Mairead McGuinness
Commissioner in charge of Financial Stability, Financial Services and Capital Markets Union
European Commission

Irene Tinagli
Chair of the Committee on Economic and Monetary Affairs
European Parliament

Elisabeth Svantesson
President of the Economic and Financial Affairs Council
Council of the European Union

Ref: MiFIR review – transparency regime for single name-CDS and standardised OTC-derivatives

Dear Mrs McGuinness, Tinagli, and Svantesson,

I am reaching out to you with respect to the current lack of transparency in the EU for OTC-derivatives, notably single-name credit default swaps (CDS).

The events on single-name CDS markets at the end of March revealed that that market remains opaque and, in consequence, subject to a high degree of uncertainty and speculation as to the actual trading activity and its drivers. We discussed this topic at the ESMA Board meeting in May, including possible policy responses, and Board members were strongly supportive of strengthening the trade transparency requirements in MiFIR.

While MiFIR introduced trade transparency requirements for OTC-derivatives, including single-name CDS, the actual transparency provided on trading activity in these instruments remains limited. This can be mainly explained by two factors. Firstly, ambiguity on the scope of OTC-derivatives covered by the provisions, which led in practice to only few transactions in OTC-derivatives being subject to the transparency regime in the first place. And, secondly, a very complex deferral regime with most transactions being published only with a significant delay.

This stands in contrast to the approach in the United States which provides for a post-trade transparency regime covering a very broad scope of OTC derivatives and with most transactions published close to real-time while providing for volume-masking for large transactions.

ESMA remains therefore convinced of the need to further improve the MiFIR requirements on trade transparency, notably on post-trade transparencies for OTC-derivatives, as also recommended in the ESMA 2020 MiFIR review report on the transparency regime for non-equity instruments[1]. In light of recent events, a focus on the single-name CDS market might be regarded as the most urgent and important. I believe, however, that it would be short-sighted to only focus on this market and that we should take a broader perspective covering standardised OTC-derivatives as a whole, as the current lack of transparency concerns most standardised OTC-derivatives traded outside of trading venues.

A more ambitious transparency regime would contribute to less opaque markets and better-informed market participants, ultimately strengthening market functioning. Of course, such regime needs to protect market participants from negative market impact by providing for an appropriately calibrated deferral regime tailored to the characteristics of the class of derivatives covered.

ESMA urges co-legislators to not lose the opportunity of the ongoing MiFIR review to strengthen the transparency regime applicable to standardised OTC-derivatives and particularly the regime for single-name CDSs, by (i) broadening the scope of instruments subject to the requirements; and (ii) providing for more real-time transparency and a streamlined deferral regime. Of course, ESMA stands ready to deliver technical standards further calibrating the scope of standardised OTC derivatives subject to the MiFIR transparency requirements and the transparency regime following the conclusion of the MiFIR review. Conscious that the MiFIR review has already reached the trilogue stage, we would remain available at your earliest convenience should you deem such improvements suitable and would like to receive further technical input for your considerations.

Lastly, given that the single-name CDS market, as well as most OTC-derivatives markets, are global in nature, it is key that we aim for a globally coordinated approach to ensure consistent rules and avoid gaps. It is helpful to note that IOSCO has started taking a closer look at the CDS market, notably the transparency of this market.

Yours sincerely,

[signed]

Verena Ross

[1] https://www.esma.europa.eu/sites/default/files/library/esma70-156-3329_mifid_ii_mifir_review_report_on_the_transparency_regime_for_non-equity_instruments.pdf

cc.: Danuta Hübner, MEP, Rapporteur on the MiFIR review, European Parliament

Thérèse Blanchet, Secretary-General of the Council of the European Union

John Berrigan, Director-General, DG Financial Stability, Financial Services and Capital Markets Union, European Commission

Claudia Lindemann, Head of the Secretariat of the Committee on Economic and Monetary Affairs, European Parliament