Italian Federation of Co-operative Banks
comments on

Discussion Paper

ESMA's policy orientations on possible implementing measures under the Market Abuse Regulation

ESMA/2013/1649

24 January 2014

General remarks

Federcasse, the Italian Federation of Co-operative Banks, is grateful for the opportunity of making its own contribution towards the consultation process on possible implementing measures under Market Abuse Regulation.

Generally speaking, the new discipline increases obligations for intermediaries. With peculiar reference to the activity of the Credit Co-operative Banks (BCC-CRs) it must be underlined that the most relevant aspect pertains to the enlargement of the scope of the Market Abuse also to MTF traded instruments.

VI. Public disclosure of inside information and delays (Article 12 of MAR)

The provision set in Art. 12 (1) of MAR seems too strict, since the extension to financial instruments admitted to MTF trading of the obligation of disclosure to the public of ongoing information, may produce a remarkable burden for issuers – as BCC-CRs – which trade exclusively their own bonds on such venues. It must be in fact highlighted that trading on MTF is often used by bank-issuers in order to guarantee investors the liquidity of financial instruments.

Therefore, the added duties deriving from new information obligations may result in discouraging trading on MTF, causing in fact a reduction of the solutions which are functional to the strengthening of the liquidity of financial instruments, which otherwise would not take place or would take place in less effective fashion.

Furthermore, it must be noted that the discipline of contrast to market abuse moves from the assumption that the performance of certain actions – deemed as unfair and thus to be made subject to sanctions (such as, for instance, "market manipulation") – may impinge on the price of the financial instruments. In the revision of the regulations, the European legislator deemed that financial instruments traded on the several Trading Venues (Regulated Markets, MTF and the new OTF) should be subject to protection under the aforementioned assumption.

Therefore, with reference to the effectiveness of the information to be disclosed to the public, Federcasse believes that the relevant provisions essentially and functionally pertaining to the equity market, particularly volatile, with prices of financial instruments more exposed to the influence of information about the firm. As for the bonds market, instead, it must be considered that the price of bonds, less subject to volatility, is a function of the financial variables existing per se within the instrument itself, rather than referred to the information about the firm.

Such new duties, creating quite evidently added costs for banks, would not generate significant benefits and would also deprive investors, in many cases, of the liquidity of the instruments held.

Q70 Do you agree with this general approach? If not, please provide an explanation.

Although keeping the application of the general discipline on market abuse (i.e. abuse of privileged information and market manipulation) also for instruments traded on MTF (or OTF), it would be advisable that ESMA - with reference to the development of implementing technical standards established by art. 12 of MAR - define a diversification of the application of the illustrated provisions according to the type of the issuer and/or the type of the financial instrument. With such regard, it must take into account the intermediaries which issue bonds traded exclusively on a MTF or an OTF.

Moreover, the application of the same provision of TD for the issuers only "listed" on MTF goes beyond the goal of the regulations. Notably, the use of OAM, as central storage mechanism, is completely disproportionate to the activity and the dimension of small issuers.

Thus, we do not agree with the given general approach.

Q71 Do you agree that, in order to ensure an appropriate dissemination of inside information to the public (i.e. enabling a fast access and a complete, correct and timely assessment of the information), applying similar requirements to those set out in the TD for the dissemination of information to all issuers of RM/MTF/OTF financial instruments would be adequate? If not, please explain and, if possible, provide alternative approaches to consider in due respect of article 12 paragraph 1 of MAR.

ESMA considers that requirements and standards similar to those set out in the TD should apply to issuers of MTF/OTF instruments. In practice, this implies that inside information about the MTF/OTF issuers should be disclosed as if it was regulated information under the TD. So that, in terms of public disclosure, there would be no difference between the mentioned trading venues.

However, Regulated Markets, MTF and OTF are different venues (under MiFID), with different requirements and different kind of issuers and investors. Given that, generally, the Regulated Markets are more costly.

As mentioned above, MTF are used typically by small issuers that have not (by fact or by law) access to regulated markets and, in the case of BCC-CRs, act locally (by law) in a defined territory. The requirements proposed in the discussion paper are excessive and do not find any particular advantage in terms of cost-benefit for clients (*rectius* investors).

In particular, the use of media allowing dissemination throughout the EU is a nonsense for a local bank (issuer) whose clients (investors) live in the same limited territory. For such kind of issuer we deem sufficient posting inside information both on its website and on those of the market (i.e. MTF).

Q73 Do you agree with the suggested criteria applicable to the website where the issuer is posting inside information? Should other criteria be considered?

We agree with the criteria proposed for the website where inside information is posted by the issuer in fulfilment of Article 12(1) and 12(7) MAR. However, small issuers should be allowed to use the website of their own Association as an alternative, albeit with the same requirements set for the issuers.