by the Member States, this register has to be public and easy to be reached, the information that it contains should be about the services and the activities for which the investment firm is authorized. ESMA has to be notified and

²⁴² Article 56 Directive 2014/65/EU

²⁴³ Article 4(1)(19) Directive 2014/65/EU

²⁴⁴ Busch, D. (2017). *MIFID II and MIFIR: stricter rules for the EU financial markets*.

²⁴⁵ Article 4(22) Directive 2014/65/EU

²⁴⁶ Article 4(1)(2) Directive 2014/65/EU

updated about this list also it has to publish this list around the Union specifying the services and the activities linked with each investment firm²⁴⁷.

To be able to get the authorization the investment firm which is a legal person must have its head quarter and its registered office in the same Member States, on the other hand if the investment firm is not a legal a person or it's a legal person that doesn't have registered office under the national law, they are required to have their head quarter in the Member State where they do their business. The authorization is needed to clarify and specify what the investment firm is authorized to do, and also when investment firms, that want to expand their sample of services and activities provided. If these services weren't foreseen when the authorization was asked the first time. This authorization has the advantage of being valid around the whole Union and it allows the investment firms to provide services and activities for which it was authorized²⁴⁸.

Clearly, the request for authorization can be granted or refused, to be granted the applicant must respect and satisfy all the requirements needed until that time the request will be refused. Investment firms to satisfy the competent authority regarding the requirement for the authorization it has to notify the information comprehending the operations, the types of business and the organizational structure²⁴⁹. After the request for the authorization is sent the applicant should receive an answer within six months. In this case ESMA again has to draft regulatory technical standards to underline the information needed by the competent authorities, the requirements for the manager of investment firms and the requirements for the shareholders and members with qualifying holdings²⁵⁰.

Obviously, this authorization can be withdrawn by the competent authority in different cases²⁵¹ i.e. the authorization is not used within 12 months, the investment firm renounces to it, the authorization is got through illegal procedures, the dispositions from the MIFID II and MIFIR are not respected by the investment firms, every withdrawal of authorization must be notified to ESMA. To keep the authorization not only the investment firm has to respect some requirements but also its management body, it must hold a non-executive directorship then it has to notify to ESMA regarding the authorization obtained.

²⁴⁷ Article 5(2) Directive 2014/65/EU

²⁴⁸ Article 6 Directive 2014/65/EU

²⁴⁹ Article 7 Directive 2014/65/EU

²⁵⁰ Article 7(4) Directive 2014/65/EU

²⁵¹ Article 8 Directive 2014/65/EU

In this case not only ESMA has the duty of collecting information also EBA has to do it in accordance with the Directive 2013/36/EU. This management body is required by the Member States to be able for implementing the governance disposition settled to have an effective and a cautious management of the investment firm also to prevent conflicts of interest. These arrangements are helpful for the management body in order to define, accept and oversee: the way in which the investment firm is organized in providing investment services, activities and ancillary services, further it has to approve a policy according with the risk tolerance of the firm and the characteristics and the needs of its clients, moreover remuneration policy of persons providing services to third parties to push them doing a responsible business²⁵². To maintain the authorization received the management body must control and assess whether the adequacy and implemented strategy address any deficiencies.

Management body of investment firms to be authorized by the competent authority has to have a good reputation, needs to have enough knowledge, skills and experience. Additionally, the management body members have to be notified to the competent authority by the investment firms in which they belong²⁵³. As affirmed by the article 10 of MIFID II the competent authorities do not grant the authorization to investment firms to do business if their members' identity is not notified to the authorities and if the authorities are not satisfied by the suitability of the shareholders²⁵⁴.

A characteristic of the investment firms is that they have different shareholders and they can propose acquisition to increase their share into the firm, because of this possibility the European Council wanted to try to regulate this proposal. At this regard every natural or legal person, who wants to acquire or increase a qualifying holding into an investment firm, has to notify to the competent authority its intention and the size of the intended holding. The competent authority has to be aware also if a natural or legal person wants to reduce its qualifying holdings and the size of the reduction²⁵⁵.

To make the job easier the competent authorities cooperate providing without delay the fundamental information for the dispositions. Furthermore, it is asked to the investment firms to report to competent authority if a disposition of holding in its capital will cause holdings above or under a certain threshold²⁵⁶. Between the date of the proposal for acquisition and the

²⁵² Article 9(3) Directive 2014/65/EU

²⁵³ Article 9(5) Directive 2014/65/EU

²⁵⁴ Article 10 Directive 2014/65/EU

²⁵⁵ Article 11 Directive 2014/65/EU

²⁵⁶ Article 11(1) and 11(3) Directive 2014/65/EU

conclusion of the deal there is a period called assessment period. During these days the competent authority can ask further information due to complete the assessment.

At this point there are two possible scenarios, one where the competent authority opposes itself to the proposed acquisition and other one when the competent authority does not oppose itself to the acquisition. In the first scenario the competent authority has the duty, within 2 days, to notify to the proposed acquirer that it denied its propose of acquisition and it needs to say the reason why of its decision. In the second scenario the competent authority not being against the propose of acquisition shall be deemed to be approved. In order to avoid misdome propose of acquisition ESMA develops and writes draft regulatory technical standards to fix an exhaustive list of information to be put into the propose for acquisition²⁵⁷.

Respecting always the main principle of MIFID II, best execution of clients' orders, the competent authority assessing the notification and the information received from the proposes acquirer wants to guarantee the sound and prudent management of the investment firm also it wants to check the suitability of the proposed acquirer. To do so the competent authority shall control and verify the reputation of the proposed acquirer, the experience of the directors of the business of the investment firm once the acquisition is concluded, the financial soundness of the proposed acquirer and whether the investment firm is able to fulfil and respect the prudential requirements²⁵⁸. To avoid the wrong assessment Member States, publish a list with the information required to carry out the assessment and which information have to be provided to the competent authorities.

For being an investment firm, obligations are required, these obligations have to be met relating to a structured deposit issued by a credit institution according to Directive 2014/49/EU²⁵⁹. The authorization cannot be granted by the competent authority if the investment firms do not have enough initial capital according with Regulation 573/2013/EU. An investment firm to respect the laws and fulfil the requirements is asked by the home Member State to comply with some organizational requirements. According to the obligations set into this Directive, investment firm must set policies and dispositions to guarantee that the firm, its management body and its employees tied with thee obligations.

²⁵⁷ Article 12 Directive 2014/65/EU

²⁵⁸ Article 13 Directive 2014/65/EU for further information on prudential requirements Directive 2002/87/EC and Directive 2013/36/EU

²⁵⁹ Article 14 Directive 2014/65/EU the obligations meet Directive 1997/9/EC

The firm has to have and keep an efficient organization and administrative dispositions, as a result of this it is forced to check and control on a regular basis financial instruments it offers or markets focusing on the possibility that they can affect the risk to the identified market. Moreover, investment firm which manufactures financial instruments has to publish and make available all the possible needed information regarding these instruments²⁶⁰. An investment firm to keep doing business on trading venues has to provide services and to do activities on a continuous and regular basis, at this regard it should use appropriate and proportionate system, resources and procedures.

These procedures have to sound administrative and accounting and effective for risk assessment. A prudent behavior from the investment firm has to be kept also when relying on a third party for performances of operational functions. Competent authorities' supervisory role being not easy it can be simplified by the investment firms with the arrangement for records regarding all services, activities and transaction done by it²⁶¹.

For the safeguard of the client, one of the main principle of MIFID II, in the case that an investment firm holds clients' financial instruments it has to do dispositions to protect and safeguard the investments' clients mainly when investment firm is insolvent also to stop it to use clients' financial instrument on own account, the opposite can happen only when the clients agree with the use of their financial instruments²⁶². The same care has to be put in when investment firm holds fund belonging to clients.

Member States to set a fair level playing field in some particular cases can impose justified and proportionate requirements about the safeguard of clients' assets, these requirements have to be notified to the Commission on time and at least two months before the date they are supposed to be applied²⁶³. As said before with the development of technologies the way to do trading changed, nowadays trades are done using algorithm. At this purpose MIFID II wants to regulate this new way of trading also after the flash crash and the 2008 financial crisis.

Regarding this new willingness of the European Council in the article 17 of MIFID II it tried to set rules and requirements for investment firms doing algorithmic trading. If this new type of trading is used by an investment firm it needs to have an efficient system and risk controls correct for the operated business securing the resiliency and the enough capacity of the

²⁶⁰ Article 16(3) Directive 2014/65/EU

²⁶¹ Article 16(6) supervisory task done by competent authority has to be aligned with MIFID II, MIFIR and Regulation 596/2014/EU

²⁶² Article 16(8) Directive 2014/65/EU

²⁶³ Article 16(12) Directive 2014/65/EU

trading system. In addition, the trading system are useful to avoid the erroneous sending of orders and the disorderly market, this system has to be used in accordance with the regulation 596/2014/EU.no only the resiliency is required but also the continuity of the business dispositions to face and manage any failure of trading system²⁶⁴. Obviously, every investment firms that want to start doing algorithmic trading have to notify its decision to the competent authority of its home Member State and the ones of the trading venues in which the investment firm starts the algorithmic trading. After the home Member State's competent authority is informed they required to the investment firm to give them regularly and ad-hoc a description of their algorithmic strategies, at any moment competent authority can ask further information from investment firm regarding its trading strategies and the parameters and limits to which the system is subject.

In order to respect the transparency principle investment firms that start high-frequency algorithmic trading should collect appropriately the time at which an order is placed, the quotations on trading venues, this information must be available to the competent authority. This previous information plus investment firm's algorithmic strategies and parameters to which it's subjected are registered in records to ensure that the competent authorities can monitor according with the requirements of MIFID II ²⁶⁵. Investment firms have to consider, when they want to follow a market making strategy, the characteristics of the market and the ones of the instrument traded. They should prosecute on a continuous basis during the trading venues' trading hours their market making strategy to provide liquidity regularly and on a foreseeable basis to the trading venues. Then investment firm should sign a written agreement with the trading venue that has to specify the investment firm's obligations.

Algorithmic trading is just one of the electronic access²⁶⁶ to a trading venue, if the investment firm give direct electronic access to a trading venue it should have systems and controls to enhance the appropriateness of the dispositions and to reassess the suitability of clients who are excluded from exceeding pre-set trading and credit threshold. These controls have to be aligned with regulation 596/2014/EU, direct electronic access without these controls is forbidden. The direct electronic access in a service that has to comply with the requirements of MIFID II and the rules of the trading venue where its access is granted. They make sure the respect of the obligations coming from the service the investment firm has to make a written

²⁶⁴ Article 17 Directive 2014/65/EU

²⁶⁵ Article 17(2) Directive 2014/65/EU

²⁶⁶ To find the definition of "direct electronic access" article 4(1)(41) Directive 2014/65/EU

agreement with the clients. Once that direct electronic access is provided the investment firm providing it has to make the competent authorities aware²⁶⁷.

Investment firm can also act as general clearing member for third parties, for doing so it must have systems and controls guaranteeing clearing services applied to persons suitable to follow the clearing criteria. Moreover, investment firm has to guarantee a written agreement between parties. As usual ESMA comes into play developing draft regulatory technical standards. These standards want to specify: the details of organizational requirements imposed to an investment firm which provides various activities, investment services and ancillary ones, they specify also when an investment firm should be forced to enter into a market making agreement²⁶⁸.

The market operators and the investment firms operating MTFs have to respect rules and meeting requirements like transparent rules and dispositions for the fair trading. Moreover, dispositions for sound management of the operations with also the setting of contingency arrangements to cope with risk are needed. The above-mentioned transparent rules are about determination of financial instruments can be traded on a specific MTF, on the line of the transparency principles the market operator and the investment firms operating a MTF have to publish information allowing them to judge investment considering the nature of the users and the kinds of instruments traded²⁶⁹. These rules need to follow some steps during their process, they need to be established, published, maintained then implemented also as they are transparent and non-discriminatory, they are based on objective criteria that manages the access to its facility.

