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The road to MiFID II – key note speech

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Ladies and gentlemen,

I am delighted to have been invited to the City Week 2016 and to speak on ESMA's work on the implementation of MiFID II/MiFIR – a long journey for many of us. While I could certainly speak for hours if not days on MiFID II and the changes it will introduce across European financial markets today I only have around 10 minutes. This is certainly challenging, but then these are challenging times and I believe that challenges keep us moving ahead. I will focus today on a few selected issues, and in particular on our work on MIFID II so far, on where we are right now in the process, and on our next steps. Finally, I'll also say a few words on how I think you could prepare for the new MiFID II world.

The road travelled so far

The last 8 years have been unprecedented in the history of financial markets. The world has been hit first by a financial crisis which was then followed by an economic crisis, and we are still struggling to bring our economies back on a sustainable growth path. MiFID2/MiFIR is one of the key reform measures in response to the financial crisis with the clear objective to making financial markets more stable, more transparent and more diligent in their duty of catering for investors. At the same time, MiFID II is also about the way in which capital flows into the economy, and hence goes hand in hand with the work on the Capital Markets Union.

MiFID II/MiFIR is the most significant and voluminous piece of Level 2 regulation that ESMA has ever undertaken. Over the last 2.5 years, we have been delivering technical advice to the Commission as well as a total of 36 draft technical standards covering issues ranging from market microstructure, pre- and post-trade transparency, commodity derivatives to access to CCPs and investor protection.

The technical advice was already delivered 1.5 years ago, in December 2014, and I'm relieved to see that the Commission has started adopting the delegated acts based on this advice.

The draft technical standards were submitted in two packages in September and December 2015 and I'm hoping that they will also soon be endorsed by the Commission. ESMA devoted significant resources to the development of its Level 2 work. This included the consultation of stakeholders at various times, an extensive data analysis, in particular for the development of the transparency regime for non-equity instruments, and a comprehensive cost-benefit analysis assessing the impact of our technical standards. Overall, the package submitted comprises more than 1500 pages without counting various consultation papers and the technical advice to the Commission.

Stuck in traffic

Alas, as it is often the case with such complex and ambitious reform measures, we – and by that I don't only mean ESMA, but also the European legislator, supervisors and market participants – are running behind schedule. This is why we suggested and the Commission in February proposed a delay of the application of MiFID II/MiFIR by one year to 3 January 2018. While this proposed delayed application has bought us valuable time for ensuring that all implementing measures are in place ahead of the start of the new regime, it is important that we – and again I speak here of all of us - don't waste it.

Unfortunately, to date the large majority of the Level 2 measures have neither been adopted nor been published in the Official Journal. While it is possible – and necessary – to already start preparing for the new regime pending the final Level 2 provisions, I understand your concerns about making huge investments and setting out complex processes prior to having legal certainty on the final Level 2 provisions. In that context, ESMA with its delegated project is in a similar position to many of you.

As I hope you will have heard by now, ESMA will provide a central facility in relation to reference and trading data and the calculation of the comprehensive MiFIR transparency parameters. This project has been made possible by the delegation of these tasks by national competent authorities to ESMA and it is the first time that such comprehensive tasks have been delegated to a European Supervisory Authority. Work on this major project, which requires ESMA to connect to hundreds of trading venues across Europe, is on track and is planned to go live in time with the application of MiFID in 2018. This project will allow us to collect data in a more efficient and harmonised manner across Europe, thereby achieving important economies of scale and lowering costs for industry and taxpayers, and publish all transparency parameters and reference data on financial instruments in a one-stop shop. However, pending legal certainty on the final Level 2 measures, in particular those specifying the transparency requirements, it is very challenging to develop the detailed requirements and functional specifications for this project. It is therefore crucial that we have legal certainty as soon as possible on all outstanding Level 2 measures.

As you are certainly aware, the Commission informed us in March and April of its intention to adopt the three technical standards on transparency requirements for non-equity instruments, position limits and ancillary activity only subject to amendments. Even though the notification in March was only an informal communication and some of the suggested amendments were left rather vague, ESMA started immediately working on the draft ESMA opinions as provided for in the ESMA Regulation in such cases. This allowed us to submit two of the opinions to the Commission already last week. The third opinion should follow by the end of this month. I hope that ESMA's quick delivery of the opinions will contribute to the swift adoption of the technical standards in the coming weeks.

