

ISDA keynote speech – ESMA’s priorities for transparency

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Ladies and Gentlemen,

It is a pleasure to speak at this year’s ISDA Annual General meeting. I’m sorry I cannot be with you in person due to conflicting agendas but it’s good to see that the Annual general meeting is taking place again in person. We are moving back into more normal times it seems, at least when it comes to the sanitary situation, even if other concerns have emerged over the last few months to capture our attention.

Today I want to share with you some thoughts on the multifaceted concept of transparency and how appropriately calibrated transparency requirements contribute to better market functioning. ESMA plays a key role in this respect both via its single rulebook work but also when carrying out its responsibilities of monitoring markets and contributing to convergent supervisory practices.

Drawing on ESMA’s recent work, I will be focussing in particular on three areas to highlight how transparency can contribute to better market functioning:

- the non-equity transparency regime of MiFIR with a focus on derivatives;
- enhancing transparency through new technologies; and
- transparency in the EU carbon market and beyond.

MiFIR review and derivative transparency

Let me first start with what can be considered the cornerstone of transparency on EU markets, the MiFID II/MiFIR regime. After four years of application, it was important to take a critical look at the regime, to identify what has worked well and what can be further improved.

ESMA undertook an extensive review of MiFID II/MiFIR over the course of 2019 to 2021 resulting in the delivery of twelve reports to the European Commission covering the whole scope of the provisions and, notably, the MiFIR transparency regime. ESMA's review followed two main objectives (i) assessing whether the provisions have delivered on their objectives and (ii) proposing the necessary targeted amendments, both at Level 1 and level 2. Our main takeaway from this review in the area of transparency is that while some progress has been made, MiFIR did not fully deliver on its ambitions. ESMA therefore made some recommendations such as replacing some of the overly complex rules with streamlined and more effective provisions. Moreover, we also recommended the establishment of a consolidated tape, in particular for shares and bonds.

Following the ESMA review, the Commission published in November 2021 its proposal for the MiFIR review. The proposals picked up on a number of recommendations highlighted in our review reports. As you are all aware, considerations by the co-legislators of these proposals are still ongoing and we hence don't know yet what the amended Regulation will look like. I would still like to share with you some thoughts on two of the proposed amendments which I know are of particular interest to you: the transparency requirements for non-equity instruments and the consolidated tape.

Firstly, **pre- and post-trade transparency** for non-equity instruments. As you know, the Commission's proposal focusses in particular on removing the complexity of the deferral regime for post-trade transparency. Following an ESMA recommendation, the Commission notably proposed deleting the Size Specific to the Instrument (SSTI) threshold for both the pre-trade and the post-trade transparency requirements. We remain of the

view that the proposed deletion would reduce complexity, and enhance the level-playing-field between EU execution venues.

We hear your concerns regarding this proposal and, in particular, about the possible impact it could have on systematic internalisers or, more generally, the liquidity available through them. As we all know, the question about where to strike the balance between transparency and liquidity is not new. Indeed, this debate resurfaces every time there is a push for more transparency. So far though, I have to say, the specific concerns about the detrimental effect of more transparency on liquidity have not materialised.

However, this does not mean that we should discount this risk and dismiss the debate. Our main objective with the deletion of the SSTI-concept has been to make the regime more effective and less complex while still ensuring adequate protection of liquidity providers. We therefore recommend that the deletion of the SSTI concept is accompanied by lower large-in-scale thresholds.

Moreover, looking at other provisions on pre-trade transparency, ESMA is of the view that further aspects could be considered with a view to making the regime simpler and more adapted to the need of the market participants. ESMA for instance made some recommendations for streamlining Article 18 of MiFIR which defines the quoting obligations for systematic internalisers in non-equity instruments.

Moving on to post-trade transparency, the Commission's proposal introduces interesting elements, for instance to establish more gradual deferrals (based notably on different transaction sizes).

At the same time, the proposal reintroduces complexity for the calibration of the regime. While we share the objective to tailor the regime to the specificities of the different instruments and transactions, we have to be mindful that the more tailored those rules are, the more complex the regime gets. Hence, it is again a matter of finding the right balance.

Secondly, the **consolidated tape provider (CTP)**. Transparency is indeed not only about imposing requirements on market participants but also ensuring that the information published is meaningful, comparable, and accessible. The consolidation of all data sources into one single access point is a catalyst to achieve these goals. In this context, we believe that the emergence of CTPs is an indispensable development for the EU capital market. We therefore fully support the political momentum that the European Commission has initiated or revived in this regard.