Operators of MTFs are required by the Member States to set arrangements to recognize and manage the consequences due to the operations of the MTF, of the users and participants. They are also required to manage conflict of interests between parties inside the MTF. Members or participants of MTFs have to be informed by the investment firms and market operators operating MTF, under recommendation of Member States, of their responsibilities due transactions executed in that trading venue, to have an easier settlement of these transactions investment firms and market operators should do some necessary arrangements²⁷⁰. MTFs should have minimum three members or users with the opportunity to actively interact with each other respecting the price formation. In some case transferable securities are admitted to trading on

²⁶⁷ Article 17(5) Directive 2014/65/EU

²⁶⁸ Article 17(6) Directive 2014/65/EU

²⁶⁹ Article 18(2) Directive 2014/65/EU

²⁷⁰ Article 18(6) Directive 2014/65/EU

MTFs without the agreement of the issuer if this happens he doesn't need to follow the obligations about the financial disclosure.

Competent authorities shall receive from investment firms and market operators of MTFs a precise description of the MTFs' working comprehending possible links with other trading venues or systematic internaliser owned by the same market operator or investment firm. All this information has to be notified to ESMA which has the duty of developing draft implementing technical standards²⁷¹.

European Parliament at article 19 of MIFID II sets specific requirements for MTFs and their operators. Investment firms and market operators running an MTF are asked to enhance non-discretionary rules for the execution of orders in the system. The MTFs' operators must be resilient, and they should be able to identify the risks of the operations and to set up measures to reduce these risks. Moreover, they are required to have from the time of the authorization enough financial resources to make easier the functioning²⁷². Investment firms and market operators operating MTFs have to monitor the orders sent, also the cancelled ones to find easier some breaches into these rules it's considered the regulation 596/2014/EU.

In the case these rules are not respected the MTFs' operators have to notify them to the competent authorities, they need to receive the information without delays²⁷³. The presence on trading for a financial instrument doesn't last forever, it can happen when investment firms or market operators suspend or remove a financial instrument from trading because it doesn't respect anymore the MTF's rules. The only case when this doesn't lead to the suspension or the removal from trading is when this can lead to significant damage for the investors' interests.

When a financial instrument is suspended or removed from trading the derivatives referred to it have to be also suspended or removed by the investment firm or market operators running MTFs, this decision has to be made public and communicated to competent authority which has to notify everything to the ESMA and to the other competent authorities comprehending an explanation of the decision. ESMA as usual is supposed to develop draft implementing technical standards in order to define the type and the timing of the communications, these drafts then have to be sent to the Commission which is empowered to adopt delegated acts according with MIFID II²⁷⁴.

²⁷¹ Article 18(10) Directive 2014/65/EU

²⁷² Article 19 Directive 2014/65/EU

²⁷³ Article 31 Directive 2014/65/EU

²⁷⁴ Article 32 Directive 2014/65/EU

4.5 Organised Trading Facility (OTF)

The directive 2014/65/EU (MIFID II) introduced another kind of trading venue to have more transparent and efficient financial markets and to try to follow the guidelines set by the G20 which wanted to move the trades of standardized OTC derivatives contracts to exchanges or electronic platform²⁷⁵, this desire came after the 2008 financial crisis because the world leaders wanted to have a regulation for as much as possible transactions of financial instruments²⁷⁶.

The new type of trading venue is the organized trading facility (OTF). This OTF replaced as third type of trading venues the systematic internalisers introduced with MIFID I. It is defined at article 4(1)(23) as a multilateral system different from a regulated market and a MTF where different third-party buys and sells interests in bonds, structured finance products, emission allowances or derivatives. Moreover, these parties are able to interact in the system giving as result in a contract²⁷⁷.

As the recital 8 of MIFIR reports of the OTC is given a broadly definition such that in the future all the different organized execution and the arrangement of trades that are not aligned with the existing venues are going to be captured into OTFs²⁷⁸. Another reason for this “light” definition is because the European Union wanted that the trading of standardized OTC contracts would go into the definition of OTFs. In this kind of trading venues are included broker crossing system and systems eligible for trading clearing-eligible and sufficiently liquid derivatives²⁷⁹. Additionally, the same recital clearly affirms that OTFs do not comprehend facilities in which there is no a clear trade execution or arranging taking place in system i.e. putting together potential buying and selling interests or portfolio compression²⁸⁰ that reduces non-market risks in derivatives portfolio with no changes in the market risk of portfolios.

Analyzing in a deeper way the definition of OTF we saw that the action of buying and selling financial instruments of the third-party results in a contract to buy or sell bonds, structured finance products, emission allowances and derivatives, through these words we can

²⁷⁵ Busch, D. (2017). *MIFID II and MIFIR: stricter rules for the EU financial markets* see also recital 25 Regulation 600/2014/EU

²⁷⁶ Lannoo, K. (2017). *MiFID II and the new market conduct rules for financial intermediaries: Will complexity bring transparency?* Bruxelles: European Capital Markets Institute

²⁷⁷ Article 4(1)(23) Directive 2014/65/EU

²⁷⁸ Recital 8 Regulation 600/2014/EU

²⁷⁹ Clausen, N., & Sørensen, K. (2012). Reforming the Regulation of Trading Venues in the EU under the Proposed MiFID II - Levelling the Playing Field and Overcoming Market Fragmentation? In *Nordic & European Company Law Working Paper Series*

²⁸⁰ Article 31 Regulation 600/2014/EU

understand that therefore only non-equity instruments are traded on OTFs. This leads to a fail regarding the regulation of every trading system in financial instrument²⁸¹.

A huge difference between the OTFs and the other two types of trading venues is that for these last two are applied non-discretionary rules executing the transactions, on the hand the OTFs' operator executes order on a discretionary basis. The discretion can be applied at two different moments, when it has to be decided if place an order on the OTF or to retract it or when the operator has to decide to not match a precise order with the available orders in the system at that moment²⁸². Giving OTF's nature some ways of doing transactions are forbidden, at this regard the combination of internalization or systematic internalization with OTFs are forbidden. This prohibition is due to fact that trades on OTFs are done accordingly with discretionary rules therefore the OTFs' operator is able to manipulate the execution of orders, doing this the risk of conflicts of interests between investors and OTF's operator increased exponentially.

Being a type of trading venue OTF to do business needs the approve of competent authorities which monitor on a continuous basis the firms and their activities. These firms are very politically and economically important, because of this the regulators' work is focused on granting financial stability, risk management, business plan and they want that requirements set for managers and shareholders are fit and proper²⁸³. To regulate the operation of an OTF, being the advisory to clients and trade on their behalf the core business of investment firms, alongside with trading facility²⁸⁴, it's fundamental to be sure that the investment firms will act fairly, honestly, professionally, in the best interests of the clients and moreover the clients need to be provided with proper and useful information to allow them to set the risks of the investment²⁸⁵.

Investment firms provide different services, regarding this the regulation and the conduction of an OTF can be viewed as ancillary services and because of that they can be affected from the relationship between the principal and the agent and from the best execution principle²⁸⁶.

²⁸¹ Busch, D. (2017). *MIFID II and MIFIR: stricter rules for the EU financial markets*

²⁸² Article 20(6) and 27 Directive 2014/65/EU

²⁸³ Clausen, N., & Sørensen, K. (2012). Reforming the Regulation of Trading Venues in the EU under the Proposed MiFID II - Levelling the Playing Field and Overcoming Market Fragmentation? In *Nordic & European Company Law Working Paper Series*

²⁸⁴ Directive 2014/65/EU Annex I n.8 and n.10

²⁸⁵ Iris H-Y Chiu, 'Securities intermediaries in the Internet Age and the Traditional Principal-Agent Model of Regulation: Some Observations from European Union Securities Regulation', 2 *Virginia Law & Business Review*, 2007

²⁸⁶ Article 14 Regulation 600/2014/EU

With the introduction on MIFID II and MIFIR the European Parliament sets the obligation for investment firms and market operator running a trading venue to have reports regarding transaction of financial instruments and notify them to the competent authorities. Investment firm mainly must have available for the competent authorities for at least 5 years this information about all the orders and transactions done by them, if these operations are done on behalf of the client the information must be about the clients²⁸⁷, the notification has to be done as quickly as possible and no later than the close of the following working day.

The competent authority plays a key role for the transmission and the spread of the information because it has to assure that the competent authority of the most relevant market regarding the liquidity for financial instruments also receives the information²⁸⁸. The financial instruments admitted to trading on OTFs are obliged to notify to the competent authorities the information regarding the data for the identification with the aim of transaction reporting. Even in this case ESMA will develop draft regulatory technical standards to keep away unnecessary administrative pressure on investment firms²⁸⁹. Moreover, ESMA have to send a report to the Commission regarding the characteristics of the transactions report received and exchanged among competent authorities able to monitor investment firms' activities.

A peculiarity of OTFs, as for MTFs, is that they can be operated not only by market operator but also by investment firms. These investment firms must follow some requirements which are the same as the ones followed by investment firms operating MTFs²⁹⁰. In order to finalize transactions, the operators of the OTF are required by the Member States to set rules in accordance with the transparency principle respecting the criteria for the determination of financial instruments able to be traded under its system, disposition to guarantee a fair and order trading also to define objective criteria for the efficient execution orders. Furthermore, these operators should own arrangements for the sound management of operations of the facility, always in line with the transparency principle the OTFs' operators should give enough public information to allow their users to make their own investment thought basing on their nature and the kind of instruments traded²⁹¹.

Clearly the thoughts and the ideas regarding the investment made by the clients are not enough to consider the best execution principle respected, in fact the users and participants of

²⁸⁷ Article 25(1) Regulation 600/2014/EU and Directive 2005/60/EC

²⁸⁸ Article 26-27 Regulation 600/2014/EU and Delegated Regulation 590/2017/EU

²⁸⁹ Article 26 Regulation 600/2014/EU further details into Delegated Regulation 590/2017/EU

²⁹⁰ Article 5 to 17 of Directive 2014/65/EU

²⁹¹ Article 18(1) Directive 2014/65/EU

OTFs have to be informed by investment firms and market operators running the trading venue of their responsibilities due to the execution on the transactions in that facility. Investment firms and market operator running OTFs have to make the dispositions needed to make the settlement of closed transactions easier. The operators of the OTFs have to be at least three with the possibility and opportunity of interacting between each other respecting the price formation.

Even if MIFID II re-introduced in a certain way the concentration rule this doesn't forbid to a transferable security to be traded on a regulated market and also on an OTF, if this happens without the approval of the issuer it will not be subject to any obligation about the financial disclosure regarding that OTF²⁹². Market operators and investment firms running OTFs shall, according with Member States' dispositions, provide to the competent authority a precise description of the functioning of the OTF including also any connections with or participations by one of the three types of trading venues or a systematic internaliser owned by the same investment firms or market operator and not less important a list of their participants or users. Then the competent authorities that received this information have to send them to ESMA on request. ESMA must make an updated list of OTFs in the union, it contains also the services provided by OTFs, further ESMA has to develop draft regulatory technical standards to define the format of the information transmitted²⁹³.

In OTFs differently from regulated markets and MTFs the investment firms and market operators run the facility on a discretionary basis, because of this characteristic the operator of OTFs are supposed to organize disposition to avoid the execution of clients orders in an OTF versus the proprietary capital of the operators running the OTF or from any entity that belongs to the same group or legal person as the investment firm or market operator. The OTFs' operators received the permission from Member States to engage in matched principal trading²⁹⁴ in bonds, structured finance products, emission allowances and some derivatives the ones where the client has consented to the process, there is a limit to the use of the matched principal trading. The limit is put in the case when investment firm and market operator running an OTF want to use matched principal trading to execute the orders of the client in an OTF in derivatives belonging to a class of derivatives subject to clearing obligation according to Regulation 648/2012/EU.

²⁹² Article 18(8) Directive 2014/65/EU

²⁹³ Article 18(10) Directive 2014/65/EU

²⁹⁴ The facilitator acts as an intermediary without any risks. Further details article 4(1)(38) Directive 2014/65/EU

In case are traded sovereign debt instrument without a liquid market²⁹⁵ the investment firms and market operators running OTFs are allowed from Member States to engage deals on own account instead of matched principal trading²⁹⁶. OTFs replaced systematic internalisers as trading venues' components thanks to MIFID II, systematic internalisers are now considered as over the counter, for this reason the operations of these two type facilities, under order of Member States, are not allowed to be done within the same legal entity. Additionally, OTFs shouldn't be in touch with a systematic internaliser in a way resulting that OTF's orders and orders or quotes of systematic internaliser interact.

