

Keynote Address

AFME European Compliance and Legal Conference London

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Ladies and gentlemen,

It is a pleasure for me to be here this morning and I would like to thank Simon Lewis for inviting me to give this keynote address to a distinguished group of legal and compliance professionals.

We live in a different financial world than we did back in 2007. Ten years ago the world faced a financial crisis, followed by an economic crisis, and since then there have been considerable efforts to bring our economies back on a sustainable growth path. Regulation intended to prevent similar turmoil, is now either in place or close to implementation.

The first signs of growth in the European Union may be regarded as the fruit of this focused reaction. On the other hand, these encouraging results have come at a time when, for the first time in a generation, a Member State is leaving the European Union. These developments will change the way EU markets operate in future and bring new considerations to investor protection and market stability.

In this speech I would like to focus my remarks on MiFID II/ MiFIR; a game-changer that will impact every part of the securities trading value chain, from trade execution and investor protection to reporting and distribution.

I will (a) first briefly reflect on the journey that brought us to where we are today. Then, (b) with particular reference to ESMA's work, I will (i) give you an update of the latest deliverables and (ii) highlight the anticipated publications we aim to conclude in the coming months.

Being here in London today makes it also apt to share a few considerations from a regulatory perspective on the big elephant in the room - the UK's forthcoming withdrawal from the EU.



MiFID II/MiFIR: The journey so far

MiFID II presents one of the key pillars for reforming financial markets after the financial and economic crisis and comes along with very challenging implementation deadlines. The clear objective of MiFID II is to make financial markets more stable, more transparent and more diligent in their duty of catering for investors.

While the one-year extension bought us valuable time for ensuring that implementing measures are in place ahead of the start of the new regime - by that I don't only mean ESMA but also national supervisors and market participants – we now have three months left to make sure our systems and procedures are up and running. MiFID II/ MIFIR will come into effect on 3 January 2018 and (I want to say it loud and clear) there will be no further delays in its implementation.

ESMA Implementation of MiFID II

Technical Standards

MiFID II gave ESMA the largest mandate ever given by legislation in terms of volume of Level II work. Since delivering its technical advice in 2014, ESMA has delivered over forty technical standards covering issues ranging from market microstructure, pre- and post-trade transparency, and commodity derivatives to authorisation procedures and best execution.

ESMA devoted significant resources to the development of these implementation measures in accordance with the mandate given to us. This included the consultation of stakeholders at various times, extensive data analysis, and a cost-benefit analysis assessing the impact of our technical standards.

I am happy that the European Commission has adopted delegated acts based on ESMA's technical advice and also adopted nearly all technical standards based on drafts prepared by ESMA including the three important technical standards on non-equity transparency, the ancillary activity test and position limits subject to some suggested amendments. More recently we have also submitted two draft regulatory technical standards on package orders and the non-equity consolidated tape to the European Commission that will hopefully be endorsed soon.

IT/Data Collection and Reporting

ESMA's 2015-2017 IT Work Programme is dominated by the legal requirements for data collection and reporting stemming from MiFID II/MiFIR, in particular the Financial Instruments Reference Data System (comprising the collection of reference and trading data and the calculation of the comprehensive transparency parameters) and the double volume cap mechanism (which will allow the collection and publication of data on volume of trading across the EU per equity instrument, and percentage of trading under transparency waivers).

Work on this major project, which requires ESMA to connect to around 300 trading venues, is on track and is planned to go live in time with the application of MiFID II/MiFIR. This project will allow us to collect data on about 15 million financial instruments and publish all transparency parameters and reference data on financial instruments in a one-stop shop rather than market participants having to retrieve this information from 28 national competent authorities. We expect this to achieve important economies of scale thereby lowering costs for industry and taxpayers.

Convergence Work

It is not only important to have rules but also to see that these are applied consistently across the Union.

