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November 11, 2022

VIA email: cp22-18@fca.org.uk

Gabriella Tóth, Senior Policy Adviser
Trading and Wholesale Conduct Policy, Markets Policy
Financial Conduct Authority (FCA)
12 Endeavour Square London E20 1JN

Re: Consultation Paper (CP22/18) On FCA's Guidance on the trading venue perimeter[1]

Dear Ms. Gabriella Tóth,

On behalf of Data Boiler Technologies, I am pleased to provide the Financial Conduct Authority (FCA) with our comments on the captioned consultation paper concerning trading venue perimeter (TVP)[1] in the Perimeter Guidance Manual (PERG) that is part of the Wholesale Markets Review (WMR). Data Boiler is a pioneer in patented trade processing and analytic solutions. We have commented on FCA's FS22/1 (accessing and using wholesale data)[2] in the past, and we engaged with the regulatory agencies in the U.S. and in Europe regarding market data, market structure, and trade surveillance matters.

In our opinion, a jurisdiction or sovereign state may apply judgements for the most suitable, efficient, and effective ways to govern and regulate the orderly functions of society, amid Brexit. We are good with regime differences over "subjective" matters, such as how much discretion or rights that one should have or is entitled to, and they bear the corresponding obligation and/or regulatory burden. These kinds of differences promote healthy competition across nations and/or regions. However, the difference this time pertains to the characteristics or principles in determining when a "subject" or "object" meeting certain condition(s) would be considered "what" with reference to Article 2(1)(11) of UK MiFIR that defines a multilateral system.

The FCA's proposed Guidance on the TVP in the UK deviated from Section 5 of the ESMA market structures Q&As 7, 10, 11 and 12[3] in the EU. The precise and absolute terms in the 34-pages European version[4] may sound appealing to those who do not operate close to the edge (grey areas). Yet, the EU requirements come along with clear definitions that can hurt the industry negatively [e.g., Organised Trading Facility (OTF) operator, which is usually a broker-dealer, would be prevented from trading against its capital may lead to drying up of market liquidity detriment to institutional investors].

While unsure about the UK, the EU seems to be not proposing to establish a threshold-based regime for OTFs, while the US proposed rules[5] afford such leeway. Shying away from having policy maker mandates or setting a threshold may avoid the impression of subjective rule-making or arbitrary judgements it does not stand the test of time. In general, the industry should welcome the FCA's proposed Guidance on the TVP because it is not as strict or rigid as the EU requirements. Relatively fewer entities would be brought within scope in the UK than the EU. However, people jockey around and/or re-domicile to make money. Among them there could be formal or informal alliances, as well as possible collusion. There will be complaints about rules being skewed in favor of particular entities, as well as new way(s) to exploit or circumvent the rule. On-going recalibration of threshold tolerances is more practical than cumulating Q&A bureaucracy.

Contemplating the characteristics or principles in determining when a "subject" or "object" meeting certain condition(s) would be considered "what" in different regimes exacerbate competition among market centers. We argue that the global

[1] https://www.fca.org.uk/publication/consultation/cp22-18.pdf
[2] https://www.databoiler.com/index_htm_files/DataBoiler%20FCA%20Wholesale%20Data.pdf
[3] https://www.esma.europa.eu/system/files_force/library/esma70-872942901-38_qas_markets_structures_issues.pdf
[4] https://www.esma.europa.eu/system/files_force/library/esma70-156-4978_consultation_paper_on_the_opinion_on_trading_venue_perimeter.pdf
[5] https://www.sec.gov/rules/proposed/2022/34-94062.pdf

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capital markets never lack competition. Indeed, we have more than enough markets but insufficient "Farmers" (see this value chain smile curve[6]) and diversity to work in the field to bear fruit. Market operators make more money selling "opioids" (TCA, liquidity sourcing, outsourced execution tools to fabricate fragmented markets are like addictive drugs) than "fruit". We dislike both the US and EU policies that brought too many entities within scope.

We applaud the FCA for seeking views on specific aspects of the MTF and OTF regimes which create the greatest barriers to entry to the market for smaller firms. Mercy to the ordinary market participants (the smaller players in both institutional and retail), as they jump through hoops and are subservient to the elites to stay in business. The gap between the 'haves' and 'have-not' is too wide (e.g. TVP allows for assorted incentives and business models favoring the Elites with rebates and other privileges/ latency advantage, while others may get nothing).