We have alerted co-legislators about some issues regarding the envisaged timeline for the selection and authorisation processes for the CTP in the MiFIR review proposal and invited them to consider a more carefully choreographed sequence of events. Notably, it does appear very challenging to run the procedures for the four asset classes in parallel and we would see clear advantages in introducing a staggered approach. We would therefore recommend starting the selection procedure with the CTP for bonds and shares and to launch the selection procedures for the CTP for derivatives and ETFs only afterwards. This would allow us at ESMA to concentrate our resources and efforts and provide more time to market participants and regulators to address remaining issues in other asset classes (such as derivatives), for instance in relation to the format and quality of the transparency reports.

I would like to emphasize the significant progress that has been made over the past years. The overall quality of the information provided notably to the ESMA IT- systems (FIRDS and FITRS) has increased over the past years, and ESMA continues to work hard on further improving data quality. The recent amendments that we proposed to the Commission in relation to RTS 1 and RTS 2 are for instance testimony to our continuous efforts to enhance, clarify and, where possible, simplify the existing reporting standards. While we should not underestimate the progress made already, I fully acknowledge that there is still room for improvement and data quality remains a high priority for us.

I also don't believe that the remaining challenges regarding the format and overall quality of the reported data should make us deviate from our trajectory towards the establishment of a consolidated tape. We should, on the contrary, seize this opportunity to concentrate our efforts towards more harmonised standards and practices, in close collaboration with all relevant stakeholders in the market.

Enhancing transparency through new technologies

Let me turn now at the opportunities new technologies and digitalisation can bring in the area of transparency. With rapidly developing new digital solutions and tools, there are clear opportunities to improve transparency. On the one hand by facilitating the standardised reporting of information, on the other by allowing for more efficient and easier access to this information by all market stakeholders. New trends, such as RegTech and SupTech, will have an important impact on the way supervisory data is generated by reporting entities, provided to the authorities and used by them. ESMA is following these exciting developments closely and is aiming itself to make use of new technologies to improve efficiency and effectiveness in its regulatory and supervisory work.

One of the ideas that is being explored by market participants and authorities is the concept of machine readable and executable reporting. This topic is also being studied by ISDA, in the Digital Regulatory Reporting initiative. The underlying idea of this technology is to describe regulatory reporting requirements using a computer code which, unlike legal text which regulators have been using up until now, can be easily implemented in the respective reporting systems.

While there are still many aspects to be assessed further, such as the appropriate governance framework or the necessary initial investments, this technology could bring down the long-term cost for reporting entities, reduce mistakes related to misinterpretation of regulatory needs and, consequently, also improve the quality of data for the authorities.

New technologies are also key to enabling the authorities to use reported data in an effective and efficient way. Over the last years, we have

experienced an exponential growth of data available to authorities, through the new reporting regimes. Besides the formal reporting regimes, other data sources, e.g. accessible on the Internet or through commercial data providers, are adding to the richness of the information that supervisors and regulators now have access to. With the growing volumes and complexity of data, new technologies, such as Big Data and Artificial Intelligence, are however becoming increasingly important to allow authorities to derive actionable information from the data.

At ESMA, we are actively developing our competences and tools in this regard. For example, this year, we launched a new Big Data IT platform that is used to analyse transaction data. This is an important step to be able to fully exploit over time the rich transaction reporting data (with the most immediate use being with regards to ESMA's new supervisory mandate for Data Reporting Service Providers). We are planning to continue expanding the platform to more data sets. This will allow us to get the most value out of data that ESMA already receives or will receive in future. It will enable us to further strengthen our ability to monitor and assess risks in the European markets, and thus support the supervisory efforts of ESMA and the national authorities.

Finally, we also expect that the upcoming European Single Access Point – ESAP – will significantly facilitate access to data by market participants. Nowadays, the information disclosed by companies and market players is fragmented. Some of this information is being collected and made available by national registers and regulators whereas other information is reported directly to and published by European authorities, like ESMA. Furthermore, data is made available in divergent formats and different languages. This situation constitutes an important barrier for investors and other users of the data, as well as limiting the opportunities of companies to reach out to the investors beyond their national market.

The objective of ESAP is to create a common source of public and freely available financial and sustainability-related information on EU companies and investment products, regardless of where in the EU they are located or originated, while enabling a better use and reuse of this information.