On the other hand, two different investment firms or market operators making business on different OTFs can engage to carry out market making on the other OTF on an independent basis. As said before the orders on OTFs are executed on a discretionary basis, however the operators of OTF may exercise discretion in few cases, when they decide to do an order or modify one on the OTF they operate or when decide to do not match a precise order of the client with other orders in the system at given time²⁹⁷.

To avoid to the investment firms and market operators to benefit from the authorization for the operation on an OTF or on *ad-hoc* basis, the competent authorities shall ask for a exhaustive description of the reason why that system cannot be or is not like a regulated market, a MTF or a systematic internaliser, a deep explanation of the use of discretion focusing on how an order to the OTF would be retracted and the case and in which way clients' orders will be matched within the OTF. The OTFs' operators then will explain to the competent authorities, through notification, their use of matched principal trading. Competent authority should check that the engagement into matched principal trading is done respecting the definition and that it doesn't lead to conflict of interest between the operators and their clients²⁹⁸.

The European Council to have a stricter surveillance on the OTF, through the Member States, imposed to the investment firms and market operator running an OTF to set and keep efficient dispositions and procedures to monitor the compliance of its members or participants with its rules. Moreover, the operators of OTF have to control also the orders sent, the orders cancelled, and the transactions made by their participants under their system to recognize infringements of those rules²⁹⁹. When those rules are not respected, or Regulation

²⁹⁵ Market for financial instruments where there are ready and willing buyers and sellers on continuous basis.

Article 2(1)(17) Regulation 600/2014/EU

²⁹⁶ Article 20(3) Directive 2014/65/EU

²⁹⁷ Article 20(6) Directive 2014/65/EU

²⁹⁸ Article 20 Directive 2014/65/EU

²⁹⁹ Article 81 Delegated Regulation 565/2017/EU

596/2014/EU³⁰⁰ arrangements are infringed the investment firms and market operators running an OTF have to notify their competent authorities as quick as possible regarding these irregularities. Then, the competent authorities will have the duty of inform the ESMA and the other competent authority regarding what it is happening.

The information required by the competent authorities have to be provided by the market operators and the investment firms operating an OTF on time, allowing them to investigate and in case prosecute market abuse also to provide assistance for further investigations and prosecutions happening on or through its systems³⁰¹.

The financial instruments admitted to trading on OTFs, as the ones admitted to trading on the other two types of trading venues, can be suspended or removed from trading on OTFs. These instruments traded on OTFs can be removed or suspended from trading by the operators of the OTFs if they do not comply anymore with the OTFs' rules except when this suspension or removal will lead to a damage for the clients' interests. Having this "power" of suspension or removal by the operators of the OTF shouldn't go against the right of the competent authority to demand for the suspension or removal of these financial instruments³⁰². The derivatives of the financial instruments, suspended or removed, have to be suspended or removed from trading on OTFs by the investment firms or market operators running the OTFs under request of Member States. This decision of removing or suspending the financial instruments and any linked derivatives has to be publicly published and the fact has to be notified to their competent authority. This competent authority wants that the other OTFs under its jurisdiction, trading the financial instrument or derivatives which are suspended or removed from trading, also suspend or remove that financial instruments or derivatives from trading where this suspension or removal cause the suspect of market abuse or a take-over bid.

As reported in the article 1 of delegated regulation 569/2017/EU the operators running an OTF can suspend a derivative according with section C of MIFID II. This derivative has to be linked only with one financial instrument which has been suspended or removed from trading³⁰³. This action of removing or suspending financial instruments and the linked derivatives from trading by the all trading venues on which they are traded can be suspended if in doing this the clients' interests will be damaged³⁰⁴. The choice of the competent authority of

³⁰⁰ Article 82 Delegated Regulation 565/2017/EU

³⁰¹ Article 31 Directive 2014/65/EU

³⁰² Article 32 Directive 2014/65/EU for a further look of the competent authority rights article 69(2) of the same directive

³⁰³ Article 1 Delegated regulation 569/2017/EU

³⁰⁴ Article 32(2) Directive 2014/65/EU

requiring the suspension from other trading venues of the financial instruments and the derivatives linked to them has to be made public and notified immediately or at latest immediately thereafter the publication of the communication to ESMA and to the other competent authorities of the other Member States. The notifications have to follow a timing and a format³⁰⁵ at this regard the ESMA has the duty to develop draft implementing technical standards, these standards has to be sent to the Commission which is empowered to behave according with the article 89 of Directive 2014/65/EU.

4.6 Trading Venues Recap

Thanks to the Directive 2014/65/EU the concept of trading venues has been changed, there are now three different types of trading the regulated market³⁰⁶, the multilateral facility (MTF)³⁰⁷ and the organized trading facility (OTF)³⁰⁸.

All of them are multilateral system, where multiple third-party brings together buying and selling interests leading to a contract. Being a multilateral system characterizes the trading venues because on the other side the systematic internalisers, that with MIFID II are no more a type of trading venue, are bilateral systems. Regulated markets, differently from MTFs and OTFs, have official recognition also they are used almost within all the countries. In contrast MTFs and OTFs are European entities centered on European countries.

Regulated markets are operated only by market operators while on the other hand MTFs and OTFs can also be operated by investment firms, after obtaining the authorization, and market operators. Obviously, the investment firms are subject to different requirements (article 5-20 Directive 2014/65/EU). Even if they can be operated by different entities, these have to follow the same requirements regarding information to give to the clients following the transparency principle, they also have to fulfil the same pre and post-trade transparency requirements. Then, they have to operate following the best execution principle without producing damage to the clients' interests. Regulated markets, differently from MTFs and OTFs, need an authorization not only to provide their services but also to exist³⁰⁹.

³⁰⁵ Commission implementing regulation 1005/2017/EU

³⁰⁶ Article 4(1)(21) Directive 2014/65/EU

³⁰⁷ Article 4(1)(22) Directive 2014/65/EU

³⁰⁸ Article 4(1)(23) Directive 2014/65/EU

³⁰⁹ Motti. (2010). *Mercati regolamentati, sistemi multilaterali di negoziazione e internalizzatori sistematici*. Bologna: Il Mulino.

There is also a difference between the requirements for the operators of MTFs and the ones of OTFs i.e. the MTFs' operators need to have dispositions to manage the risks at which they are exposed.

The main differences between the last approved type of trading venue and the other two are that regulated markets and MTFs are operated on a non-discretionary basis while the OTFs are operated with discretion, because of this they cannot deal on own account apart when they operate on the sovereign debt. The discretion above mentioned can be exercised in some cases. Additionally, a particularity of the OTFs' operators is that they are required to satisfy investor protection obligation regarding the information for the clients, the suitability requirement and the best execution principle, this happens because of the discretion granted to OTFs operators. Then OTFs allow the access to trading to a wide variety of investors, allowing the transactions also to retail clients³¹⁰ this is linked with a "neutrality" of the operator of the OTF regarding the access of investment firms admitted to trading that it has to be limited in order to avoid the infringement of the multilateralism³¹¹.

| MiFID II | | |
|-----------------------------|--|---|
| Trading venues | | |
| Regulated Market | Multilateral Trading Facility (MTF) | Organised Trading Facility (OTF) |
| Eligible instruments | | |
| All | All | Non-equity instruments |

Figure 5 Instruments traded on different trading venues

Even if the concept of what is traded on a trading venue (TOTV) is not completely clarified by ESMA³¹², we can find differences between the three types of trading venues, at this regard the last main difference is about the type of instruments that can be traded on the types of trading venues, on the regulated markets and MTFs all the financial instruments can be traded while on the OTFs are allowed to be traded only non-equity instruments.

³¹⁰ Lucatoni. (2017). *Il mercato dei derivati: note preliminari ad uno studio sistematico*.

³¹¹ Marin, F. (2018). *VERSO LA CAPITAL MARKETS UNION: LE NUOVE TRADING VENUE NELLA MIFID II E NEL MIFIR. RIVISTA TRIMESTRALE DI DIRITTO DELL'ECONOMIA*

³¹² ESMA on a document regarding OTC derivatives TOTV, it doesn't define the concept of TOTV because also derivatives traded on OTC can be considered to TOTV

As the definition of OTF reports under this system the interests of buying and selling are about bonds, structured finance products, emission allowances or derivatives. Even if as we said before the operators of the trading venues have to follow the same pre and post-trade transparency rules, being the financial instruments traded on the trading venues different the transparency principles to be applied to equity and non-equity instruments are different³¹³.

4.7 Overview on Systematic Internaliser (SI) and Over The Counter (OTC)

Not all the transactions are done on the exchange and regulated markets, most of them are done out of the trading venues. MIFID II, trying to give a regulation to the transactions done outside the exchange, redefined the concept of trading venues and consequently the composition of the over-the-counter segment.

4.7.1 Systematic internaliser (SI)

With the introduction of the Directive 2014/65/EU the systematic internalisers lost their “position” in the category of trading venue, being replaced by the OTFs. The SIs are defined by the article 4(1)(20) of the Directive 2014/65/EU³¹⁴. The difference with the definitions of the three kinds of trading venue is that the systematic internalisers are not defined as a multilateral system, a systematic internaliser is defined as an investment firm which deals on own account through the execution of clients’ orders not on a trading venue.

Dealing on own account by an investment firm that is a systematic internaliser has to be done on an organized, frequent systematic and substantial basis. Investment firms being a systematic internaliser, following the transparency principle, has to publish firm quotes regarding shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on trading venues, these financial instruments must have a liquid market³¹⁵.

The quotes that a systematic internaliser is obliged to publish have a minimum size which has to be at least the 10% of the standard market size of share, ETF, certificate or share traded on a trading venue. These instruments are divided by classes according to the competent authorities of the most important market regarding the liquidity, then these divisions have to notified to ESMA that develop draft regulatory technical standards to have an efficient and correct valuation of these financial instruments³¹⁶. Systematic internalisers’ quotes must be published by them with regularity and continuously during the trading hours, the investment firms that fulfil the definition of systematic internaliser have to notify this to their competent

³¹³ Article 3-11 Regulation 600/2014/EU transparency requirements for equity and non-equity instruments

³¹⁴ Article 4(1)(20) Directive 2014/65/EU

³¹⁵ Article 4(1)(25) Directive 2014/65/EU and Article 2(1)(17) Regulation 600/2014/EU

³¹⁶ Article 14 Regulation 600/2014/EU

authority that will make ESMA aware which will write down a list of SIs in the Union. From the definition of systematic internaliser we now that they execute clients' orders, this execution can be done differently depending on the type of the client. If a client is defined as professional the execution of the orders can happen at a different price without follow the requirements set by article 27 MIFID II, the other case is when the systematic internalisers execute the orders at the quoted prices because of the requirements set by article 27 Directive 2014/65/EU³¹⁷.

The Regulation 600/2014/EU also set obligations for the competent authorities, they have to check if the investment firms update on a regular basis the bid and offer prices published, moreover they have the duty of controlling that investment firms respect the requirements for price improvement³¹⁸. The systematic internalisers have the possibility to choose, considering their policies and through a non-discriminatory way, to who give access to their quotes, then they can always refuse to start a discontinuous business relationship with clients with credit status and risk not very convenient for them. Then, another advantage of being able to choose to who allow the access to the systematic internalisers' quotes is that they can decide on a non-discriminatory way their number of transactions with the same client to reduce their risk exposure³¹⁹.

A main pillar of MIFID II is the transparency principle, according to this investment firms, that respect the definitions of systematic internaliser, have to publish their quotes respect to bonds, emission allowances, structured finance products and derivatives traded on a trading venue which are required to have a liquid market, the publication happens when firms provide their quotes³²⁰. The quotes published have to be available also to the other clients after having received the access to them. Investment firms defined as systematic internalisers have to mandatory respect post-trade requirements.