We attribute the phenomenon of the proliferation of market centers to the fact that competition has intensified to find natural liquidity in the fragmented markets. Vigorous efforts have been made to fabricate the highly fragmented Global Capital Markets/ decentralized finance (DeFi). DeFi network consists of bilateral and/or multilateral agreements are sometimes referred to as a bureaucracy. For all fairness, DeFi does not have absolute advantage over centralized finance (CeFi), and vice versa. The noumenon[7] of Regulation NMS in the US, or the so-called "venue-by-venue competition" globally is indeed a brutal Warring States Period[8]. Warlords are staking claims everywhere in the DeFi division of the markets. If policy makers around the World do not want to be perceived as price control interference of markets, the only way to drive orderly function of markets is by aligning and making values transferable across different trading (streaming)[9] platforms.

If a pond is overcrowded with fishing boats and it costs almost nothing to throw bait, then the pond may be polluted with too much bait and no fish. Reaching out to other clients to find a potential match when receiving an initial buying or selling interest is like throwing bait. Let those who want to throw bait in catching fish own up to the relevant costs. For that, copyright licensing mechanism[10] from the music industry has shown us a roadmap. Data ownership/ intellectual property right is the only thing that can address the issues across the access fee rebates, payment for order flow (PFOF), market data and whatnot.

- The approach is simple – trading platforms would be based on who they serve, how many subscriptions they are going to get and determine whether to carry a broader or narrower "catalog". The broader the "catalog", the platform would pay a wider range of broker-dealers, featured traders, algo developers in royalties.
- Best of all, it is time tested against decades of lawsuits in other industries to assert data ownership claims, as well as effective to deal with bilateral and multilateral agreements embedded in formal and informal networks.
- This copyright mechanism and our suggestion of a "sound library" [11] would allow for creative discovery of unknown unknowns, [12] which can be anybody's game. It will minimize the gaps between the 'haves' and have-nots.
- There will be opportunities to earn royalty's payments, 2nd profit for unused algorithms, off-loading of certain staff costs while incurring minimal in royalty admin fees, payment for usage of others' algo IP, and subscription for

[6] https://www.linkedin.com/pulse/smile-curve-changes-securities-value-chain-evolves-kelvin-to/
[7] https://www.linkedin.com/pulse/noumenon-equity-market-structure-kelvin-to/
[8] https://www.linkedin.com/pulse/warring-states-period-finding-new-equilibrium-kelvin-to/
[9] https://www.linkedin.com/pulse/trading-venue-perimeter-related-market-data-issue-kelvin-to/
[10] https://www.databoiler.com/index_htm_files/DataBoiler Copyright Licensing.pdf
[11] https://www.databoiler.com/index_htm_files/DataBoiler SoundLibrary.pdf
[12] https://www.pmi.org/learning/library/characterizing-unknown-unknowns-6077

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pattern monitoring services. Existing vested interests, other encumbrances, and new entrants can all flourish under this recommended approach regardless of interactive or non-interactive subscription services they choose.

- Policy makers should welcome this approach because the only way to regulate the decentralized equity markets is via decentralized crowd intelligence.

We believe "What Gets Paid and Who Gets What"[13] must be based on clear delineation of rights and obligations. Think about what gives rise to arbitrage or pick off on price. All profit driven business would have done it if they did not have to bear the corresponding cost in using others' copyrighted materials. BestEx, order protection and ways to curb conflicts of interest all boil down to tweaking incentives causing it to not be economically viable for a constituent to exploit its economy of scope, scale, or engage in other misbehavior acts. The only way to truly "harmonize" across market centers is shaking up the TVP.

Copyright Licensing Mechanism is NOT a drastic change. Rest assured it is market driven, and not subjective judgement on what should be the equivalent value of price versus size improvement. Best of all, it is time tested against decades of lawsuits in the other industries to assert data ownership claims, as well as effective to deal with bilateral and multilateral agreements embedded in formal and informal networks.

