

6 August 2015

Dear Sirs,

Response to the Consultation on Draft Regulatory Technical Standards on the CSD Regulation

We offer comments on:

- Trading and settlement fails in relation to fixed income products.

Our response focuses specifically on the requirement for a Trading Venue (as defined under MiFID 2) to appoint a buy-in agent in the event that a transaction is not cleared by a CCP and a receiving party does not appoint a buy-in agent themselves.

As a leading MTF operator for corporate bonds, we believe MarketAxess Europe Limited ("MarketAxess") is well qualified to comment on this scenario. MarketAxess is one of the leading platforms for corporate bonds in Europe (*the largest being Bloomberg, which is not regulated as an MTF for corporate bonds and accordingly shall not be subject to the requirements of CSDR that are applicable to Trading Venues).

While not strictly covered by the question in this consultation, we believe that it is important to make the below comments in order to address a misperception about the role of fixed income Trading Venues in the settlement system, which could lead to obligations being placed on Trading Venues that are impossible for them to fulfil.

Q2: Please indicate whether the assumption that the trading party has all the information required to apply the buy-in would be correct, in particular in cases where the fail does not originate from the trading party, but would rather be due to a lack of securities held by one of the intermediaries within the chain

Our response covers the requirement in Annex 2 (draft RTS) Article 14.1, which states that in the instances where a transaction is not cleared by a CCP and a receiving party does not appoint a buy-in agent within two business days following the elapse of the extension period, then the Trading Venue shall appoint a buy-in agent.

We must first point out that there is no CCP for the fixed income instruments (primarily corporate bonds) traded on the MarketAxess MTF. This fact alone makes the proposition that the Trading Venue appoint a buy-in agent unworkable as counterparties settle bilaterally with one another. The Trading Venue will not, therefore, be integrated into the clearing workflow for these bilateral trades and will not know: if a trade has failed and if the receiving party has appointed a buy-in agent in the required time frame or at all. In addition, the entities who execute the trade on the Trading Venue may have acted as agent for the actual counterparties to the trade, meaning that the Trading Venue is several steps removed from the settlement process.

To compound matters, under MiFID 2, a Trading Venue is not permitted to be a counterparty to any trades executed across its system. To reiterate, MarketAxess is not (and, under MiFID 2, cannot be,) a participant in any settlement system and is not aware of - or involved by the CSD and/or the competent authority - when a trade has failed to settle, and particularly whether or not a buy-in agent has been appointed.

Even if the Trading Venue had all of the relevant information necessary to appoint a buy in agent, there is still the issue of *on behalf of whom* the buy-in agent should be appointed, since the Trading Venue itself cannot be a party to a trade. The only plausible explanation is that the Trading Venue is expected to be acting as agent on behalf of the recipient. However, this can only make sense if the recipient is a participant on the Trading Venue (and not, for example, a client of a participant on the venue, or a sub fund, or a custodian). This would put the Trading Venue in a compromising position whereby it is not acting impartially towards its participants. A Trading Venue must have non-discretionary rules and is not able to act as agent on behalf of its participants. It is hard to square the obligation of the trading venue to appoint a buy in agent *on behalf of a member* with the obligations of a MTF operator.

However, as we have stated above, we believe that the greater likelihood is that the recipient is not a participant on the Trading Venue at all, and only the entity that executed the trade on its behalf was the participant on the Trading Venue. In that case, the recipient is actually one or more steps removed from the actual participant on the trading venue. In such event this rule would require the Trading Venue to appoint a buy-in agent with no knowledge of on behalf of whom it is appointing the buy-in agent. This would be impossible to implement in practice.

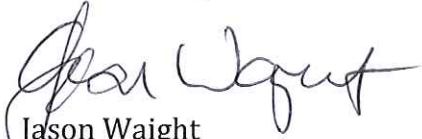
Accordingly, as an operator of a fixed income MTF for instruments for which there is no CCP, we cannot envisage how we would be able to provide effective buy-in facilities given the MTF's lack of involvement in the settlement activity of trades executed on the

MTF. Given the lack of a CCP, we believe the only entities in the position to effect a buy in in the bond market would be the CSD and/or the counterparties to the trade.

For Trading Venues to be able to fulfil this role with any guarantee of accuracy and timeliness, substantial changes would need to be made to the post-trade infrastructure which we do not consider proportionate nor intended. Our preferred approach would be to rely on the CSDs and counterparties to the trade who have the relevant information to conduct the buy-in process.

A further consideration is the relationship between the MiFID 2 definitions of liquid instruments and the buy-in process in the CSDR. Given the impact of liquidity requirements on the trading requirements for financial instruments, it is important that the CSDR is closely linked to MiFID/R and, in particular, that the settlement period reflects the liquidity of an instrument. The ability to successfully manage buy-ins is, to a large extent, determined by the liquidity in the market. 86% of corporate bonds trade less than five times per day. A mandatory buy-in regime which does not take into account the fact that illiquidity was the cause of the settlement failure in the first place is likely to result in further fails.

Your sincerely



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