When investments firms execute a transaction, on own account or on behalf of the client, in share, bonds, ETFs, derivatives, depositary receipts and similar financial instruments traded on a trading venue are forced to publish the price, the volume and the time of the transactions. Competent authorities have the possibility to let the investment firms to publish later, or to publish just part of the information and the details of the transactions during the period of the deferral publication, during an extended period of deferral the investment firm can omit the publication of the volume of transactions. Then, ESMA which has received this information is

³¹⁷ Article 15 Regulation 600/2014/EU

³¹⁸ Article 16 Regulation 600/2014/EU

³¹⁹ Article 17 Regulation 600/2014/EU

³²⁰ Article 18(1) Regulation 600/2014/EU

required to develop draft regulatory technical standards to underline the identifiers for the different types of transactions, additionally these standards have to be submitted to the Commission³²¹.

4.7.2 Over the Counter (OTC)

After the meeting G-20 in Pittsburgh the regulators identified the weakness of the transactions done outside the exchange on the so-called over-the-counter, the European Commission wanted to try to regulate as much as possible the OTC derivatives market, which is generally divided in five branches i.e. foreign exchange derivatives and interest rate derivatives, introducing the European Market Infrastructure Regulation (EMIR) (Regulation 648/2012/EU).

EMIR was introduced in order to reduce systemic risk, enhance transparency in the OTC derivatives market and maintain financial stability. To reach its goal the Regulation puts in order rules about OTC derivative contracts, central counterparties (CCPs), which entered into force in 2015, and trade repositories³²². A certain level of regulation seemed to be needed for the OTC derivatives because as recital 4 of Regulation 648/2012/EU says the OTC derivatives³²³ lack of transparency being negotiated privately and so any information is available only to the parties of the contract, moreover they lead to a complex connection which lead to a misidentification on the level and the nature of the risks involved³²⁴.

The key point of this Regulation is the introduction of the so-called CCPs. In many jurisdictions central clearings are mandatory for most standardized derivatives, obviously clearing leads to costs because CCPs require margin³²⁵ to be published. Their role is to clear all the standardized OTC derivatives contracts that after have to be reported to trade repositories. In doing so they want to reduce the counterparty risks, the CCPs go alongside with some requirements introduced by draft technical standards. These standards want to ensure the reduction of counterparty risks through the definition of the framework for the application of the clearing obligation, they also specify the risk mitigation technique for OTC derivatives non-centrally cleared³²⁶.

CCPs, previous authorization from the competent authority, have the duty to clear OTC derivatives contracts referred to a class of OTC derivatives subject to clearing obligation

³²¹ Article 20 and 21 Regulation 600/2014/EU

³²² European Commission. (2017). *Questions and Answers on the proposal to amend the European Market*. Brussels.

³²³ As defined at article 2(7) Regulation 648/2012/EU

³²⁴ Recital 4 Regulation 648/2012/EU

³²⁵ Recital 70 Regulation 648/2012/EU

³²⁶ ESMA. (2012). *ESMA proposes rules on derivatives, central counterparties and trade repositories*.

according with ESMA having the role of deciding which class of OTC derivatives is subject to clearing obligation. The be declared subject to the clearing obligation those contracts have to respect some parameters, they have to be concluded in a certain way i.e. between two financial counterparties, or they are entered into or novated on or after the date from which the clearing obligation takes place³²⁷. The CCPs have to respect the clearing obligation on a non-discriminatory and transparent basis. Here again ESMA plays a key role developing draft regulatory technical standards to specify the classes of OTC derivatives subjected to the clearing obligation, the minimum maturity of OTC derivative contracts subject to frontloading.

Cleared versus non-cleared outstanding OTC IRS trades for DDRL and Regis-TR

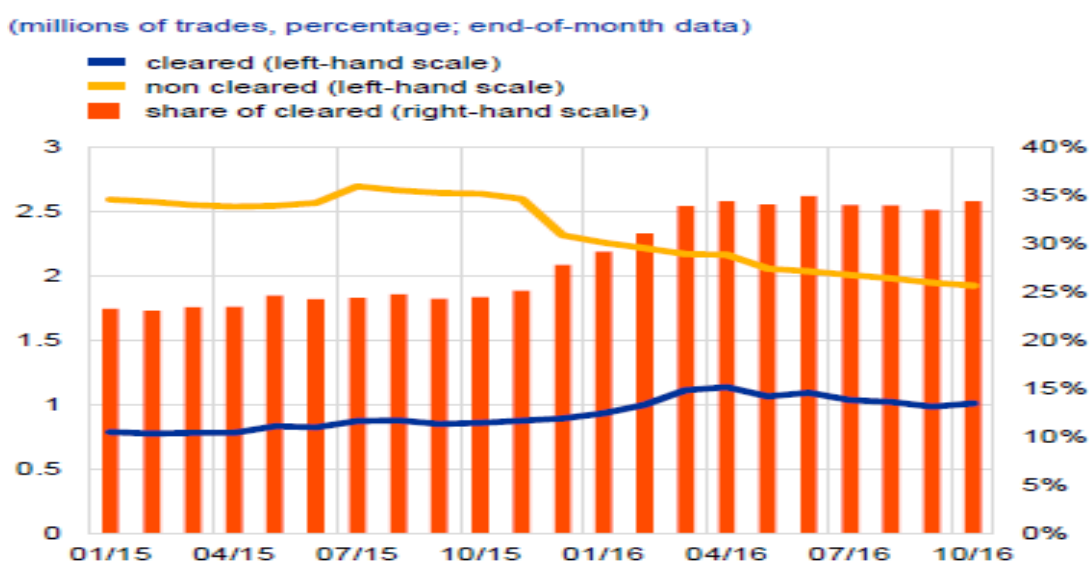


Figure 6 Path of cleared and non-cleared OTC IRS

Regarding the goal on enhancing transparency is tried to be reached forcing the CCPs and their clearing members to publish the prices and the fees linked with the provided services, moreover CCP shall report separately costs and revenues of the services offered, it has to make public the risk associated with the service provided to the clearing members and clients. Additionally, CCP informed their members and clients about the price formation used to calculate the end-of-day exposures to its members also the volumes of the cleared transactions of every class on instruments cleared by the CCP³²⁸. A second step to increase the transparency is done with the introduction of requirements i.e. clear information regarding derivative contracts has to be given to trade repositories³²⁹ and made it available for the supervisory

³²⁷ Article 4 Regulation 648/2012/EU

³²⁸ Article 38 Regulation 648/2012/EU

³²⁹ Central data centers collecting and maintaining the records of derivatives

authority then ESMA is responsible for the control of trade repositories and for granting and withdrawing the authorization³³⁰.

5 OVERVIEW OF AMERICAN REGULATION FOR FINANCIAL MARKETS

The financial markets obviously are not only a European business, they are also present in the United States of America. The regulation of these markets on the other side of the ocean is way different from the one in Europe. The entities empowered of the regulation of the US financial market are the Security and Exchange Commission (SEC), which regulates the transactions of corporate stocks or bonds and which is a federal institution independent from the government. The other regulator is the called Commodity Futures Trading Commission which has the role of control the transactions of futures and options (CFTC).

| Types of instrument | Federal Government Regulator | Self-Regulating Organization |
|----------------------------|--------------------------------------|---------------------------------------|
| Corporate stocks/bonds | Securities & Exchange Commission | National Association of Stock Dealers |
| Asset-backed securities | None | None |
| Municipal securities | None | Municipal Securities Rulemaking Board |
| Money market instruments | None | None |
| Futures | Commodity Futures Trading Commission | National Futures Association |
| Options | Commodity Futures Trading Commission | Options Clearing Corporation |

Figure 7 Regulators of the US Financial Markets

SEC has to adopt new regulations and when it's needed change the old ones, it has a surveillance duty regarding the intermediary companies providing financial consultation and the main responsibility of the SEC is to coordinate the regulation of the American financial market linked also with foreign entities³³¹. SEC was introduced as supervisor of the market with the aim of protect the investors, maintain a fair, orderly and efficient market and to facilitate capital formation.

³³⁰ European Commission. *The European market infrastructure regulation (EMIR) lays down rules on OTC derivatives, central counterparties and trade repositories.*

³³¹ Servizio studi del Senato. (2010). *La vigilanza sui mercati finanziari negli Stati Uniti: le istituzioni e le proposte di riforma.*

In order to fulfil its duties, the SEC is split into divisions, each of them with a different role. One of the them is the division of trading and markets which works alongside the Commission trying to fulfil its responsibility of maintaining fair, orderly and efficient markets and nonetheless this division has to surveil the financial markets. This division controls every day the major market participants i.e. securities exchanges, securities firms and self-regulatory organisations (SROs). Moreover, also the Securities Investor Protection Corporation (SIPC), that insures the securities and cash in the customer accounts against the failure of brokerage firms, is controlled by this division³³².

The SEC has to review the equity markets structure which were subject to a big transformation in the last years, in fact these markets are now characterized by a more decentralized system in which the trading activity, then the American trading venues, are divided along exchanges, alternative trading systems (ATS) and broker-dealers or internalisers³³³. This markets structure came out with different regulations, particularly the Regulation NMS which pointed out two types of competition, the one among market centers and the one among individual orders. These types of competition are allowed by the Commission but the trading centers have to execute trades at the best publicly quoted prices.

The broker-dealer above mentioned is defined professor Robert Shiller as an organization hiring natural persons as brokers and dealers, these two figures act in a different way, the brokers follow the instruction from others as their agent and thanks to them they earn commissions, the dealers instead act as a principal in the transactions from where they will make a mark-up³³⁴

To execute trades the brokers or dealers, as the Rule 15c3-5³³⁵ defined, with access to exchange or to ATS have to establish and maintain a system of risk management controls and supervisory procedures to reduce the financial risk of the brokers and dealers and to ensure compliance with all regulatory requirements. These brokers and dealers are not only required to have and maintain a risk management system but they also have to implement it. For the Commission these controls and supervisory duties have to be applied on a pre-trade basis and under the exclusive control of the broker or dealer in order to do not be inadequate to solve the risks of market access³³⁶.

³³² Securities and Exchange Commission. SEC.gov | What We Do

³³³ SEC.gov | U.S. Equity Market Structure: Making Our Markets Work Better for Investors.

³³⁴ Shiller, R. (2008). *Brokers, Dealers, Exchanges & ECNs*.

³³⁵ Risk Management Controls for Brokers or Dealers with Market Access

³³⁶ Rule 15c3-5

The Rule 15c3-5 was introduced by the Commission to reduce the risks faced by the broker or dealer requiring to it to have an effective financial and regulatory risk management controls, these controls should be helpful to decrease risks linked with market access then increase market integrity and investor protection in the securities markets.

Linked with the protection of the investor the Commission wrote down a possible interpretation regarding the standard of conduct for investment. To run an investment a broker or a dealer has to follow some guidelines, first being considered a fiduciary it has to act in the best interests of its clients, moreover it has to provide advice and services to retail investors. Furthermore, it has to deliver to retail investors a relationship summary that has to provide these investors with information about the services offered, the fees and costs scheme³³⁷.

The equity markets, not only the American one; are always subject to changes and modernization, to allow the US equity markets to follow these changes the Commission adopted the Regulation NMS (national market system). This regulation is defined as a series of dispositions to remodel the equity markets after these changes.

These dispositions were oriented to the protection of the clients' interests with a new Order Protection rule, moreover this regulation introduced a new Access Rule that with a private linkage approach wanted to develop a fair and non-discriminatory access to quotations displayed by NMS trading centers. Other dispositions were the new Sub-Penny rule which reminds the European minimum tick size and the reorganization of existing Exchange Act rules to help to understand clearly the rules³³⁸.

With the development of new technologies also the way to trade changed, nowadays a big share of the US equity trading is done through electronic limit order books operated by broker or dealers. These new trading systems not being regulated as exchange are known as Alternative Trading System (ATS)³³⁹.

What is an ATS? The Commission defined an ATS as a trading system that meets the definition of exchange but is not required to register as a national securities exchange if it operates under the Exchange Act rule. ATS are SEC-regulated electronic trading system buying and selling interests regarding securities. Obviously an ATS has to follow some rules defined by the Regulation ATS, it has to register as broker-dealer and report its intention to the Commission before starting its operations. Moreover, as we saw in the European regulation,

³³⁷ Proposed Commission Interpretation Regarding Standard of Conduct for Investment

³³⁸ Regulation NMS

³³⁹ Mahoney, P. and Rauterberg, G. (n.d.). *The Regulation of Trading Markets: A Survey and Evaluation*.

the ATS has to notify any changes in its operations and any intentions of cessations of them³⁴⁰. Today all the ATSs are dark pools this means that they allow their users to place orders without publicly displaying the size and price of their orders to other participants in the dark pool, same characteristic belonging to the OTC users.