ESMA has undertaken a broad range of activities aimed at facilitating MiFID II/MiFIR implementation for market participants and relevant stakeholders. There is an inexhaustible demand for clarification and guidance reaching us at ESMA (both directly from market participants and via NCAs). We have tried to continue to give as much guidance as possible in the limited time available and within our limited resources. Coming to consistent views across national regulators can also be time consuming. Let me briefly outline the key areas we have worked on to provide guidance on MiFID II/MiFIR.

- Opinions

Over the last months, ESMA has published various, new opinions.

Firstly, we have published an opinion clarifying the concept of Traded on a Trading Venue (TOTV), in particular for OTC-derivatives following many requests for clarification that we received from stakeholders. Our opinion provides for, a pragmatic and cautious approach ensuring that MiFID II/ MiFIR is implemented in an expedient manner. We will closely monitor market developments and may opt for a more ambitious approach in the future should we consider this necessary.

Secondly, we issued two opinions providing more certainty on the trading of third-country trading venues in the context of the MiFIR post-trade transparency and the MiFID II position limit regime. In addition, we published an opinion providing market size figures needed for market participants to establish whether an activity is to be considered ancillary to the main business.

- Q&A

EU law isn't always easy to interpret and the ESMA Q&A is a helpful instrument to provide additional clarity. An extensive set of Q&As covering all areas of MiFID II/MiFIR (investor protection, transparency, market data, market microstructure and commodity derivatives) have been produced by ESMA with the most recent additions being 14 Q&As covering 'information



on costs and charges', 'post-sale reporting' and 'appropriateness/ complex financial instruments' in the area of investor protection.

- Workshops

In order to further help market participants, prepare for the application start date of MiFID II and related IT systems which I mentioned earlier, ESMA devised and implemented a communication plan with the aim of holding at least six workshops, with trading venues from all over the EU, during the implementation process. To date, ESMA organised four workshops with the remaining two to be set before the end of 2017. The workshops have proven to be another very useful tool to ensure communication between ESMA and the future users of those systems (trading venues and NCAs) and to address issues encountered.

Forthcoming Work

Trading Obligation for Derivatives

One major remaining task is the assessment of which classes of derivatives have to be subject to the trading obligation for derivatives foreseen in MiFIR. In this respect, ESMA issued a Discussion Paper (DP) on its general approach to this important topic last Autumn which was well received by stakeholders. Work on this topic continued this year with the publication of a Consultation Paper that included a new and significantly improved data analysis taking into account many concerns raised by stakeholders. We are now at the final stages of sending the draft technical standards to the Commission.

Hand in hand with the clearing obligation under EMIR, ESMA firmly believes in the positive effects the trading obligation will have on the transparency and competitiveness of derivatives markets. To ensure smooth implementation we hope the Commission can quickly endorse the RTS and also take related equivalence decisions.

Transitional Calculations for Non-Equity Instruments

Over the summer, we published the transitional calculations for non-equity instruments specifying the LIS- (Large In Scale) and SSTI- (Size Specific to the Financial Instrument) thresholds for all instruments, and the liquidity status of all instruments except bonds, thereby providing more certainty on the new transparency regime and giving market participants half a year to prepare their systems.

The publication of the transitional calculations on the liquidity status of all instruments will be completed before the year end.

Suitability Guidelines

On the investor protection area, the guidelines on certain aspects of the MiFID II suitability requirements are in consultation until October 2017 and I take this opportunity to encourage you to provide us with your valid feedback.

Transparency Waivers

In terms of opinions, we are currently working on ESMA opinions on pre-trade transparency waivers for equity and non-equity instruments. While we already issued quite a number of opinions on waiver notifications, there remains still significant work to be done. We received about 250 waiver notifications for equity instruments and about 500 notifications for non-equity instruments.

Position Limits

Lastly, we are working on ESMA opinions on position limits for commodity derivatives. Last July we published the very first opinions on position limits on corn, milling wheat and rapeseed derivatives and more will follow in due course. We expect to handle more than 100 notifications on position limits.

Concluding Remarks: MiFID II/ MiFIR

I think it is fair to say that good progress has been made in achieving clarity on the shape of the future MiFID II/MiFIR regime. The legal certainty obtained by the adoption of important regulatory technical standards (supported by a package of opinions, guidelines and Q&As) should allow for most of the necessary planning and investment in systems, policies and procedures.

