

OICV-IOSCO CONSULTATION REPORT

Issues Raised by Dark Liquidity

Comments by AMAFI

1. Association française des marchés financiers (AMAFI) has more than 120 members representing over 10,000 professionals who operate in the cash and derivatives markets for equities, fixed-income products and commodities. Nearly one-third of the members are subsidiaries or branches of non-French institutions.

2. AMAFI welcomes the opportunity to comment on the Consultation Report (hereafter referred as to the "Report" on "Issues Raised by Dark Liquidity" issued by the Technical Committee of the International Organization of Securities Commissions.

3. Before commenting the principles proposed in the "Report", AMAFI would like to emphasise some general comments.

I) GENERAL COMMENTS

➤ *AMAFI welcomes IOSCO's initiative*

4. AMAFI strongly supports IOSCO's proposal to set up principles in order address the issues raised by the developing of dark liquidity. The proposed principles could be implemented rapidly in each jurisdiction.

➤ *AMAFI shares the analysis of the "Report" on the issues raised by dark liquidity*

5. As mentioned in the "Report", dark liquidity has always existed for large orders (upstairs trading) or through the liquidity of brokers which internalise their order flow. But due to the evolution of technology and the recent evolution of regulatory framework (for instance in Europe with the MIFID Directive put in place in 2007 which abolished concentration rules) the number of dark pools has increased in the recent years. This situation raises various questions on the overall functioning of the equity market among them are the following :

- The quality of the price formation process. The quality of the price formation process could be altered, if the proportion of the orders executed through dark systems, which are mainly based on pre trade imported price transparency waiver, should increase dramatically.

- Fair access to the dark liquidity and to information;
- Confidence in the market structure by the investors.

➤ ***But AMAFI considers that there is a need for further work on this subject***

6. Having saying that, AMAFI regrets that IOSCO, in its analysis of the situation and in its draft principles has remained at a very high level, currently well known by many market participants and regulators. If AMAFI understands that the proposed principles can be useful in jurisdictions where the market regulatory framework has not reached the highest standards, it must be noticed that those principles are already in place in the more mature jurisdictions. AMAFI encourages IOSCO to carry out further work and analysis in phase with the critical nature of the issues for the equity market structure raised by dark liquidity. Given the increasing role in the Financial Stability Board in the context of the G20, AMAFI considers that IOSCO should address the market structure issues at an appropriate level.

➤ ***Regulatory framework***

7. To address the issues mentioned above, which are explained in the “Report”, AMAFI considers that the regulation should, at least and at a first stage, be based on the following :

- Pre trade transparency should be the main rule with clear waiver to this principle (e.g. large orders, pre imported price transparency,;)
- Post trade transparency for transactions executed in dark pools should be done in real time and available to all market participants for free after 15 minutes and on a reasonable commercial basis before 15 minutes.
- Dark systems should be supervised by regulators.
- Regulators should have the means to monitor the evolution of the volume of transactions that is processed through these systems and the power to change the rules when it is required.

II) IOSCO Principles

Topic 1: Transparency to Market Participants and Issuers

Principle 1: *The price and volume of firm bids and offers should generally be transparent to the public. However, where regulators consider permitting different market structures or order types that do not provide pre-trade transparency, they should consider the impact of doing so on price discovery, fragmentation, fairness and overall market quality.*

8. AMAFI strongly supports this principle. Pre-trade transparency should be the main principle. AMAFI considers that actionable IOIs should be in any cases considered as orders.

Principle 2: *Information regarding trades, including those executed in dark pools or as a result of dark orders entered in transparent markets, should be transparent to the public. With respect to the specific information that should be made transparent, regulators should consider both the positive and negative impact of identifying a dark venue and/or the fact that the trade resulted from a dark order.*

9. AMAFI agrees with this principle but considers that post trade transparency should be done in real time because this information is a key component of the price formation process. Of course, the regulatory framework can put in place delays for publication, for large transactions when the firm is at risk. Besides that, it is crucial to consider that this information is a public good that should be free after a period of time (15 minutes seems the current benchmark) and available on a reasonable commercial basis before this period. AMAFI also considers that the post trade information should identify the dark venue. Therefore, AMAFI suggests the following draft :

Principle 2: *Information regarding trades, including those executed in dark pools or as a result of dark orders entered in transparent markets, should be transparent to the public **in real time. Information should be free for the public after 15 minutes and available on a reasonable commercial basis before.** Regulators should regularly assess whether the 15 minutes period could be reduced. ~~With respect to the specific information that should be made transparent, regulators should consider both the positive and negative impact of identifying a dark venue and/or the fact that the trade resulted from a dark order.~~*

Topic 2: Priority of Transparent Orders

Principle 3: *In those jurisdictions where dark trading is generally permitted, regulators should take steps to support the use of transparent orders rather than dark orders executed on transparent markets or orders submitted into dark pools. Transparent orders should have priority over dark orders at the same price within a trading venue.*

10. AMAFI strongly supports this principle. The price-visibility-time priority is a key element to preserve market integrity.

Topic 3: Reporting to Regulators

Principle 4: *Regulators should have a reporting regime and/or means of accessing information regarding orders and trade information in venues that offer trading in dark pools or dark orders.*

11. AMAFI considers that it is not acceptable that there remain any market areas with no visibility for the regulators.

Topic 4: Information Available to Market Participants about Dark Pools and Dark Orders

Principle 5: *Dark pools and transparent markets that offer dark orders should provide market participants with sufficient information so that they are able to understand the manner in which their orders are handled and executed.*

12. AMAFI strongly supports this proposal. Such transparency is needed in order to maintain the confidence of market participants and investors in the functioning of the equity market.

Topic 5: Regulation of the Development of Dark Pools and Dark Orders

Principle 6: *Regulators should periodically monitor the development of dark pools and dark orders in their jurisdictions to seek to ensure that such developments do not adversely affect the efficiency of the price formation process on displayed markets, and take appropriate action as needed.*

13. AMAFI strongly supports this proposal.



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