Which type of trading venue should have what capabilities in order to maximize overall reach and efficiency of global capital markets, it depends on three things:
(1) how much an interactive or non-interactive streaming platform is willing to carry, i.e. a broader or narrower "catalog";
(2) nimbleness to maneuver around in crafting niches; and
(3) ability to grow the number diversified market participants and growing the overall pie.

This approach efficiently addresses the "who owns the data" question, optimizes scale and scope of different trading venues, and is effective in negotiating among different market constituents on tick size/ minimum price increment, odd-lot/ round lot, access discretions, what should be complimentary versus healthy competition, and other market structure matters. So, prioritize the adoption of Copyright Licensing Mechanism. Once this firm foundation is set in place, the rest will fall in respective orders for the responsible development of the Global Capital Markets.

Please see Appendix 1 for our responses to Questions 1-12 in CP22/18. Feel free to contact us with any questions. Thank you and we look forward to engaging in any discussions and/or opportunities where our expertise might be helpful.

Sincerely,

Kelvin To

Founder and President
Data Boiler Technologies, LLC

CC: The Honorable Mr. Richard Lloyd, Interim Chair
Ms. Sarah Pritchard – Executive Director, Markets
Mr. Sheldon Mills – Executive Director, Consumers and Competition

This letter is also available at:
https://www.DataBoiler.com/index_htm_files/DataBoiler%20FCA%20Trading%20Venues%20202211.pdf
Please also see our related comment letters to the SEC in the US and the ESMA in the EU on the TVP topic at:
https://www.DataBoiler.com/index_htm_files/DataBoiler%20SEC%20ATS%2020220418.pdf and
https://www.databoiler.com/index_htm_files/DataBoiler%20ESMA%20Trading%20Venues%20202204.pdf

[13] https://www.amazon.com/Who-Gets-What-Why-Matchmaking/dp/0544705289/

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Appendix 1: Data Boiler's responses to Questions 1-12 in the Consultation Paper

Q1: Do you agree with our approach that following issuance of our final guidance, Q&As 7, 10, 11 and 12 in Section 5 of the ESMA market structures Q&As should not form part of our supervisory expectations?

As mentioned in our preemptive, the regime difference pertains to the characteristics or principles in determining when a "subject" or "object" meeting certain condition(s) would be considered "what". Unlike regime differences over "subjective" matters, such as how much discretion or rights one should have or is entitled to, and they bear the corresponding obligation and/or regulatory burden. Civilized values may gradually corrode down to a phenomenon of "referring a deer as a horse" if the definitions of the "what" is not being harmonized internationally. So, we really hope the UK, EU, and the US to collectively come to an agreement with these definitions of TVP.

Out of practical realities given the Brexit, we understand and applaud the FCA in producing this version of changes. Despite departure from the Q&As 7, 10, 11 and 12 in Section 5 of the ESMA market structures Q&As, the FCA diplomatically show for example, how a UK customer type is applied to activity on a firm's permission with mapping to MiFID-based client category. By explicitly stating that these ESMA's Q&A parts do not form part of the FCA supervisory expectations helps avoid possible contradictions with other rules in the UK.

The industry should welcome the FCA's proposed Guidance on the TVP in general because it is not as strict or rigid as the EU requirements. Fewer entities would be brought within scope in the UK than the EU. However, people jockey around and/or re-domicile to make money. There could be formal or informal alliances, as well as possible collusion. Contemplating the definitions of TVP would not address the phenomenon of the proliferation of market centers. Intensifying venue-by-venue competition is indeed a brutal Warring States Period[8]. Warlords are staking claims everywhere in DeFi division of the markets.

Mercy to the ordinary market participants (the smaller players in both institutional and retail), as they jump through hoops and are subservient to the elites to stay in business. The gap between the 'haves' and 'have-not' is too wide (e.g. TVP allows for assorted incentives and business models favoring the Elites with rebates and other privileges/ latency advantage, while others may get nothing). Policy makers around the World should make it a top regulatory priority to reform market data/ market structure. Copyright Licensing Mechanism[10] can drive orderly function of markets by aligning and making values transferable across different trading (streaming[9]) platforms. See the preemptive of this comment letter and our whitepaper – the "Noumenon of Equity Market Structure"[14] for a discussion.

