HSBC

Global Markets

Ref Consultation Paper / MiFIR review report on the obligations to report transactions and reference data - 24th September 2020 | ESMA74-362-773

Paris, 20th November 2020

Dear Madam, Sir,

I would like to thank you for circulating, well in advance of any legislative proposals, the MIFIR review report on the obligations to report transactions and reference data. I am unfortunately not in a position to provide you now with exhaustive comments as like many other firms, we have been much focused on the finalization of the Brexit operational preparations and dialogue with the supervisors. I should also highlight the number of simultaneous consultations having potentially very significant impacts on our activities (particularly in the field of ESG risk management and disclosures).

I would like to focus therefore on three major concerns. If possible, I would like to send you a more specific and elaborated answer next week.

Systematic internalisers are not trading venues, they are market makers who, on a principal basis, using their own capital and balance sheet, provide prices to their clients: to ensure that they can manage the related market risks, there should be a strict difference made between what is available to the supervisor and what is available real time in the market. It is therefore necessary that only a very limited proportion of OTC derivative trading is subject to transparency. Beyond this, it should be noted that ESMA also proposes that SIs should be required to submit a daily file for FIRDS reporting, up until the instrument ceases to be traded. In the context of derivatives this will be both difficult and costly to manage without clearly understanding the benefit of it in terms of supervision.

Mandatory order transmission reporting – i.e. where a client transmits an order to an executing firm, and provides the details set out in RTS 22 art. 4(2), the executing firm must make a transaction report on behalf of the client in accordance with art. 4. At the time of MiFID II implementation we had decided not to offer this due to the build and risk involved; mandating such service seems really demanding, bearing in mind the principle of contractual liberty.

Chain of transactions: while we understand the rationale of such ask, we have concerns on how a transaction identification code to be used by all reporting parties in the execution chain could be achieved and implemented.

At a time when technology is disrupted notably by artificial intelligence and big data solutions, further analysis would be needed in order to be able to provide alternative suggestions (if any – providing access to our data lakes?) to achieve the same aims. Regulators are also working towards more global alignment on transaction reporting; such an initiative should be encouraged as it would achieve a major simplification (meaning less operational and regulatory risks) for firms that need to maintain and monitor many different reporting frameworks.

I would also like to highlight that banks and more broadly the financial industry are addressing major changes coming from the evolution of society and the EU priorities: EU Green deal – ESG reforms and digital future - cyber risk and disruptive technologies. Any evolution that is not driven by these priorities should very much rely on a robust cost benefit analysis, balancing the needs for evolution v. the needs for stability.

Sincerely yours,

Nathalie Gay Guggenheim
MD – Head of GBM Regulatory Transformation Europe
HSBC France GBM Head of Sustainable Finance

---

Phone +33 1 40707480
Mobile +33 607093546
Email nathalie.gay-guggenheim@hsbc.fr