In order to reinforce the markets for securities and to introduce innovative new markets the Commission adopted the Regulation ATS. This Regulation wanted also to give to ATS the possibility to choose to register as a national securities exchange or as broker-dealer. The number of ATSs is growing on a continuous basis, at this regard these rules want to combine this number into the national market system and also they want to make the registered exchanges more competitive with ATSs³⁴¹.

The broker-dealers can also internalize orders, which means they match orders they hold as agent or they take the other side of the trade as principal. Internalization is a type of dark liquidity this means that broker-dealers can decide to do not publish prices and quantities at which they are willing to internalize orders.

Broker-dealers managing customer's cash and securities in order to protect their clients' interests have to respect different requirements. They have to respect the Net Capital rule which asks to broker-dealers to keep more than a dollar of highly liquid assets for each dollar of liabilities. Then having to protect clients' interests broker-dealers cannot use customer securities and cash to finance their own business. Nonetheless they have to notify to count, check and verify which securities are held for customers and which for themselves³⁴².

We now analyze the second regulator of the American financial market the CFTC. This entity's duty is to have markets that are open, transparent, competitive and financially sound, moreover it wants to protect the market users and their funds that are subject Commodity Exchange Act. This Commission also looks to reduce the risk of the futures and swaps markets to the economy and the public³⁴³.

Same as the SEC also the CFTC is split in divisions each of them with a different role, the Clearing and Risk controls the derivatives clearing obligations and other market participants in the clearing process, the Enforcement division scrutinize and "punish" violations of the Commodity Exchange Act and regulations, the division to complete the duty of the Commission

³⁴⁰ Sec.gov. (2018). *SEC.gov / Alternative Trading System ("ATS") List*.

³⁴¹ Regulation ATS

³⁴² Rule 17a-5 and Rule 17a-11 of Securities Exchange Act

³⁴³ Cftc.gov. *Mission & Responsibilities / U.S. COMMODITY FUTURES TRADING COMMISSION*

is the Market Oversight one which will lead the market to be open, transparent, fair, competitive and safe with the control of derivatives platforms and swap data repositories³⁴⁴.

To facilitate its work of supervision CFTC's advisory committees were created, between them there are the global markets advisory committee (GMAC) and the market risk advisory one (MRAC). The global markets committee will help the Commission to avoid regulatory or operational difficulties to global business while still maintaining the protections for market participants. Furthermore, GMAC will help the Commission regarding appropriate standards to regulate futures, swap, options and intermediaries, in addition it will play his role identifying ways to enhance domestic and international regulatory structures keep allowing to the domestic markets and firms to be competitive globally³⁴⁵. On the other side the role of the MRAC is to notify to the Commission regarding systemic issues that affect the stability of the derivatives and other linked markets and the results and causes of the development of market structure of the derivatives and other linked markets³⁴⁶.

5.1 American Trading Venues

As already underlined most of the exchanges nowadays are done in an electronic way. These exchanges can be done on trading venues, in the American scenario the definition and the division of trading venues are different from the ones belonging to the European picture.

The trading venues are divided according with the American regulation in three branches the exchange i.e. the New York one, the alternative trading system and the broker-dealer internalization. The American regulators reach these distinctions because thanks to the development of the financial markets because new electronic trading venues came out.

The choice between being one of these types of trading venues obviously leads to different consequences, obligations and requirements. At this regard the exchanges have market surveillance and regulate their members, while ATSS do not. The exchanges' rules are required to meet a public interest and changes to those rules subjected to SEC approval. Any broker-dealer has to be able to be a member of exchanges, while ATSS apply a fair access only when the 5% trading volume threshold is exceeded, on the other hand the broker-dealer decide to internalize an order or not on a discretionary basis. About the quotations broker-dealer do not have any obligations, ATSS can choose until when the 5% of trading volume is exceeded and exchanges' ones are included in the consolidated quotation system³⁴⁷.

³⁴⁴ Cftc.gov. *CFTC Organization | U.S. COMMODITY FUTURES TRADING COMMISSION*

³⁴⁵ Renewal charter of the global markets advisory committee

³⁴⁶ Renewal charter of the market risk advisory committee

³⁴⁷ Mahoney, P. and Rauterberg, G. (n.d.). *The Regulation of Trading Markets: A Survey and Evaluation*

As we can understand the differences between one regulated entity or another is about the rules of internal governance providing the term of contracts between the trading venue and its members or customers. This choice will affect market participants' access to quotation.

The kinds of trading venues are characterized also by distinctive liability rules, broker-dealers when they internalise and alongside them the ATSS follow the same liability rule as every other private financial institution. While the operators of exchanges have fully immunity from consequences due to monetary damages when they operate respecting regulations and functions of being a self-regulatory organization³⁴⁸ (SRO).

5.1.1 Exchange

A type of American trading venue is the exchange which is defined as an organization providing a market place to bring together buyers and sellers of securities acting as a stock exchange³⁴⁹. An exchange following the rules has to give a fair picture of its members and it's required to have a correct administration of affairs, the fees and other charges have to be shared between all the participants and issuers.

These rules are in place to avoid illegal acts, to enhance cooperation and coordination among individuals regulating, settling, clearing and facilitating transactions in securities, to have a free and open market and mainly to give protection to investors. Linked with the concept of a free market the rules of the exchange do not set unnecessary restrictions on competition.

Members of exchanges cannot make transactions on own account or on the account of an associated person, however transactions by a dealer acting as market maker or transactions for the account of a natural person are allowed³⁵⁰. As we saw in the European regulation securities can be suspended or removed from trading if they can cause risks for the investors.

The members or participants of an exchange are required to notify to the Commission on an annual basis information regarding the traded securities, their intentions, this notification are asked in order to give as much protection as possible to the investors³⁵¹.

5.1.2 Alternative Trading System (ATS)

As the code of federal regulations points out these ATSS have to respect some requirements, according to the regulation these requirements are about the notification to the regulators of their intentions and operations, moreover they are required to provide the prices

³⁴⁸ Being a SRO lead the exchange to be able to perform regulatory functions usually run by SEC

³⁴⁹ Securities Exchange Act of 1934 version enacted March 23, 2018

³⁵⁰ Securities Exchange Act of 1934 version enacted March 23, 2018 Section 11

³⁵¹ Securities Exchange Act of 1934 version enacted March 23, 2018 Section 13

and the sizes of the orders. Differently from brokers the ATSs do not charge any fees to members and broker-dealers having access to ATS using a national securities exchange.

Regarding the access to an ATS it should set standards to grant the access to its system, which cannot be with no reason forbidden to any person, also following the transparency principle it is asked to keep a register with all the participants and the ones having access denied. Furthermore, it has to be possible to control and examine ATS's premises, systems, records and cooperate with the inspectors. There is also a nominal requirement for ATS in fact it cannot have the word exchange into its nomination.

5.1.3 Broker-Dealer

The third kind of American trading venue is the so-called broker-dealer. As above defined the broker acts for the account of others charging with fees, the other entity is the dealer who acts, differently from the broker, as a principal. Brokers-Dealers to make transactions have to be registered to the Commission, the procedure to get the authorization starts with providing information regarding the brokers-dealers to the Commission which can grant the registration only if the request sent by the brokers-dealers respect all the requirements needed³⁵².

The registration can be suspended, no longer than 12 months, or revoked if the Commission finds that brokers-dealers do not fulfil the requirements anymore and if they violate the previous regulations' obligations. Brokers-dealers are allowed to affect transactions only of securities traded on a national security exchange of which they are members.

The investor has to choose the broker-dealer who will decide on which market execute your trade. It can be executed on an exchange or to a market maker, a firm ready to buy or sell a stock listed on an exchange. Moreover, the broker-dealer can decide to execute the trade on an OTC or he can bring your order to an ATS which will complete your transaction as quick as possible³⁵³.

In order to respect the main principle of the regulation, protect the clients' interests, the broker-dealer is obliged to look for the best execution for the client's orders. To do so the broker-dealer periodically has to assess which "place" is better to place the order of his client. He should check also the possibility of price improvement.

³⁵² Securities Exchange Act of 1934 version enacted March 23, 2018 Section 15

³⁵³ SEC. Executing an Order | Investor.gov

5.2 Comparison between the European Regulation of Financial Markets and the American one

The European regulation of financial markets has several differences respect to the American one. First as we know the United States has a single rule book about the regulation of the financial system while in Europe every country, of course respecting the community directive, has its own rule book i.e. Italy with the Testo unico della Finanza (TUF).

The analysis of the differences can start from the figures of the regulators of the financial markets into the two continents. In Europe the regulation of the financial markets is operated by the ESMA, an entity located in Paris, which has the duty to control and regulated all the transactions, for what is possible, operated on the trading venues and systematic internalisers. In the United States the regulation of financial markets is divided between two federal regulator the SEC and the CFTC, these two Commissions share the regulation of the markets basing on the products that are traded, in fact the SEC has the role of regulator regarding the corporate stock or bonds while the CFTC regulates the transaction of futures and options.

Another difference between the two regulations is the definition of the concept of trading venue. The three types of European trading venues are defined as multilateral system this lead to the exclusion from the regulation of the bilateral systems. In Europe trading venues are defined as a regulated market, an MTF or an OTF³⁵⁴, this definition was subjected to changes thanks to the introduction of MIFID II. These kind of trading venues are differentiated by the operators who run them, market operators and investment firms, also for the products traded on them, OTFs are able to trade only non-equity instruments contrary to the other two types. On the other side of the ocean the concept of trading venues is slightly different. The three types of American trading venues aren't defined neither as multilateral system nor as a bilateral one, they are constituted by exchanges, ATSS or broker-dealer. First of all the American trading venue are linked only with the equity market which regulated by the SEC while in Europe they are linked with all the financial instruments as we can see from MTFs and OTFs that allow the trades of derivatives on them.

Obviously, there are also common aspects, in both the regulations the protection of the clients is their central point and aim. Further, the operators of the trading venues have to be granted with the authorization to trade, in both the scenarios this authorization can be suspended or revoked. Moreover, the European operators of trading venues and the American ones are forced to do transactions following the best execution principle, they also have to notify to their respective competent authorities, before starting the transactions, their intentions, their

³⁵⁴ Article 4(1)(24) Directive 2014/65/EU

participants and in case if there will be changes of the members. In addition, both the European and American operators of trading venues, always linked with the protection of the clients, are forced to respect the transparency principle that lead also to publicly notify the prices of the transactions.

6 CONCLUSIONS

During the years European authorities have always tried to increase regulation on the financial markets. Before the application of the community directive every country was related to its own financial market regulation implying more difficulties in doing transactions. With the introduction of MIFID I and with its development into MIFID II the European Parliament and Council made a huge step forward into the financial market regulation.

It's useful to remind that the European Parliament and Council, trying to define a unique regulation for the whole financial market, decided to approve alongside MIFID II other regulations not leave any branch of the financial markets unregulated. These regulations are the MIFIR which underlines the transparency requirements for equity and non-equity instruments, the EMIR which is focused on trying to regulate a much as possible the OTC and in addition the PRIIPs regulation was introduced focused on the information provided to clients in order to assess the level of risk tolerance.

Financial crisis in 2008 showed lacks in MIFID I regarding the transparency rule, market integrity and protection of clients. After this event the regulators started to draft MIFID II which wanted to fulfil lack of the previous directive. As above mentioned in detail the directive 2014/65/EU made some adjustments to solve these problems. It ensures that exchanges are executed on regulated platforms, it improves the transparency and oversight of financial markets-including derivatives markets and addressing some shortcomings in commodity derivatives markets, it limits the speculations on commodities, it introduces regulation on algorithm and high-frequency trading and it enhances investor protection and improves conduct of business rules as well as conditions for competition in the trading and clearing of financial instruments

MIFID II focalizes the attention of the regulators and the operators of the market on the protection of the clients. To reach this goal different principles were put in order, the transparency principle leading to the notification of the transactions and the members of the trading venues and the best execution principle which forced the operators of the trading venues to run their transactions taking always care of the willingness of their investors.