Q2: Do you agree with our interpretation of the definition of a multilateral system?

We agree with the four main elements stated in 3.9 – a multilateral system comprises: (a) a trading system or facility; (b) multiple third-party buying and selling trading interests; (c) interact in the system; (d) are in financial instrument. These four elements synchronize with the ESMA's opinion on the TVP in Europe but are different from the SEC's proposed amendments[5]. Comparatively, the 591-pages SEC proposed amendments look blurry and cumbersome. We dislike both the US and EU policies that brought too many entities within scope. Given the UK version being similar to the EU, the effects would be similar but possibly to a lesser extent because we view the FCA's version is not as rigid as the EU requirements. Although the UK and the EU does not have an order protection rule, firms pursuing Best Execution found it costly to connect with additional venues that add little or no real benefit to their performance. The global capital markets never lack competition. Indeed, we have more than enough markets but insufficient "Farmers" (see this value chain smile

[14] https://www.databoiler.com/index_htm_files/DataBoiler%20Noumenon%20Equity%20Market%20Structure.pdf

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curve[6]) and diversity to work in the field to bear fruit. Market operators make more money selling "opioids" (TCA, liquidity sourcing, outsourced execution tools to fabricate fragmented markets are like addictive drugs) than "fruit".

Sending out a request for quotes or streaming market data technically costs little to almost nothing. Yet, one ought to pay royalties when streaming copyrighted materials. There is a tremendous value in composing trades and publishing trade algorithms[10]. Allowing it to stream freely at no cost is like a pirate copy of an MP3 song. We recommend all market centers (streaming platforms[9]) would have to bear royalties payments and earn appropriate subscription fees to cover their cost. Hence, there will no longer be the issues of regulatory arbitrage or MTFs / OTFs at competitive disadvantage compared to other interactives streaming platforms, such as Systemic Internalisers and Communication Protocol Systems (CPSs) as they do not fall within the definition of "Regulated Market" (RM).

Under our recommended scheme, order flow would be like "songs" streaming on different platforms. Broker-dealers would earn royalties on top of their trading revenue. Additionally, algo wheels that are no longer in use may be able to earn a "second profit". These royalties may be a small amount per "song", but it will be substantial for a hit song that is played many times. More importantly, picture the cost structure of a broker-dealer where traders and algorithm developers usually attributed to a significant portion of all costs. What if some or all of these "featured artists" costs may be off-loaded and paid for directly by the copyright licensing royalty scheme?

In turn, the definition of "professional" versus "non-professional" would be better delineated as – those who are able to compose a full song versus those who play only a few single notes. For the "featured artists" wanting to earn the royalties, they will identify themselves and bear their fair share of responsibilities (profit/ liabilities). Imagine how much easier it would be to identify the bad actor if the composed trades end up causing market chaos/ manipulation.

Each streaming platform, regardless of it being "interactive" or "non-interactive" subscription services and including CPSs, would craft their own space according to segment(s) or niche(s) they served. Some broker-dealers may want their order flows to be exclusively played on an interactive platform. Others may want to trade cross-asset classes and/or cross-regions. Trading platforms would be based on who they serve, how many subscriptions they are going to get and determine whether to carry a broader or narrower "catalog".

To create a catalog, one does not need to reveal trade strategies in full. Instead, it could use a high-level description of the algorithm (just like a movie trailer preview), or a brief sample where one tested out an algo-wheel. The enabling technology is Data Boiler's patented invention to transform trades into music. Appropriate obfuscation to preserve confidentiality of trade strategies are ensured, while rights to claim ownership of data by broker-dealers can be asserted.

Copyright Licensing Mechanism is NOT a drastic change. It is simply replacing the existing PFOF, access fee rebates, and other incentives in different markets with a synchronized common term called "royalty". It is time tested against decades of lawsuits in other industries to assert data ownership claims, as well as effective to deal with bilateral and multilateral agreements embedded in formal and informal networks. This copyright mechanism and our suggestion of a "sound library"[11] would allow for creative discovery of unknown unknowns[12], which can be anybody's game. It will minimize the gaps between the 'haves' and have-nots. Policy makers around the World should welcome this approach because the only way to regulate the decentralized equity markets is via decentralized crowd intelligence.