As concerns substance on the non-equity transparency requirements, we are supportive of many requested amendments and in particular the proposal for a phased approach to reaching the transparency requirements for bonds (liquidity assessment) and for determining the size specific to the instrument threshold (SSTI) above which non-equity instruments may, under certain conditions, be waived from transparency. While we believe that our September proposal was calibrated in a cautious manner, we agree that phasing in the transparency requirements adds another layer of security and may contribute to the smooth implementation of MiFID II. The ESMA opinion proposes that all the four stages of the phase-inwould be set out in the RTS, providing for a declining schedule of trades for the liquidity assessment of bonds and an increasing schedule of trade percentiles for the determination of the pre-trade SSTI, and that the phase-in would be accompanied by yearly ESMA reports on the liquidity impacts of the staged approach. We believe that this alternative proposal to the one suggested by the Commission has the advantage of setting a clear path to more transparent non-equity markets while providing for more legal certainty and a less cumbersome procedure.

The road ahead

Let me now give you a glimpse of the work ahead. While the adoption of the Level 2 measures will be a significant step forward, the workload for ESMA will remain highly charged for the coming years. Currently our work focuses on three areas:

- Practical implementation of MiFID II/MiFIR at ESMA;
- The trading obligation for derivatives;
- Work on level 3 measures.

Practical implementation of MiFID II/MiFIR at ESMA: MiFID II/MiFIR significantly extends ESMA's tasks and responsibilities compared to MiFID I. For instance, ESMA will have to publish the percentage of trading carried out under the reference price waiver and the negotiated transaction waiver for the purpose of the double volume cap. Furthermore, ESMA will have to issue a significant number of opinions on the applications of waivers from transparency and for setting position limits on commodity derivatives. In addition, work on the delegated project described earlier will require significant resources to make sure that the system goes live in time and that all relevant thresholds are determined and published sufficiently ahead of the application of MiFID II.

The trading obligation for derivatives: MiFIR introduces a trading obligation for derivatives thereby implementing the G20 commitment to trade standardised derivatives on trading platforms. We have started working on the technical standard specifying the derivatives that should be subject to the trading obligation. Since this is new territory for us, and following the example set by the clearing obligation, we intend to publish in a first step a discussion paper this summer. The discussion paper will lay out the overall approach for identifying which derivatives or classes of derivatives should be subject to the trading obligation as well as a first data analysis. In a next step we will publish a consultation paper, probably at the beginning of 2017, which will then be followed by the submission of the final draft RTS to the Commission in the summer of 2017.

In addition, to the RTS on the trading obligation, we also still have to deliver a technical standard on the scope of the non-equity tape. We started working on this one as well, and plan to consult on it in the summer.

Work on level 3 measures and supervisory convergence: Last but certainly not least comes the work on level 3 measures. With the bulk of the work on the single rule book delivered, ESMA's focus will shift increasingly from rulemaking to implementation. As such, supervisory convergence in the implementation, supervision and enforcement of common EU rules will be a core focus of ESMA's activities.

Concerning MiFID II, ESMA will focus in the short-term on the delivery of three mandatory set of guidelines on trading halts, the management body of market operators and the management body of data reporting services providers. Furthermore, we are working on Q&As, starting with those issues that you have signalled to us as the most urgent ones, such as on the systematic internaliser regime, and the definition of OTFs. I encourage you to send your questions on MiFID II/MiFIR to ESMA and your national supervisors. We would welcome if you accompanied your questions by your interpretation of the issue at stake. This would help us to get a better understanding of the issue and to tackle them quickly as part of our Level 3 work.

Conclusion

I hope my short speech allowed you to get a better understanding the long road that we have travelled and will continue to travel to get to the new world. There are certainly still many challenges ahead (road blocks, construction works, etc), but I remain confident that MiFID II/MiFIR will improve the functioning of securities markets and will deliver on more integrated markets in Europe. While the application of MiFID II still seems far ahead, keep in mind that implementation will take significant time and resources. I'm looking forward to what promises to be an interesting panel discussion.

Many thanks for your attention.