

# MULTILATERAL TRADING FACILITIES (MTFS) ON ROMANIAN CAPITAL MARKET

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## Abstract

*The latest version of directive regarding markets in financial instruments, Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014, known as MiFID II, lists trading venues in EU jurisdictions as the regulated markets, multilateral trading facilities (MTFs) and organised trading facilities (OTFs). The differences between these three trading places are laying down through European secondary legislation.*

*European approach on markets do not follow the American model on trading markets: stock exchanges and alternative trading systems (ATS). Although the names differ, the essence has been preserved for alternative trading systems and multilateral trading facilities.*

*Trading venues include regulated markets and multilateral trading facilities. Both trading places involve a multilateral system „which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments“. In both cases the pairing of orders is done in a way that results in a contract. In both cases the orders are issued in respect of the financial instruments admitted to trading under markets rules which is authorised by competent authority (Financial Supervisory Authority, FSA). Both places are operated regularly and in accordance with national and European law.*

*The difference between the types of trading places will be quantitative, not qualitative. MTF – multilateral trading facility, the alternative market – although it is not a regulated market in the strict sense, it looks very similar. Still, it differs from regulated market by the lack of regulated procedures for admission to the market, simplified authorization and more relaxed market operation. The difference is only about a level - missing or different - of regulation, not about the essence of the concepts. Fundamentally, although more relaxed, alternative markets create the same particular framework for the formation of legal acts and operations regarding the financial instruments accepted by the system (market).*

**Keywords:** capital market, stock exchange, regulated market, trading venue, multilateral trading facility MTF.

## 1. Introduction

Usually, trading markets comprise stock exchanges and ATs. The most preeminent market model offers this picture: an *exchange* is an organization of any kind which provides a market place or facilities for bringing together purchasers and sellers of securities.<sup>1</sup>

Similarly, an *alternative trading system* means an organization that provides a market place for bringing together purchasers and sellers of securities<sup>2</sup>. But such system doesn't imply advanced rules governing the conduct of users or punishment measures for them, other than exclusion from trading.

European market model does not follow the American model on trading markets (stock exchanges and alternative trading systems), but the essence has been preserved.

European trading venues include regulated markets and other trading systems: MTFs and OTFs.

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<sup>1</sup> *Securities Exchange Act 1934*, Section 3 a (1): The term „exchange“ means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange. See <https://www.govinfo.gov/content/pkg/COMPS-1885/pdf/COMPS-1885.pdf>.

<sup>2</sup> *Securities and Exchange Commission (SEC), Regulation ATS, Code of Federal Regulations*, Title 17, Section 242.300a: *Alternative trading system* means any organization, association, person, group of persons, or system: (1) That constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange (...); and (2) That does not: (i) Set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on such organization, association, person, group of persons, or system; or (ii) Discipline subscribers other than by exclusion from trading. See <https://www.law.cornell.edu/cfr/text/17/242.300>.

Regulated markets and MTFs involve a multilateral system „which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments”<sup>3</sup>. In both cases the pairing of orders is done in a way that results in a contract. In both cases the orders are issued in respect of the financial instruments admitted to trading under markets rules which are authorised by competent authority (FSA). Both places operate regularly and in accordance with national and European law.

Again, in line with the American market model, the differences rest in the lack of regulated procedures for admission to the market, simplified authorization and more relaxed market operation for MTFs.

## 2. Regulated market

European market model gave up the American name of „stock exchange”. European legislation and national one does not refer to stock exchange but to regulated market. Such market represents the most sophisticated market for financial instruments.

Regulated market means a multilateral system operated by a market operator, which „brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments”, in accordance with its non-discretionary rules, in a way that results in a contract. Furthermore, a regulated market operates financial instruments admitted to trading under its rules and which is authorized and functions regularly in accordance with Capital Market Law and FSA rules. These capital market laws lay down rules for issuers and financial instruments in order to be admitted to regulated market<sup>4</sup>.

These general rules are supplemented with particular codes of market operators which establish rules for admission and withdrawal from trading, dissemination of information and operations with financial instruments admitted to trading.

In particular, Romanian capital market knows the *Bucharest Stock Exchange* as a regulated market. Although the law no longer uses the name stock exchange, the name of the market keeps this traditional name: Bucharest Stock Exchange (BVB).

Along with the Capital Market Law and the regulations of the authority (FSA), the BVB code represents the „trading manual” for the regulated market operated by BVB SA<sup>5</sup>.

## 3. Multilateral trading facilities (MTFs)

Along with the regulated market, the Capital Market legislation - European and Romanian - regulates the MTFs, a notion similar to the ATSS of American origin.