Q3: Are there any other relevant characteristics to a multilateral system that should be taken into account?

We believe the FCA has covered most if not all the relevant characteristics to today's multilateral systems. MAR 5AA guidance on multilateral systems is helpful for the industry to comply with related FCA's requirements. Yet, innovations in

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the future would probably introduce new ways to operate a multilateral system. Attempting to create an exhaustive list of communication tool services that goes beyond providing information and allows trading to take place is impractical or meaningless. Using casino games or sport gambling as an analogy, there may not be an exhaustive list of new games or new ways to play the old games. The list would be outdated by the time there was an all-inclusive version. The question is what type of game(s), policy makers want to regulate and which scale of game(s) that is permissible to operate without bureaucratic management.

It makes sense to regulate games like a derby horse race that accepts open betting. It is probably overkill for the government to monitor mahjong and card game play with family and friends at home. If using characteristics such as a "house that customarily books all bets" to define trading venue requiring authorisation, then it would miss "side-betting" (a bet made with a player other than a house that customarily books all bets or other than with the shooter). The collapse of Archegos Capital[15] may prompt scrutiny of outsized bets accumulated by family offices. Dysfunctional of security-based swap market[16] and/or the OTC markets[17] may cause a liquidity crunch to the broader financial system.

When accessing the trading venue authorisation perimeter, we want to be practical. There are certain merits to the threshold approach for the US Alternative Trading Systems (ATSs). No fish would be able to survive in the pond when the water is overly clear. Rigid rules regardless of "scale of the game" would drain liquidity. The orderly function of any market requires ample liquidity from diversified sources. Otherwise, there would be no price discovery process and no easy and definitive way to value securities. It is tricky for regulators to be assertive while not being too rigid to shrink ordinary market activities or to discourage innovations.

Q4: Do you agree with our proposed guidance in relation to voice broking?

By explicitly stating that "arranging trades over the telephone is not a sufficient condition" in the draft Handbook text in Annex B of Appendix 1 to this consultation paper, the FCA places the emphasis on whether the arrangement "**bringing about**" transactions. It is similar to ESMA's opinion on trading interest are "**brought together**…" for qualification as "multiple 3rd party buying and selling interest", which is the second characteristic [point (b) in 3.9 of the FCA's version] of a multilateral system. So, one should expect the regulator to review whether the "Voice Broking" may be a part of a multilateral system (not an inward looking Order Management System [OMS] or "Bulletin Board" that only aggregate and broadcast buying and selling interests in financial instrument with no possibility of execution) or a hybrid system (as referred to in Annex I MiFID RTS 2[18] (Commission Delegated Regulation (EU) 2017/583) and Annex I MiFID RTS 1[19] (Commission Delegated Regulation (EU) 2017/587).

Think about it, is it worthwhile to produce a more exhaustive list of "relevant characteristics" when enforcement agencies do not have resources to sweep the entire universe to check each system qualifying as "multilateral system" or check if service of a "voice broking" or communication tool goes beyond providing information and allows trading to take place? Often, regulators rely on someone filing a complaint to launch an investigation. So, unless policy makers want and can implement some kind of annual "car inspection" system, it is impractical to administer the enforcement.

[15] https://www.hedgeweek.com/2021/05/05/299729/archegos-collapse-shows-what-can-happen-when-leverage-misapplied
[16] https://www.sec.gov/swaps-chart/swaps-chart.pdf
[17] https://www.imf.org/external/pubs/ft/fandd/basics/pdf/dodd-markets.pdf
[18] http://ec.europa.eu/finance/securities/docs/isd/mifid/rts/160714-rts-2-annex_en.pdf
[19] http://ec.europa.eu/finance/securities/docs/isd/mifid/rts/160714-rts-1-annex_en.pdf

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Q5: Do you agree with our proposed guidance relating to internal crossing by portfolio managers?