Thanks to this late directive it was finally defined the concept of trading venue, divided into three sub-categories regulated markets, MTFs and OTFs. All of these three types of trading venues bring together buying and selling interests leading to a contract. Through this distinction the regulators wanted to specify at first which operators could trade on trading venues, i.e. regulated markets can only be run by market operators, and on which trading venues they are able to trade, basing on their characteristics. Moreover, it was specified also which financial instruments were traded on each trading venue i.e. non-equity instruments on the OTFs. Directive 2014/65/EU using the trading venue definition and resetting in a certain way the concentration rule also wanted to try to regulate as much as possible the transactions run on the OTC and to bring the higher number possible of transactions on the trading venues to have a safer and a more regulated financial market.

As we said MIFID II was approved alongside other directives MIFIR and EMIR. Markets in financial instruments regulation was introduced to not leave breaches into the regulation of financial markets. This regulation set requirements about Disclosure of data on trading activity to the public. Disclosure of transaction data to regulators and supervisors, mandatory trading of derivatives on organised venues, removal of barriers between trading venues and providers of clearing services to ensure more competition, specific supervisory actions regarding financial instruments and positions in derivatives.

European market infrastructure regulation wants to increase the transparency of the OTC derivatives markets. It establishes new regulatory requirements on all types and sizes of entities that enter into any form of derivative contract, including those not involved in financial services.

The main goal of these directives, protection of the clients, best execution principle and adoptions of transparency rules, are the same as the American regulation. This same characteristic of the two regulations shows that even if the clients don't have an active role into trade their interests are the center of the financial markets, this approach became more and more important after the crisis.

APPENDIX List of Regulated Markets

| Entity type | Entity name | Home member state | Host member state | Office type | Competent authority | Authorisation/Notification date | Authorisation withdrawal/End date | Status | Last update |
|------------------|---|-------------------|-------------------|-------------|---|---------------------------------|-----------------------------------|--------|-------------|
| Regulated market | FISH POOL ASA | NORWAY | | Head office | Norwegian Financial Supervisory Authority | 03/01/2018 | | Active | 21/12/2017 |
| Regulated market | NASDAQ OSLO ASA | NORWAY | | Head office | Norwegian Financial Supervisory Authority | 03/01/2018 | | Active | 21/12/2017 |
| Regulated market | MONEP | FRANCE | | Head office | Autorité des Marchés Financiers (AMF) | 01/11/2007 | | Active | 21/12/2017 |
| Regulated market | OSLO AXESS | NORWAY | | Head office | Norwegian Financial Supervisory Authority | 03/01/2018 | | Active | 21/12/2017 |
| Regulated market | NOREXCO ASA | NORWAY | | Head office | Norwegian Financial Supervisory Authority | 03/01/2018 | | Active | 21/12/2017 |
| Regulated market | Powernext SAS | FRANCE | | Head office | Autorité des Marchés Financiers (AMF) | 10/02/2014 | | Active | 21/12/2017 |
| Regulated market | OSLO BØRS ASA | NORWAY | | Head office | Norwegian Financial Supervisory Authority | 03/01/2018 | | Active | 21/12/2017 |
| Regulated market | Euronext Paris SA | FRANCE | | Head office | Autorité des Marchés Financiers (AMF) | 01/11/2007 | | Active | 21/12/2017 |
| Regulated market | MATIF | FRANCE | | Head office | Autorité des Marchés Financiers (AMF) | 01/11/2007 | | Active | 21/12/2017 |
| Regulated market | Mercado de Renta Fija, AJAF | SPAIN | | Head office | Comisión Nacional del Mercado de Valores (CNMV) | 10/05/2010 | | Active | 05/01/2018 |
| Regulated market | Mercado Electrónico de Renta Fija, MERF | SPAIN | | Head office | Comisión Nacional del Mercado de Valores (CNMV) | 01/11/2007 | | Active | 05/01/2018 |
| Regulated market | Bolsa de Barcelona | SPAIN | | Head office | Comisión Nacional del Mercado de Valores (CNMV) | 01/11/2007 | | Active | 05/01/2018 |
| Regulated market | NASDAQ COPENHAGEN A/S | DENMARK | | Head office | Finanstilsynet | 10/01/1996 | | Active | 05/01/2018 |
| Regulated market | MEFF | SPAIN | | Head office | Comisión Nacional del Mercado de Valores (CNMV) | 01/11/2007 | | Active | 05/01/2018 |
| Regulated market | MEFF | SPAIN | | Head office | Comisión Nacional del Mercado de Valores (CNMV) | 23/02/2011 | | Active | 05/01/2018 |
| Regulated market | Bolsa de Bilbao | SPAIN | | Head office | Comisión Nacional del Mercado de Valores (CNMV) | 01/11/2007 | | Active | 05/01/2018 |
| Regulated market | Mercado de Renta Fija, AJAF | SPAIN | | Head office | Comisión Nacional del Mercado de Valores (CNMV) | 01/11/2007 | | Active | 05/01/2018 |
| Regulated market | Bolsa de Bilbao | SPAIN | | Head office | Comisión Nacional del Mercado de Valores (CNMV) | 01/11/2007 | | Active | 05/01/2018 |
| Regulated market | Bolsa de Valencia | SPAIN | | Head office | | 01/11/2007 | | Active | 05/01/2018 |

| | | | | | | | | | |
|------------------|--|----------------|--|-------------|--|------------|--|--------|------------|
| Regulated market | Bolsa de Madrid | SPAIN | | Head office | Comisión Nacional del Mercado de Valores (CNMV) | 01/11/2007 | | Active | 05/01/2018 |
| Regulated market | Bolsa de Barcelona | SPAIN | | Head office | Comisión Nacional del Mercado de Valores (CNMV) | 01/11/2007 | | Active | 05/01/2018 |
| Regulated market | Nasdaq Copenhagen A/S - Nordic@MID | DENMARK | | Head office | Finanstilsynet | 10/01/1996 | | Active | 08/01/2018 |
| Regulated market | Nasdaq Copenhagen - Auction on Demand | DENMARK | | Head office | Finanstilsynet | 10/01/1996 | | Active | 08/01/2018 |
| Regulated market | Borsa Italiana S.P.A. - ETFFPlus | ITALY | | Head office | Commissione Nazionale per le Società e la Borsa (CONSOB) | 27/02/2007 | | Active | 09/01/2018 |
| Regulated market | Borsa Italiana S.P.A. - Mercato Telematico Azionario | ITALY | | Head office | Commissione Nazionale per le Società e la Borsa (CONSOB) | 02/01/1998 | | Active | 09/01/2018 |
| Regulated market | Borsa Italiana S.P.A. - MOT | ITALY | | Head office | Commissione Nazionale per le Società e la Borsa (CONSOB) | 02/01/1998 | | Active | 09/01/2018 |
| Regulated market | Borsa Italiana S.P.A. - MIV | ITALY | | Head office | Commissione Nazionale per le Società e la Borsa (CONSOB) | 25/03/2009 | | Active | 09/01/2018 |
| Regulated market | Borsa Italiana S.P.A. - IDEM | ITALY | | Head office | Commissione Nazionale per le Società e la Borsa (CONSOB) | 02/01/1998 | | Active | 09/01/2018 |
| Regulated market | MTS S.P.A. - MTS Italia | ITALY | | Head office | Commissione Nazionale per le Società e la Borsa (CONSOB) | 30/06/1998 | | Active | 09/01/2018 |
| Regulated market | Burza cenných papírů Praha, a.s. | CZECH REPUBLIC | | Head office | Czech National Bank (CNB) | 23/10/1992 | | Active | 12/01/2018 |
| Regulated market | RM-SYSTEM, česká burza cenných papírů a.s. | CZECH REPUBLIC | | Head office | Czech National Bank (CNB) | 19/03/1993 | | Active | 12/01/2018 |
| Regulated market | Bourse de Luxembourg | LUXEMBOURG | | Head office | Commission de Surveillance du Secteur Financier (CSSF) | 13/07/2007 | | Active | 15/01/2018 |
| Regulated market | Nasdaq Helsinki Oy | FINLAND | | Head office | Finanssivalvonta (FSA) | 19/03/1999 | | Active | 16/01/2018 |
| Regulated market | DIJESSELDORFER BOERSE (REGULIERTER MARKT) | GERMANY | | Head office | Federal Financial Supervisory Authority (BaFin) | 03/01/2018 | | Active | 25/01/2018 |
| Regulated market | BOERSE BERLIN (REGULIERTER MARKT) | GERMANY | | Head office | Federal Financial Supervisory Authority (BaFin) | 03/01/2018 | | Active | 25/01/2018 |
| Regulated market | Börse Berlin (Berlin Second Regulated Market) | GERMANY | | Head office | Federal Financial Supervisory Authority (BaFin) | 03/01/2018 | | Active | 25/01/2018 |
| Regulated market | BADEN-WÜRTTEMBERGISCHE WERTPAPIERBOERSE (REGULIERTER MARKT - TECHNICAL PLATFORM 2) | GERMANY | | Head office | Federal Financial Supervisory Authority (BaFin) | 03/01/2018 | | Active | 25/01/2018 |
| Regulated market | BADEN-WÜRTTEMBERGISCHE WERTPAPIERBOERSE (REGULIERTER MARKT) | GERMANY | | Head office | Federal Financial Supervisory Authority (BaFin) | 03/01/2018 | | Active | 25/01/2018 |
| Regulated market | Boerse Hamburg Lang and Schwarz Exchange (Regulierter Markt) | GERMANY | | Head office | Federal Financial Supervisory Authority (BaFin) | 03/01/2018 | | Active | 25/01/2018 |
| Regulated market | HANSEATISCHE WERTPAPIERBOERSE HAMBURG (REGULIERTER MARKT) | GERMANY | | Head office | Federal Financial Supervisory Authority (BaFin) | 03/01/2018 | | Active | 25/01/2018 |

| | | | | | | | | | |
|------------------|---|----------|--|-------------|--|------------|--|--------|------------|
| Regulated market | NIEDERSAECHSISCHE BOERSE ZU HANNOVER (REGULIERTER MARKT) | GERMANY | | Head office | Federal Financial Supervisory Authority (BaFin) | 03/01/2018 | | Active | 25/01/2018 |
| Regulated market | BOERSE MUENCHEN - GETTEX - REGULIERTER MARKT | GERMANY | | Head office | Federal Financial Supervisory Authority (BaFin) | 03/01/2018 | | Active | 25/01/2018 |
| Regulated market | EUROPEAN ENERGY EXCHANGE (REGULIERTER MARKT) | GERMANY | | Head office | Federal Financial Supervisory Authority (BaFin) | 03/01/2018 | | Active | 25/01/2018 |
| Regulated market | BOERSE MUENCHEN (REGULIERTER MARKT) | GERMANY | | Head office | Federal Financial Supervisory Authority (BaFin) | 03/01/2018 | | Active | 25/01/2018 |
| Regulated market | TRADEGATE EXCHANGE (REGULIERTER MARKT) | GERMANY | | Head office | Federal Financial Supervisory Authority (BaFin) | 03/01/2018 | | Active | 25/01/2018 |
| Regulated market | BOERSE BERLIN EQUIDUCT TRADING (BERLIN SECOND REGULATED MARKET) | GERMANY | | Head office | Federal Financial Supervisory Authority (BaFin) | 03/01/2018 | | Active | 25/01/2018 |
| Regulated market | BOERSE BERLIN EQUIDUCT TRADING (REGULIERTER MARKT) | GERMANY | | Head office | Federal Financial Supervisory Authority (BaFin) | 03/01/2018 | | Active | 25/01/2018 |
| Regulated market | FRANKFURTER WERTPAPIERBOERSE (REGULIERTER MARKT) | GERMANY | | Head office | Federal Financial Supervisory Authority (BaFin) | 03/01/2018 | | Active | 26/01/2018 |
| Regulated market | XETRA (REGULIERTER MARKT) | GERMANY | | Head office | Federal Financial Supervisory Authority (BaFin) | 03/01/2018 | | Active | 26/01/2018 |
| Regulated market | EUREX DEUTSCHLAND | GERMANY | | Head office | Federal Financial Supervisory Authority (BaFin) | 03/01/2018 | | Active | 26/01/2018 |
| Regulated market | Zagrebačka burza d.d. | CROATIA | | Head office | Croatian Financial Services Supervisory Agency (HANFA) | 18/09/1991 | | Active | 31/01/2018 |
| Regulated market | Euronext Brussels Derivatives | BELGIUM | | Head office | Financial Services and Markets Authority (FSMA) | 01/11/2007 | | Active | 15/02/2018 |
| Regulated market | Euronext Brussels | BELGIUM | | Head office | Financial Services and Markets Authority (FSMA) | 01/11/2007 | | Active | 15/02/2018 |
| Regulated market | Wiener Börse AG | AUSTRIA | | Head office | Austrian Financial Market Authority (FMA) | 01/11/2007 | | Active | 23/02/2018 |
| Regulated market | Ljubljana Stock Exchange Inc. | SLOVENIA | | Head office | Securities Market Agency (ATVP) | 01/03/1990 | | Active | 28/02/2018 |
| Regulated market | CYPRUS STOCK EXCHANGE | CYPRUS | | Head office | Cyprus Securities and Exchange Commission (CySEC) | 01/11/2007 | | Active | 01/03/2018 |
| Regulated market | Nasdaq Iceland hf. | ICELAND | | Head office | Iceland Financial Supervisory Authority (FME) | 03/01/2018 | | Active | 01/03/2018 |
| Regulated market | Nasdaq Iceland hf. | ICELAND | | Head office | Iceland Financial Supervisory Authority (FME) | 03/01/2018 | | Active | 01/03/2018 |
| Regulated market | Nasdaq Iceland hf. | ICELAND | | Head office | Iceland Financial Supervisory Authority (FME) | 03/01/2018 | | Active | 01/03/2018 |