European trading venues include regulated markets and other trading systems (MTFs and OTFs). Both regulated market and multilateral trading facility involve a multilateral system „which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments”. In both cases the pairing of orders is done in a way that results in a contract and in both cases the orders are issued in respect of the financial instruments admitted to trading under markets rules which is authorised by competent authority (FSA). Both places are operated regularly in accordance with national and European law.

MTF – multilateral trading facility, the alternative market – although it is not a regulated market in the strict sense, it looks very similar. Still, it differs from regulated market by the lack of regulated procedures for admission to the market, simplified authorization and more relaxed market operation. The difference is only about a level - missing or different - of regulation, not about the essence of the concepts. Fundamentally, although more relaxed, alternative markets create the same particular framework for the formation of legal acts and operations regarding the financial instruments accepted by the market.

MTF can be operated by an investment firm or a market operator. This is a major difference compared to the regulated market.

Investment firms and market operators operating an MTF shall establish rules and procedures for fair and orderly trading and establish objective criteria for the efficient execution of orders. Capital Market Law shall require that investment firms and market operators operating an MTF to establish rules regarding the criteria for determining the financial instruments that can be traded under its systems. Still, these criteria do not match

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<sup>3</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.06.2014, p. 349).

<sup>4</sup> Art. 51, 55 of Law no. 24/2017 on issuers of financial instruments and market operations.

<sup>5</sup> BVB Rulebook – Market Operator, <https://bvb.ro/Regulations/LegalFramework/BvbRegulations>.

with the procedures requested for admitted to a regulated market. These regulated markets implement a much-complicated procedure: admission of securities to official stock-exchange listing and information to be published on those securities (Directive 2001/34/EC of the European Parliament and of the Council) which requires a prospectus to be published when securities are offered to the public or admitted to trading on a regulated market [Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017].

Lack of „prospectus” procedure is an important relaxation in operating an MTF. However, investment firms and market operators operating an MTF should publish, maintain and implement transparent and non-discriminatory rules, based on objective criteria, governing access to its facility. The law shall require that investment firms and market operators operating an MTF provide that there is access to sufficient publicly available information to enable its users to form an investment judgement.

#### 4. Romanian MTF AeRO

Romanian capital market knows a particular MTF. It is operated by BVB SA (market operator) and it is named AeRO. Rules laid down for its operation are approved by FSA<sup>6</sup>.

To be admitted to trading on the Section Financial Instruments listed on MTF, the shares must fulfil the criteria provided in BVB Rulebook.<sup>7</sup> Thus for the admission of shares the requirements, that must be cumulatively fulfilled, are: to be registered in the FSA records; to be freely transferable, fully paid, issued in dematerialized form (evidenced by registration in the account); the free-float to represent at least 10% in the issued shares and the number of shareholders to be at least 30.

The requirements regarding the Issuers are: the foreseeable capitalization to be at least the equivalent in lei of EUR 250,000; to have a registry service supply agreement with the Central Depository or, to have the confirmation of the Central Depository regarding the fulfilment of conditions of clearing-settlement and registration necessary for the trading of the respective financial instruments; not be in procedure of bankruptcy nor in judicial reorganization; to request the trade within MTF; to sign the Contract between BVB and issuer provided in BVB Rulebook.

For the admission to trading on MTF, the issuer must send at BVB all the required documents and to pay the fees provided in the BVB Rulebook.

#### 5. Withdrawal of the financial instruments

The withdrawal of the financial instruments from MTF shall be done: following a FSA decision issued in this sense; if the issuer does not comply maintenance requirements corresponding to the sector and the category in which the financial instruments were admitted to trading or the issuer does not comply with the provisions of the trading agreement concluded with BVB; if the issuer is in bankruptcy or judicial dissolution procedure or the issuer participates in a merger as an absorbed company or in other motivated situations.

Furthermore, the market operator, BVB SA, may withdraw from trading on the MTF a financial instrument, based on FSA's agreement, in the cases in which it finds serious violations of the incidental regulations or an orderly market of the respective financial instrument can no longer be maintained.

In conclusion, the withdrawal of the financial instruments from MTF can be done in much more affordable conditions than from regulated market. In principle in this last case the will of the issuer is not enough. Specific procedures must be involved<sup>8</sup>. Again, the MTF has more relaxed rules than the regulated market.