How a fund manager who operates an internal crossing system would curb conflicts of interest for funds they manage versus others is one of the unsettling issues we identified on page 6 of our comment letter[20] to ESMA's consultation paper[4]. Comparatively, Q24E of the draft Handbook text in Annex B of Appendix 1 to the FCA's consultation paper is not as strict as the ESMA's requirements on Single dealer, bilateral system that "**trades on own account**" on every transaction… and is required to "**take on market risk**"… As long as Portfolio Managers' "internal crossing" practices:

- "**exercise discretion**" in relation to the financial instruments it manages…
- do not consider that it is the purpose of COLL 6.9.9R and FUND 1.4.3R to prevent a UCITS management company or an external AIFM that is a full-scope UK AIFM from doing this in these circumstances …
- portfolio manager is the **only user of the system**…
- **no interaction of multiple third-party** trading interests,

then, it does not require authorisation as a multilateral system. The industry should welcome the UK approach. We, however, think that conflict or what gives rise to arbitrage or pick off on price is indeed a result of no bearing of the corresponding cost in using others' copyrighted materials. BestEx, order protection and other ways to curb conflicts of interest all boil down to tweaking incentives causing it to be economically not viable for a constituent to exploit its economy of scope, scale, or engage in other misbehavior acts. The only way to truly "harmonize" across market centers is shaking up the TVP with Copyright Licensing Mechanism[10]. See the preemptive of this comment letter and our whitepaper – the "Noumenon of Equity Market Structure"[14] for an elaborated discussion.

Q6: Do you agree with our proposed guidance relating to blocking onto trading venues?

Blocking onto trading venues should be another welcoming move that the industry favored the UK approach over the concise and absolute requirements of the ESMA that "functioning of the arrangement" per Recital 8 MiFIR must meet all 3 characteristics:

- Consist of an interface that only aggregates and broadcasts buying and selling interests in financial instrument;
- Neither allows for the communication or negotiation between advertising parties nor imposes the mandatory use of tools of affiliated companies;
- No possibility of execution or the bringing together of buying and selling interests in the system.

We see the UK approach is simpler than the reliance on Article 4(1)(c)[21] for pre-arranged equity transactions benefits from a Large-in-Scale waiver and reliance on waivers from pre-trade transparency in Article 9(1) of MiFIR[22] for non-equity transaction that met certain conditions.

We are not sure how **the purpose only of blocking trades** onto a trading venue "**consistent with the intentions**" of the parties [between **two clients**, and that transaction is then executed between the **counterparties**] to the underlying transactions to trade on a trading venue is going to the review by regulator? Sharing with regulators on a quarterly basis data on "where" customers' orders are routed is relatively easy. The hard part is "when" routing should happen to qualify for the "best market-timing" for order execution. How to curb "selective timing" to get in-and-out of market, or if execution vendor may classify a trade as dealing with "counter-parties" versus "clients"? Should the FCA require a Best Execution rule like the SEC in the US? Or should the FCA follow the ESMA's approach that an "extension of the trading

[20] https://www.databoiler.com/index_htm_files/DataBoiler%20ESMA%20Trading%20Venues%20202204.pdf
[21] https://www.esma.europa.eu/databases-library/interactive-single-rulebook/clone-mifir/article-4
[22] https://www.esma.europa.eu/databases-library/interactive-single-rulebook/clone-mifir/article-9

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venue" is supposed to comply with all relevant MIFID II provisions including rules relating to "non-discriminatory access and fees"? Fair access and how fees are set all circled back to the problem of "What Gets Paid and Who Gets What"[13] and we believe that it must be based on clear delineation of rights and obligations. Therefore, Copyright Licensing Mechanism[10] is the only way to deal with "who owns the data", fair access and other related market structure issues. See the preemptive of this comment letter and our whitepaper – the "Noumenon of Equity Market Structure"[14] for an elaborated discussion.

Q7: Do you agree with our interpretation to regard a crowdfunding platform operating only in primary markets as not involving the operation of a multilateral system?