| | | | | | | | | | |
|------------------|---------------------------|-------------|--|-------------|---|------------|--|--------|------------|
| Regulated market | NASDAQ Tallinn Aiksiselts | ESTONIA | | Head office | Estonian Financial Supervision Authority (EFSA) | 01/01/2002 | | Active | 01/03/2018 |
| Regulated market | Nxchange B.V. | NETHERLANDS | | Head office | Netherlands Authority for the Financial Markets (AFM) | 31/03/2016 | | Active | 02/03/2018 |
| Regulated market | Euronext Amsterdam N.V. | NETHERLANDS | | Head office | Netherlands Authority for the Financial Markets (AFM) | 23/05/2016 | | Active | 02/03/2018 |

| | | | | | | | | | |
|------------------|--|-------------|--|-------------|---|------------|--|--------|------------|
| Regulated market | Malta Stock Exchange | MALTA | | Head office | Malta Financial Services Authority (MFSA) | 05/10/2007 | | Active | 02/03/2018 |
| Regulated market | ICE Endex Markets B.V. | NETHERLANDS | | Head office | Netherlands Authority for the Financial Markets (AFM) | 25/10/2004 | | Active | 02/03/2018 |
| Regulated market | Institutional Financial Securities Market | MALTA | | Head office | Malta Financial Services Authority (MFSA) | 22/09/2017 | | Active | 02/03/2018 |
| Regulated market | HUDEX Energiatőzsdé Zrt. | HUNGARY | | Head office | Central Bank of Hungary | 11/12/2017 | | Active | 02/03/2018 |
| Regulated market | Nasdaq Vilnius, AB | LITHUANIA | | Head office | Bank of Lithuania (LSC) | 11/05/1993 | | Active | 02/03/2018 |
| Regulated market | European Wholesale Securities Market | MALTA | | Head office | Malta Financial Services Authority (MFSA) | 17/02/2012 | | Active | 02/03/2018 |
| Regulated market | Nasdaq Riga AS | LATVIA | | Head office | Financial & Capital Market Commission (FKTK) | 14/07/1995 | | Active | 05/03/2018 |
| Regulated market | Gielda Papierów Wartościowych w Warszawie S.A. | POLAND | | Head office | Polish Financial Supervisory Authority (KNF) | 12/04/1991 | | Active | 06/03/2018 |
| Regulated market | Towarowa Gielda Energii S.A. | POLAND | | Head office | Polish Financial Supervisory Authority (KNF) | 23/02/2015 | | Active | 06/03/2018 |
| Regulated market | Gielda Papierów Wartościowych w Warszawie S.A. | POLAND | | Head office | Polish Financial Supervisory Authority (KNF) | 12/04/1991 | | Active | 06/03/2018 |
| Regulated market | Gielda Papierów Wartościowych w Warszawie S.A. | POLAND | | Head office | Polish Financial Supervisory Authority (KNF) | 12/04/1991 | | Active | 06/03/2018 |
| Regulated market | Gielda Papierów Wartościowych w Warszawie S.A. | POLAND | | Head office | Polish Financial Supervisory Authority (KNF) | 12/04/1991 | | Active | 06/03/2018 |
| Regulated market | Gielda Papierów Wartościowych w Warszawie S.A. | POLAND | | Head office | Polish Financial Supervisory Authority (KNF) | 12/04/1991 | | Active | 06/03/2018 |
| Regulated market | BondSpot S.A. | POLAND | | Head office | Polish Financial Supervisory Authority (KNF) | 12/02/1996 | | Active | 06/03/2018 |
| Regulated market | Gielda Papierów Wartościowych w Warszawie S.A. | POLAND | | Head office | Polish Financial Supervisory Authority (KNF) | 12/04/1991 | | Active | 06/03/2018 |
| Regulated market | The Irish Stock Exchange plc | IRELAND | | Head office | Central Bank of Ireland (CBI) | 01/11/2007 | | Active | 07/03/2018 |
| Regulated market | EURONEXT - MERCADO DE FUTUROS E OPÇÕES | PORTUGAL | | Head office | Comissão do Mercado de Valores Mobiliários (CMVM) | 03/12/2007 | | Active | 14/03/2018 |
| Regulated market | OMIP - Pólo Português, S.G.M.R., SA | PORTUGAL | | Head office | Comissão do Mercado de Valores Mobiliários (CMVM) | 27/06/2006 | | Active | 14/03/2018 |
| Regulated market | Euronext Lisbon - Sociedade Gestora de Mercados Regulamentados, SA | PORTUGAL | | Head office | Comissão do Mercado de Valores Mobiliários (CMVM) | 28/02/2000 | | Active | 14/03/2018 |
| Regulated market | Nasdaq Stockholm AB - EUR WB EQ Derivatives | SWEDEN | | Head office | Finansinspektionen (FI) | 30/08/2013 | | Active | 16/03/2018 |
| Regulated market | Nasdaq Stockholm AB - Finnish EQ Derivatives | SWEDEN | | Head office | Finansinspektionen (FI) | 30/08/2013 | | Active | 16/03/2018 |
| Regulated market | Nasdaq Stockholm AB | SWEDEN | | Head office | Finansinspektionen (FI) | 30/08/2013 | | Active | 16/03/2018 |
| Regulated market | Nasdaq Stockholm AB - Danish EQ Derivatives | SWEDEN | | Head office | Finansinspektionen (FI) | 30/08/2013 | | Active | 16/03/2018 |
| Regulated market | Nasdaq Stockholm AB - EUR FI Derivated | SWEDEN | | Head office | Finansinspektionen (FI) | 30/08/2013 | | Active | 16/03/2018 |
| Regulated market | Nasdaq Stockholm AB - Commodities | SWEDEN | | Head office | Finansinspektionen (FI) | 30/08/2013 | | Active | 16/03/2018 |
| Regulated market | Nasdaq Stockholm AB - Pan Nordic EQ Derivatives | SWEDEN | | Head office | Finansinspektionen (FI) | 30/08/2013 | | Active | 16/03/2018 |
| Regulated market | Nasdaq Stockholm AB - USD WB EQ Derivatives | SWEDEN | | Head office | Finansinspektionen (FI) | 30/08/2013 | | Active | 16/03/2018 |
| Regulated market | | SWEDEN | | Head office | Finansinspektionen (FI) | 30/08/2013 | | Active | 16/03/2018 |

| | | | | | | | | |
|------------------|--|----------------|-------------|--|------------|--|--------|------------|
| Regulated market | Nasdaq Stockholm AB - Danish FI Derivatives | SWEDEN | Head office | Finansinspektionen (FI) | 30/08/2013 | | Active | 16/03/2018 |
| Regulated market | Nasdaq Stockholm AB - Nordic@Mid | SWEDEN | Head office | Finansinspektionen (FI) | 30/08/2013 | | Active | 16/03/2018 |
| Regulated market | Nasdaq Stockholm AB - Norwegian EQ Derivatives | SWEDEN | Head office | Finansinspektionen (FI) | 30/08/2013 | | Active | 16/03/2018 |
| Regulated market | Nasdaq Stockholm AB - Auction on Demand | SWEDEN | Head office | Finansinspektionen (FI) | 30/08/2013 | | Active | 16/03/2018 |
| Regulated market | Nasdaq Stockholm AB - Swedish EQ Derivatives | SWEDEN | Head office | Finansinspektionen (FI) | 30/08/2013 | | Active | 16/03/2018 |
| Regulated market | Nordic Growth Market - NGM AB | SWEDEN | Head office | Finansinspektionen (FI) | 01/11/2007 | | Active | 16/03/2018 |
| Regulated market | Cboe Europe Equities Regulated Market - Integrated Book Segment | UNITED KINGDOM | Head office | Financial Conduct Authority (FCA) | 03/01/2018 | | Active | 29/03/2018 |
| Regulated market | London Metal Exchange | UNITED KINGDOM | Head office | Financial Conduct Authority (FCA) | 03/01/2018 | | Active | 29/03/2018 |
| Regulated market | Cboe Europe Equities Regulated Market - Reference Price Book Segment | UNITED KINGDOM | Head office | Financial Conduct Authority (FCA) | 03/01/2018 | | Active | 29/03/2018 |
| Regulated market | Cboe Europe Equities Regulated Market - Off-Book Segment | UNITED KINGDOM | Head office | Financial Conduct Authority (FCA) | 03/01/2018 | | Active | 29/03/2018 |
| Regulated market | London Stock Exchange Regulated Market (derivatives) | UNITED KINGDOM | Head office | Financial Conduct Authority (FCA) | 03/01/2018 | | Active | 29/03/2018 |
| Regulated market | NEX Exchange Main Board (non-equity) | UNITED KINGDOM | Head office | Financial Conduct Authority (FCA) | 03/01/2018 | | Active | 29/03/2018 |
| Regulated market | London Stock Exchange Regulated Market | UNITED KINGDOM | Head office | Financial Conduct Authority (FCA) | 03/01/2018 | | Active | 29/03/2018 |
| Regulated market | NEX Exchange Main Board (equity) | UNITED KINGDOM | Head office | Financial Conduct Authority (FCA) | 03/01/2018 | | Active | 29/03/2018 |
| Regulated market | Euronext London Regulated Market | UNITED KINGDOM | Head office | Financial Conduct Authority (FCA) | 03/01/2018 | | Active | 29/03/2018 |
| Regulated market | Bursa de Valori Bucuresti SA | ROMANIA | Head office | Romanian Financial Supervisory Authority | 31/01/2006 | | Active | 02/04/2018 |
| Regulated market | Budapesti Értéktőzések Zrt. (Budapest Stock Exchange) | HUNGARY | Head office | Central Bank of Hungary | 30/04/2002 | | Active | 17/04/2018 |
| Regulated market | Nasdaq Helsinki Oy - Auction on Demand | FINLAND | Head office | Finanssivalvonta (FSA) | 07/06/2017 | | Active | 15/06/2018 |
| Regulated market | Nasdaq Helsinki Oy - Nordic@Mid | FINLAND | Head office | Finanssivalvonta (FSA) | 23/11/2015 | | Active | 15/06/2018 |
| Regulated market | Hellenic Exchanges - Athens Stock Exchange SA | GREECE | Head office | Hellenic Capital Market Commission (HCMC) | 01/11/2007 | | Active | 12/07/2018 |
| Regulated market | Hellenic Exchanges - Athens Stock Exchange SA | GREECE | Head office | Hellenic Capital Market Commission (HCMC) | 01/11/2007 | | Active | 12/07/2018 |
| Regulated market | ELECTRONIC SECONDARY SECURITIES MARKET | GREECE | Head office | Hellenic Capital Market Commission (HCMC) | 28/04/2009 | | Active | 12/07/2018 |
| Regulated market | Gielda Papierów Wartościowych w Warszawie S.A. | POLAND | Head office | Polish Financial Supervisory Authority (KNF) | 12/04/1991 | | Active | 24/07/2018 |
| Regulated market | Gielda Papierów Wartościowych w Warszawie S.A. | POLAND | Head office | Polish Financial Supervisory Authority (KNF) | 12/04/1991 | | Active | 24/07/2018 |
| Regulated market | ICE FUTURES EUROPE | UNITED KINGDOM | Head office | Financial Conduct Authority (FCA) | 03/01/2018 | | Active | 07/08/2018 |
| Regulated market | ICE FUTURES EUROPE - AGRICULTURAL PRODUCTS DIVISION | UNITED KINGDOM | Head office | Financial Conduct Authority (FCA) | 03/01/2018 | | Active | 07/08/2018 |
| Regulated market | ICE FUTURES EUROPE - FINANCIAL PRODUCTS DIVISION | UNITED KINGDOM | Head office | Financial Conduct Authority (FCA) | 03/01/2018 | | Active | 07/08/2018 |
| Regulated market | ICE FUTURES EUROPE - EQUITY PRODUCTS DIVISION | UNITED KINGDOM | Head office | Financial Conduct Authority (FCA) | 03/01/2018 | | Active | 07/08/2018 |
| Regulated market | Nasdaq Stockholm AB - Norway ETF | SWEDEN | Head office | Finansinspektionen (FI) | 30/08/2013 | | Active | 01/10/2018 |
| Regulated market | BULGARIAN STOCK EXCHANGE | BULGARIA | Head office | Financial Supervision Commission (FSC) | 15/05/1998 | | Active | 06/11/2018 |