The system will gather all the information into a simple user-friendly web portal available in all EU official languages. It should include automated translation services and search tools and it is planned to support an application programming interface (API) and notification services enabling easy access and monitoring.

Once the legislation establishing ESAP is adopted, ESMA will play a central role in the development and maintenance of this portal. To succeed, we will need to cooperate closely with the other European supervisory authorities, the national competent authorities and the so called Official Appointed Mechanisms (i.e. the national registers in each country). This is a truly European project, with great ambitions, and ESMA stands ready to play its part in making it a reality. It will not be easy, and there are questions about phasing/timing, but it is necessary to achieve the ambitious goal of creating a single platform in Europe that provides information on EU companies and products and is used by investors to gain comparable information to take their investment decisions.

Transparency in the EU Carbon market and beyond

My final area of remarks today is aimed at broadening out the topic of transparency to the commodities markets.

The important role that transparency plays, has been recently highlighted in ESMA's final report on emission allowances and derivatives on emission allowances that we delivered to the European Commission at the end of March.

In this report, ESMA performed an in-depth analysis of the trading of emission allowances (EUA) and emission allowance derivatives, based on data gathered from different sources, including EMIR reporting, MiFIR transaction reporting, MiFID II daily and weekly position reports, auction data and data obtained from the EU Registry.

Based on available data, our analysis did not find any fundamental issues in the functioning of the EU carbon market. The analysis performed evidenced the specificities and unique characteristics of the EU carbon

market. It also showed the challenges of having a comprehensive view of this market and an in-depth understanding of its developments, including due to fragmented data sources that were not easy to pull together into a clear picture. The analysis unveiled some interesting findings on participants active in this market and their positions.

As part of this report, ESMA made some policy recommendations (from the perspective of securities supervisors) to contribute to improving the transparency and the monitoring of the EU carbon market.

I will not go through all these recommendations but on the transparency side, I would mention the suggestion to improve the informational content of weekly position reports by improving the reliability and robustness of counterparty classification, which will help better understand which categories of market participants are active in the carbon market and identify potentially emerging trading patterns or market trends.

ESMA believes that the measures proposed would provide more information to market participants and the public at large about the carbon market and that they would help in maintaining orderly markets going forward. As such, they would contribute to the continued adequate functioning of the EU carbon market – a market which plays an important role for the Union’s green transition. This report also appears quite timely as carbon markets, both compliance and voluntary, have gained significant renewed attention since COP 26, as illustrated by the new workstream set up by IOSCO on compliance and voluntary carbon markets.

I would note that some of the recommendations made by ESMA, including the one on weekly position reports, apply not only to derivatives on emission allowances but to commodity derivatives more generally. This leads me on to the last point I wanted to make today on commodity derivatives and latest market developments.

Recent developments in commodities markets

Following Russia's invasion of Ukraine we have seen high volatility and price hikes in commodity markets, in particular oil, natural gas, wheat and other agricultural products. ESMA is therefore closely monitoring those markets. In particular, given its responsibilities in relation to clearing and the supervision of CCPs, ESMA is paying specific attention to the recent increase in collateral requirements resulting from this volatility in the commodities markets and the potential impact on investors, markets and financial stability.

Events that occurred early March on the London Metal Exchange regarding Nickel trading certainly acted also as a bit of a wake-up call. It reminded us all that in certain situations market volatility can quickly turn into a problem to maintain orderly markets.

The recent events in commodity markets are leading us to reflect carefully on what tools should be in place to better identify a risky position at an early stage, and thus allowing market infrastructure players, but also ultimately authorities, to take action as necessary before potential risks materialise. Here again I believe we need to look at measures that would improve the transparency in these markets and would enable market participants and regulators to identify risks and maintain orderly markets.

Conclusion

To conclude, market transparency is a common good, but also a long-term endeavour which requires constant adjustments and improvements:

- 1) to make the rules better calibrated;
- 2) to adapt to new market developments and new risks; and
- 3) to better integrate the new tools that technology is offering us.

In this overall context, let me thank you again for the efforts made over the past years by all of you to help ESMA in understanding your part of the market and what is needed to keep it effective, efficient and stable. We



are well aware that the challenges ahead of us need to be addressed collaboratively and we are therefore looking forward to continuing working constructively together with you.

I wish you a good rest of the conference. Thank you for your attention.