Regarding a crowdfunding platform that operates only in primary markets as not involving the operation of a multilateral system should be another welcoming move that the industry favored the UK regime over the US and the EU jurisdictions. We agree with the FCA that there is a **distinction between** the **matching of funding interests** and the **interaction of trading interests**… **multiple third-party** buying and selling trading interests of investors in financial instruments are able to **interact within a system** (for example, **in a secondary market**) would be a multilateral system. The question is our experience and market reality have indicated that a market center only operates in the primary market space but not in a secondary market as it would not be competitive with peers who operate in both primary and secondary markets. A liquid secondary market is what sustained the price that issuers would consider for listing on a primary market. Attracting certain crowdfunding platforms to domicile in the UK is one thing, the quality of issuers they would bring and stay in the UK markets is another. Besides, does the enforcement agency have resources to sweep the entire universe to check each crowdfunding platform qualifying as "multilateral system" and be able to draw the right distinction between matching of funding interests versus facilitating trading interests? Often, regulators rely on someone filing a complaint to launch an investigation. So, unless policy makers want and can implement some kind of annual "car inspection" system, it is impractical to administer the enforcement.

Q8: Do you agree with our interpretation of the characteristics of a bulletin board?

We see that the FCA's statement of "we would not regard a firm as operating only a bulletin board if:

- it matches trading interests within the system;
- it allows users to respond within the system to other users' trading interests, including by communicating in relation to, negotiating or accepting essential terms of a transaction; or
- users can commit to or enter into contracts for the sale / purchase of the financial instruments (i.e. execute transactions) within the system."

is essentially an indirect way of saying the same things as "functioning of the arrangement" per Recital 8 MiFIR must met all 3 characteristics (while the tone being tuned-down to a more industry friendly manner). Hence, we have no objection to this part.

Q9: Do you agree with our approach to updating the Glossary definition of a service company in relation to client limitation types?

The FCA's proposal to update the relevant section of the Glossary Terms so that the definition of a service company also refers to the current client categorization terminology with respect to client limitation types is understandable. The

problem is – the definition of "retail" versus "professional" may need appropriate revision.[23] The market has evolved with new dynamics, such as the MEME stocks phenomenon. Gamma-squeeze the hedge funds, mobilize the naïve to move prices (the gag would have been prohibited if it occurred at a broker-dealer), lambast the top market-makers to advance controversial agenda on payment for order flow... a rebellious move by an insurgent or who has the war chest to orchestrate a market wide shake-up? We think sensible and sensitivity to the uprising of "insurgent" are keys to remain agile in this cyberpunk new environment. The insurgent would fly below the radar to avoid scrutiny when they perform flash-attacks on their targets. It is hard to discern a bad actor versus someone requiring protection.

Reference to our response in Q6: Do you agree with our proposed guidance relating to blocking onto trading venues?, we raised the question of how to curb "selective timing" to get in-and-out of market, or if execution vendor may classify a trade as dealing with "counter-parties" versus "clients"? We recognize the well-intend of the FCA in proposing to add to the limitation "professional clients" and "eligible counterparties" client types, whilst also preserving the references to "market counterparties" and "intermediate customers". Yet, the enforcement is a challenge.

Under our recommended Copyright Licensing Mechanism[10], the definition of "professional" versus "non-professional" would be better delineated as – those who are able to compose a full song versus those who play only a few single notes. For the "featured artists" wanting to earn the royalties, they will identify themselves and bear their fair share of responsibilities (profit/ liabilities). Imagine how much easier it would be to identify the bad actor if the composed trades end up causing market chaos/ manipulation. Again, we believe "What Gets Paid and Who Gets What"[13] must base on clear delineation of rights and obligations. See the preemptive of this comment letter and our whitepaper – the "Noumenon of Equity Market Structure"[14] for an elaborated discussion.

Q10-12: Which regulatory requirements applicable to MTFs and OTFs are most likely to create barriers to entry to the trading venue market for smaller firms? Does the existing service company regime already address concerns regarding these barriers to entry? Based on which criteria should firms be potentially subject to a more scalable set of requirements?

We do not disagree with the FCA's service company regime. We applaud the FCA for allowing this opportunity to seek views on specific aspects of the MTF and OTF regimes, which are perceived to create the greatest barriers to entry to the market for smaller firms. Mercy to the ordinary market participants (the smaller players in both institutional and retail), they jump through hoops and are subservient to the elites to stay in business. The gap between the 'haves' and 'have-not' is too wide (e.g. TVP allows for assorted incentives and business models favoring the Elites with rebates and other privileges/ latency advantage, while others may get nothing). The noumenon[7] of Equity or other asset classes' Market Structure, or the so-called "venue-by-venue competition" globally is indeed a brutal Warring States Period[8]. Warlords are staking claims everywhere in DeFi division of the markets. If policy makers around the World do not want to be perceived as price control interference of markets, the only way to drive orderly function of markets is by aligning and making values transferable across different trading (streaming)[9] platforms.