However, the impact that MiFID II will have on securities markets cannot be understated. Firms and trading venues should fully understand the effect this legislation will have both on their businesses and on the industry as a whole. The landscape is set to change and we all must stand ready to adapt. I am convinced that firms who willingly engage and adapt are those that benefit most.

There are still matters that merit clarification such as the interaction of MiFID II/MiFIR with the SFTR. Also, supervisors are having a lot of discussions with firms on the implementation of the new rules on various topics. Although ESMA has been doing its best to support market participants, we do not have all the answers, some of which will depend on the practical application of the rules to specific circumstances, and we rely strongly on professionals like you to give the best chance of success to the new regulatory regime.

The journey was long and at times unpredictable but we're now at a critical juncture, three months before the implementation deadline. Making the new regime work is crucial as we seek to make EU markets more transparent, efficient, attractive and safer to invest in.

Brexit

I would like to finish my address with a few regulatory considerations on the UK's withdrawal from the Union; a scenario that will not only change many of our personal lives but is also set to significantly alter business models in the European financial sector.

In 2016 the Global Financial Centres Index placed London once again as the leading global financial centre, ahead of New-York, Singapore, Hong-Kong and Tokyo¹. This highlights the prominent role played by London in the EU single market for financial services, operating as a hub for the whole Union.

The UK's withdrawal from the European Union creates a unique situation requiring a common effort, at EU level, to safeguard investor protection, the orderly functioning of financial markets and financial stability.

ESMA work on Brexit

In the course of the UK withdrawing from the EU, UK-based market participants may seek to relocate entities, activities or function to the EU27 in order to maintain access to EU financial markets.

New authorisations must be granted in full compliance with Union law and in a coherent manner across the EU27, and there should be no automatic recognition of existing authorisations from other jurisdictions. Any outsourcing or delegation arrangement from entities authorised in the EU 27 to third country entities should be strictly set and consistently supervised, while recognising that such arrangements may be an efficient way to perform some functions or activities. Outsourcing or delegation arrangements should not result in entities becoming letterbox entities nor in creating obstacles to effective and efficient supervision.

It is important to remember that firms and entities have the freedom to decide to locate in any of the EU27 they choose. This is an important pillar of the single market, of the EU. However, relocation should never be a decision taken with the intention of avoiding stricter regulatory standards in other jurisdictions.

During the first weeks of June, we published an opinion setting out general principles to foster consistency in authorisation, supervision and enforcement related to the relocation of entities, activities and functions from the UK. These are not new legislative developments but a practical tool to address a new and evolving situation and support supervisory convergence in the EU27.

Building on the general opinion we developed further sector-specific guidance dealing with investment firms, investment funds and trading venues.

In addition, ESMA, through the recently established Supervisory Coordination Network, is providing a forum for reporting and discussions among NCAs regarding specific cases of market participants seeking to relocate entities, activities or functions to the EU27. The forum's objective is to promote consistency of supervisory decision-making by NCAs.

With the United Kingdom (UK) leaving the EU, a significant number of market infrastructures and the corresponding activity will be located outside the EU, whilst they will remain of the

¹ http://www.finance-montreal.com/sites/default/files/publications/gfci20_26sep2016.pdf



utmost importance for EU financial markets. This reinforces the need to build the CMU and increases the importance of third country issues for EU financial markets.

ESMA believes that, depending on the risks posed by third country entities going forward, it is important to have the possibility of supervision at EU level like it has been proposed for certain non-EU CCPs that play an important role for the EU financial markets.

Conclusion

This brings me to the end of my speech. The implementation of MiFID II/ MiFIR as well as the withdrawal of the UK from the EU are testing both supervisors and market participants. However, I am confident that together we can meet these challenges and further strengthen financial markets in the EU.

I would like to thank you for your attention and I will hand over to Tilman now, but would be happy to answer some questions later.