BIBLIOGRAPHY

- Annunziata, F. (2018). IL RECEPIMENTO DI MiFID II: UNO SGUARDO DI INSIEME, TRA CONTINUITÀ E DISCONTINUITÀ. In *Rivista delle Società* page 3-4
- Better regulated and transparent financial markets. (2017). Eur-lex
- Borsa Italiana (2006). *La comunicazione finanziaria alla luce delle nuove direttive comunitarie*.
- Borsa Italiana (2014). *Italian Equity Markets: Liquidity, transparency, efficiency*.
- Borsa Italiana S.p.a. (2018). *Regolamento dei Mercati organizzati e gestiti da Borsa Italiana S.p.A.* (pp. 109-111).
- Borsa Italiana. (2018). *MIFID II Modifiche del Regolamento dei mercati di Borsa Italiana*.
- BorsaItaliana.it (2018) *Requisiti Star – Borsa Italiana*
<https://www.borsaitaliana.it/azioni/mercati/star/requisiti/requisitistar.html>.
- Borsaitaliana.it. (2016). *Il nuovo MTA International - Borsa Italiana*.
<https://www.borsaitaliana.it/notizie/trading-online-magazine/azionario/nuovo-mta-international.htm>
- Busch, D. (2017). *MIFID II and MIFIR: stricter rules for the EU financial markets*.
- Capriglione, F. (2015). Prime riflessioni sulla MiFID II (tra aspettative degli investitori e realtà normativa). *Rivista Trimestrale Di Diritto Dell'economia*, (2), 88
- Cftc.gov. *CFTC Organization | U.S. COMMODITY FUTURES TRADING COMMISSION*. <https://www.cftc.gov/About/CFTCOrganization/index.htm>
- Cftc.gov. *Mission & Responsibilities | U.S. COMMODITY FUTURES TRADING COMMISSION* <https://www.cftc.gov/About/MissionResponsibilities/index.htm>
- Clausen, N., & Sørensen, K. (2012). Reforming the Regulation of Trading Venues in the EU under the Proposed MiFID II - Levelling the Playing Field and Overcoming Market Fragmentation? In *Nordic & European Company Law Working Paper Series* (p. 285). Mette Neville and Karsten Engsig Sørensen.
- Comision Nacional Del Mercado De Valores. (2018). CNMV - MiFID II – MiFIR
- Duffie, D., Li, A. and Lubke, T. (2010). *Federal Reserve Bank of New York Staff Reports*. Policy Perspective on OTC Derivatives Market Infrastructure.
- Durbin, M. (2010). *All About High Frequency Trading*. The McGraw-Hill companies

- ESMA (2016). *Transaction reporting, order record keeping and clock synchronization under MIFID II*. p.23.
- ESMA. (2012). *ESMA proposes rules on derivatives, central counterparties and trade repositories*.
- ESMA. (2018). *Investment services and regulated markets - Markets in financial instruments directive (MiFID)*.
- European central Bank (2016). *Looking back at OTC derivative reforms – objectives, progress and gaps*. p.3.
- European Commission (2010). *Impact Assessment*. Brussels.
- European Commission (2011). *Review of the Markets in Financial Instruments Directive*. Bruxelles
- European Commission. (2017). *Questions and Answers on the proposal to amend the European Market*. Brussels.
- European Commission. *The European market infrastructure regulation (EMIR) lays down rules on OTC derivatives, central counterparties and trade repositories*.
- European Securities and Markets Authority (2017). *Final Report Draft RTS on package orders for which there is a liquid market*. p.9.
- European Securities and Markets Authority (2018). *Questions and Answers on MIFID II and MIFIR transparency topics*. pp.38-45.
- European Securities and Markets Authority. (2015). *ESMA publishes response to Capital Markets Union Green Paper*
- Faustini, E. (2008). *L'eliminazione dell'obbligo di concentrazione nella Direttiva Mifid*. Luiss Carlo Guidi.
- Fohlin, C. (2016). Frictions: Lessons from the History of Financial Market Microstructure. In: D. Chambers and E. Dimson, ed., *FINANCIAL MARKET HISTORY REFLECTIONS ON THE PAST FOR INVESTORS TODAY*. David Chambers and Elroy Dimson, pp.134-147
- G-20 Leaders (2010). *Implementing OTC Derivatives Market Reforms*. Financial Stability Board.
- Giappichelli. *Finalità e contenuti della direttiva 2014/65/UE (MiFID II) e del regolamento (UE) n. 600/2014 (MiFIR)*
- Gresse, C. (2011). *Effects of the Competition between Multiple Trading Platforms on Market Liquidity: Evidence from the MiFID Experience*

- Investment services and regulated markets - Markets in financial instruments directive (MiFID). (2018). ESMA
- Iris H-Y Chiu, 'Securities intermediaries in the Internet Age and the Traditional Principal-Agent Model of Regulation: Some Observations from European Union Securities Regulation', 2 Virginia Law & Business Review, 2007, p. 307.
- Jerry W. Markham & Daniel J. Harty, 'For Whom the Bell Tolls: The Demise of Exchange Trading Floors and the Growth of ECNs', 33 Journal of Corporation Law, 2007–2008, p. 865, at p. 911
- Juncker, J. (2014). *A new start for Europe*. European Commission. Retrieved from http://europa.eu/rapid/press-release_SPEECH-14-567_en.html
- Kumpan, C. and Muller-Lankow, H. (2017). *The multilateral single-dealer system - an oxymoron under MiFID II?*
- Lannoo, K. (2017). *MiFID II and the new market conduct rules for financial intermediaries: Will complexity bring transparency?* Bruxelles: European Capital Markets Institute pag.6
- Leaders' Statement- The Pittsburgh Summit, G20, 2009
- London Stock Exchange Group. (2018). *STAR*. <https://www.lseg.com/areas-expertise/our-markets/borsa-italiana/equities-markets/raising-finance/mta/star>
- Lucatoni. (2017). *Il mercato dei derivati: note preliminari ad uno studio sistematico*.
- Mahoney, P. and Rauterberg, G. (n.d.). *The Regulation of Trading Markets: A Survey and Evaluation*.
- Marin, F. (2018). VERSO LA CAPITAL MARKETS UNION: LE NUOVE TRADING VENUE NELLA MIFID II E NEL MIFIR. *RIVISTA TRIMESTRALE DI DIRITTO DELL'ECONOMIA*, (1), 63-93.
- Motti. (2010). *Mercati regolamentati, sistemi multilaterali di negoziazione e internalizzatori sistematici*. Bologna: Il Mulino.
- Neal, L. (2016). Frictions: The role of Stock Exchanges in Financial Globalization: A Historical Perspective. In: D. Chambers and E. Dimson, ed., *FINANCIAL MARKET HISTORY REFLECTIONS ON THE PAST FOR INVESTORS TODAY*. David Chambers and Elroy Dimson, pp. 118-130
- Orsi, G. (2018). *L'Abolizione della Concentration Rule e la Competizione tra le Nuove Sedi di Esecuzione*

- Parziale, A. La proposta di riforma MiFID II ed il suo impatto sulla disciplina delle trading venues. *Risi Dei Mercati Finanziari E Corporate Governance: Poteri Dei Soci E Tutela Del Risparmio*, 335
- Renewal charter of the global markets advisory committee
- Renewal charter of the market risk advisory committee
- SEC.gov | U.S. Equity Market Structure: Making Our Markets Work Better for Investors. Retrieved from https://www.sec.gov/news/statement/us-equity-market-structure.html#_edn51
- Sec.gov. (2018). *SEC.gov Alternative Trading System ("ATS") List*. <https://www.sec.gov/foia/docs/atlist.htm>
- Securities and Exchange Commission. (2018). *Proposed Commission Interpretation Regarding Standard of Conduct for Investment*.
- Securities and Exchange Commission. SEC.gov | What We Do. Retrieved from <https://www.sec.gov/Article/whatwedo.html#org>
- Servizio studi del Senato. (2010). *La vigilanza sui mercati finanziari negli Stati Uniti: le istituzioni e le proposte di riforma*
- Shiller, R. (2008). *Brokers, Dealers, Exchanges & ECNs*.
- User, S. (2018). CONCENTRAZIONE DEGLI SCAMBI
- Valiante, Diego (2012), "Setting the Institutional and Regulatory Framework for Trading Platforms: Does the MiFID definition of OTF make sense?", ECMI Research Report.
- Zavaritt, A. (2007). *Mifid, il questionario che le banche devono ancora fare. Il Sole 24 Ore*

LAW INDEX

- Council Directive 93/6/EEC
- Delegated regulation 565/2017/EU
- Delegated regulation 566/2017/EU
- Delegated regulation 569/2017/EU
- Delegated regulation 570/2017/EU
- Delegated regulation 573/2017/EU
- Delegated regulation 574/2017/EU
- Delegated regulation 578/2017/EU
- Delegated regulation 584/2017/EU
- Delegated regulation 588/2017/EU
- Delegated regulation 590/2017/EU
- Directive 1993/22/EEC
- Directive 1995/46/EC
- Directive 2000/12/EC
- Directive 2000/12/EC
- Directive 2002/87/EC
- Directive 2003/71/EC
- Directive 2004/39/EC (2004)
- Directive 2005/60/EC
- Directive 2013/36/EU
- Directive 2014/49/EU
- Directive 2014/65/EU
- Directive 2016/1034/EU
- Directive 91/308/EEC
- Directive 97/9/EC
- European Council Stockholm, Conclusions of the Presidency. (2001)
- Exchange Act Rule
- Implementing regulation 1005/2017/EU
- Law 2.1.1991 n.1
- Regolamento mercati Adottato con delibera 20249 28/12/2017
- Regulation 1095/2010/EU
- Regulation 1286/2014/EU

- Regulation 1287/2006/EC
- Regulation 565/2017
- Regulation 575/2013/EU
- Regulation 580/2017/EU
- Regulation 584/2017/EU
- Regulation 589/2017/EU
- Regulation 596/2014/EU
- Regulation 600/2014/EU
- Regulation 648/2012/EU
- Regulation 648/2014/EU
- Regulation 824/2016/EU
- Regulation ATS
- Regulation NMS
- Risk Management Controls for Brokers or Dealers with Market Access Rule 15c3-5
- SEC. Executing an Order | Investor.gov. Retrieved from <https://www.investor.gov/introduction-investing/basics/how-market-works/executing-order>
- Securities Exchange Act of 1934 version enacted March 23, 2018
- Testo Unico della Finanza