The blurriness of the US proposed rules may be seen as a positive among Too Big To Fail (TBTF) elites. They have wider shoulders to bear the compliance burden than smaller firms. The US requirements largely focus on written policies and standards, usually those victimless cases end up in settlements. A "toothless rule" will not bite; it will not help prosecute wrongdoers in recouping losses for the harmed victims. In turn, TBTF elites may factor in such regulatory fines and settlements as part of their costs in doing business. Contemplating the characteristics or principles in determining when a

[23] https://www.bnnbloomberg.ca/pro-traders-and-algorithms-have-overrun-the-fast-twitch-option-market-1.1841941

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"subject" or "object" meeting certain condition(s) would be considered "what" in different regimes exacerbate competition among market centers.

The global capital markets never lack competition. Indeed, we have more than enough markets but insufficient "Farmers" (see this value chain smile curve[6)] and diversity to work in the field to bear fruit. Market operators make more money selling "opioids" (TCA, liquidity sourcing, outsourced execution tools to fabricate fragmented markets are like addictive drugs) than "fruit".

We dislike both the US and EU policies that brought too many entities within scope. The 591-pages SEC proposed amendments in the US look blurry and cumbersome; it is a slippery slope when deviating from an objective basis in establishing clear boundaries between prohibited and permissible activities to delineate rights and obligations. The precise and absolute terms in the European version may sound appealing to those who do not operate close to the edge (grey areas). Yet, the requirements come along with clear definitions that can hurt the industry, especially smaller firms negatively. For example, the requirements might be too strict or rigid that an OTF operator which is usually a broker-dealer (not a RM) can use discretion to bring about transactions, that it would be prevented from trading against its capital.[24] To some extent, it leads to the drying up of market liquidity and is a detriment to institutional investors. Both the US and EU's changes are between a rock and a hard place.[25]

While unsure about the UK, the EU seems not to be proposing to establish a threshold-based regime for OTFs, while the US proposed rules[5] afford such leeway. Shying away from having the policy maker mandates or sets a threshold may avoid the impression of subjective rule-making or arbitrary judgement that does not stand the test of time. From a practical standpoint, there are certain merits to the threshold tolerance approach for the US ATSs. No fish would be able to survive in the pond when the water is overly clear. Rigid rules regardless of "scale of the game" would drain liquidity. The orderly function of any market requires ample liquidity from diversified sources. Otherwise, there would be no price discovery process and no easy and definitive way to value securities. We encourage the FCA to consider appropriate deviation from this EU policy and update Market Conduct Sourcebook (MAR) 5A.3(2)[26] with suitable threshold that applicable to OTFs in the UK.

If a pond is overcrowded with fishing boats and it costs almost nothing to throw bait, then the pond may be polluted with too much bait and no fish. Reaching out to other clients to find a potential match when receiving an initial buying or selling interest is like throwing bait. Let those who want to throw bait in catching fish own up to the relevant costs. For that, copyright licensing mechanism[10] from the music industry has shown us a roadmap. Data ownership/ intellectual property right is the only thing that can address the issues across the access fee rebates, PFOF, market data and whatnot.

We agree a firm must consider how its arrangements relate to the permissions in Article 25 of the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001 (RAO). Whether regulatory obligations for trading venues can be made more proportionate for smaller firms, while maintaining high standards of market integrity, it depends not only on the activity undertaken and client types, and a firm choosing to be authorised as a service company. More importantly, market integrity depends on clear delineation of rights and obligations to determine "What Gets Paid and Who Gets What" [13]. Please see the preemptive of this comment letter and our whitepaper – the "Noumenon of Equity Market Structure" [14] for additional discussion.

[24] https://www.opalesque.com/industry-updates/2933/greenwich-associates-survey-shows-institutional-investors-remain-frustrated.html
[25] https://www.linkedin.com/pulse/trading-venue-perimeter-between-rock-hard-place-kelvin-to/
[26] https://www.handbook.fca.org.uk/handbook/MAR/5A/?view=chapter