

ECON Scrutiny Speech – MiFID 2

Economic and Monetary Affairs Committee
European Parliament

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Chair
European Securities and Markets Authority

Dear Members of the European Parliament,

Ladies and gentlemen,

I am delighted to provide the ECON Committee with a further update on the past and on-going regulatory work of ESMA and have an exchange of views on its content.

As you will no doubt be aware we published in late September our final draft technical standards on MiFID 2, MAR and CSDR, which represents two years of work for us. I appreciate that 900 pages of draft rules may create additional questions that require a more in-depth discussion than what is possible in this forum. Therefore I would like to emphasise that ESMA staff continues to be available to explain our proposals in more detail if so desired by MEPs.

Let me briefly touch upon three topics, all within MiFID 2, that attract most of the attention and explain how we have addressed them in the final draft RTS.

Non-equity transparency

You will have noticed that we have ultimately adopted the instrument-by-instrument approach to determine whether a bond is liquid and you will recognise that we paid attention to the positions expressed by many of you in the last scrutiny slots. We believe that this approach delivers more accuracy and adaptability and therefore captures a population of bonds that based on recent trading activity can be considered as liquid. I am aware that there are still some concerns about the underlying parameters to assess the liquidity after issuance or the exclusion of transactions below a €100,000 to determine large sizes that can benefit from waivers and deferred publication. We have clear explanations for those specific points but let me state that, overall, we firmly think we have a system that strikes the right balance between the many divergent interests and the objective of introducing meaningful transparency in European bond markets which should improve their functioning.

I would ask you to bear in mind that the non-equity transparency regime covers a vast range of asset classes, particularly on the derivatives side. I believe we have published a standard of high quality, covering all those classes to a great level of detail.

We now need to prepare for the crucial phase of implementation, which will include performing liquidity assessments and setting the thresholds for transactions across asset classes and having them in place in time for market participants who need to adjust their systems accordingly. ESMA is already in the process of launching its implementation project in order to collect data, aggregate it and perform the necessary

calculations. The same goes for equity transparency and the double volume cap calculations.

Position limits

Let me now turn to the topic of position limits. We have adjusted the range of limits that can be set to 5 to 35% taking into consideration concerns by ECON that the previous lower limit of 10% may not be sufficiently strict to deal with, for instance, highly liquid contracts. I am aware that some concerns remain about whether this range is either strict enough or too strict depending on the point of view. What I would like to stress again is that ESMA has had to establish a broad range as this regime has to accommodate, at one go-live date, an unprecedented number and diversity of contracts which is not at all comparable to, for example, the US system.

I would like to reiterate that ESMA's approach should result in national regulators setting strict limits where strict limits are needed while allowing them to set less ambitious limits where this is adequate in order to maintain minimum levels of liquidity.

Ancillary activity

Lastly, I would like to briefly mention the ancillary activity test which, of course, remains a much debated subject. I would like to reiterate that ESMA tried to design this test in a cautious and pragmatic way, taking into consideration the specifics of different asset classes.

Given the unsurmountable technical weaknesses of a test based on capital calculations, we looked for an adequate and workable proxy for testing whether the activity in commodity derivatives is ancillary to the main business of an entity and the legal advice received by ESMA confirms that the use of this proxy is in compliance with the Level 1 text.

Some stakeholders ask for the reinstatement of a capital-based test but, to be candid, some of them are the very same stakeholders that not too long ago were concerned that they were unable to perform a capital test, that it would be very costly to perform and that it would not deliver convergent application across the Union.

We believe the test we have designed is workable and stays in line with the overarching objectives of the co-legislators of narrowing the exemptions from financial regulation, reducing opaque parts of the market and creating a level-playing field between investment firms and large non-financial players conducting activities identical to financial players. We remain convinced that a measure based on capital would be technically weak, very costly for small and medium-sized non-financial participants and would impede supervisory convergence.

Implementation work

I would also like to take the opportunity today to look ahead, as ESMA's work on MiFID II, MAR and CSDR is by no means finished.

The next technical standards package is already very much in the pipeline and consists of implementing technical standards of a mostly

technical nature and also not quite as voluminous as the previous one. Nonetheless, it comprises important topics such as position reporting, which is of paramount importance for having an efficient position limits regime and which represents one of the many significant implementation challenges for national supervisors and ESMA.

The implementation challenges in the run-up to the implementation date of MiFID II is the other topic I would like to mention. I am not going to surprise anybody in the room when saying that the timing for stakeholders and regulators alike to implement the rules and build the necessary IT systems is extremely tight. Even more, there are a few areas where the calendar is already unfeasible. This relates to the fact that it will take some time, and well into 2016, before the text of the RTS will be stable and final. The building of some complex IT systems can only really take off when the final details are firmly set in the RTS and some of the most complex IT systems would need at least a year to be built. We have therefore raised these timing issues with the European Commission, and the fact that some IT systems will not be ready in January 2017, and the uncertainty this will create as they are needed for the execution of certain elements of MIFID 2. Related to that, we have raised with the Commission whether this uncertainty would need a legislative response with delaying certain parts of MIFID 2, mainly related to transparency, transaction and position reporting.

Position reporting is one area where supervisory authorities have to build IT systems from scratch to collect reports from investment firms and trading venues and to exchange those reports among themselves to be able to determine aggregate positions in commodity derivatives at group

level. Likewise, investment firms, trading venues, and supervisors alike need to rebuild their transaction and reference data reporting systems almost from scratch. ESMA itself is building a substantial IT system to collect financial instruments reference data and trading data from venues in order to publish a complete, single list of financial instruments trading in the Union and the thresholds for pre- and post-trade transparency relevant for those instruments. All these projects are large and complex, probably more than those triggered by MiFID I, which required 3 years of implementation.

ESMA also has a specific role when it comes to assessing pre-trade transparency waivers and proposals for setting position limits. We will have to go through these many assessments in the 6 months window between the national transposition date of MiFID II in July 2016 and the application date of January 2017. Given the sheer volume of financial instruments covered, having all those ready in time for application will be extremely resource-intensive for ESMA and National Competent Authorities.

These specific implementation projects give just a glimpse of the wide range of issues that the coming months will bring. It will be hence essential to ensure a careful coordination between the adoption of the RTS, the national transposition, the delegated acts and the development of IT systems.

Thank you for your attention.