#### 6. Reporting requirements for the issuers on MTF

The issuer whose financial instruments are listed on MTF will send to market operator (BVB SA), the *annual report* within no more than 4 months from the end of the reporting period<sup>9</sup>. The issuer whose financial instruments are traded in the Financial Instruments Section on MTF, shall transmit to market operator (BVB SA), the *half yearly report* within no more than 3 months from the end of the reporting period<sup>10</sup>. In the extent in which there are concluded *quarterly reports* for the first and the third quarter, the issuers of the financial

<sup>6</sup> BVB Rulebook - multilateral trading system, [https://bvb.ro/Juridic/files/EN\\_SMT%20Rulebook%2008042022\\_site.pdf](https://bvb.ro/Juridic/files/EN_SMT%20Rulebook%2008042022_site.pdf).

<sup>7</sup> *Idem*, art. 19, para. (2)-(3).

<sup>8</sup> Art. 44 of Law no. 24/2017, squeeze-out procedure.

<sup>9</sup> Art. 65 and art. 66 of Law no. 24/2017, corroborated with art. 126 and art. 127 of FSA Regulation no. 5/2018.

<sup>10</sup> Art. 67 of Law no. 24/2017, republished, corroborated with art. 128 of FSA Regulation no. 5/2018.

instruments traded on MTF will send these reports to be made known to the investors, within a reasonable period of time.

Also, the issuers will send to market operator (BVB SA) the current reports (continuous reporting)<sup>11</sup> without delay, but not later than 24 hours from the event's occurrence or from the date of receipt by the issuer. The market operator may decide the suspension from trading of the financial instruments of the issuer who refuses or forgets to send to it, in due time, the mandatory reports.

Reports submitted to market operator by the issuers whose financial instruments are listed on the MTF are made public through the operator official web page, in the MTF section. The market operator (BVB SA) will monitor the fulfilment of the periodic and continuous reporting of the issuer, under the provisions of its rulebook.

Issuers whose financial instruments are traded on MTF International Section do not have reporting obligations towards market operator (BVB SA).

## 7. Pre and Post Trading Transparency

Through the market operator website are provided, continuously throughout trading hours, the prices and quantities for sale and purchase of the financial instruments traded on MTF.

Market operator will make public, in real time and in reasonable commercial terms and in a non-discriminatory manner, the pre- and post-trading information regarding the transactions carried out within the MTF (this information is also available, free of charge, for data delayed 15 minutes from the time of publication).

Through the MTF Section web page there are provided statistics, information on issuers, and other information to investors. The operator issues daily, monthly and annual reports with information on trading activity (to reflect the types of operations performed, the financial instruments traded, information about trading prices and the trading values).

## 8. Market abuse

Rules regarding market abuse (market manipulation and trading based on inside information) shall apply to financial instruments admitted to trading on a regulated market and to financial instruments traded within a MTF, too. These rules, which are contained in European and Romanian law<sup>12</sup> are now applicable regardless of the trading places, regulated markets or MTFs.

Any claims or complaints relating to market abuse (activities related to market manipulation or trading based on inside information) that have been committed by participants during the trading on MTF will be filled with FSA, communicating also the market operator (BVB SA) opinion on its.

## 9. Conclusions

A MTF is an European term for a relatively new trading venue. In essence, it is a self-regulated trading venue because its main rules are located in own rulebook than in Capital Market Law. These venues are alternatives to the traditional stock exchanges. The concept was introduced within the MiFID (Markets in Financial Instruments Directive), an European directive enacted to harmonise investors protection and allow investment firms to provide services throughout the European Union.

New trading venue, MTFs, have had a considerable impact on European share-trading markets because trading venues compete with one another.

The new MTFs were notable for low cost bases for issuers and for high trading speeds (using technology to make their platforms attractive to high frequency traders). All of these made the new venues highly attractive and existing venues were forced to discount heavily, significantly impacting revenues.

MTFs are a kind of simplified exchange because they provide similar or competing trading services and have similar structures, like rulebooks and market surveillance divisions.

Companies wishing to list upon a regulated market undergo a listing process and pay fees. This allows the market operator to ensure that only appropriate securities are available for trading. This involves requirements

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<sup>11</sup> Art. 223 c) of FSA Regulation no. 5/2018.

<sup>12</sup> Art. 1 Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation), Art. 44 Law no 24/2017.

about the number of shares that are available, market capitalization and standards on how the accounts of the company are maintained and strict rules about how news is released to the market.

Whether or not a security has been „admitted to trading on a regulated market” is a key concept within European directive (MiFID), and determines the rules applying to trading in the security. By contrast, MTFs do not have a standard listing process and cannot attract the special status of a „regulated market security”.

However, trading venues do not only imply a competition for trading shares. They also involve a hierarchy. The regulated market is the upper level due to the harsher listing conditions. In this logic, MTFs are just a step until reaching the „top league” of trading, the regulated market.

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