ICMA International Capital Market Association

M MiFID II/R implementation: ESMA guidance

With less than three months remaining, MiFID II/R will enter into force on 3 January 2018. During the third quarter of 2017, the European Securities and Markets Authority (ESMA) has provided further guidance on a number of key issues for fixed income markets.

The following briefing is designed to provide a non-exhaustive summary of relevant guidance impacting market structure and fixed income trading, notably (i) transitional transparency calculations for bonds and credit derivatives; (ii) market structure, access to trading venues and CCPs; (iii) pre-trade transparency waivers, and (iv) MiFIR data reporting.

(i) MiFID II transitional transparency calculations for bonds and credit derivatives

To increase transparency in fixed income markets, MiFID II/R requires details of trades to be made publicly available. RTS 2, a delegated regulatory technical standard, sets out detailed pre- and post-trade assessment criteria for non-equity instruments including bonds and credit derivatives. The concepts of large-in-scale (LIS) and size-specific to the instrument (SSTI) define thresholds above which instruments are eligible for pre-trade transparency waivers and post-trade deferrals.

On this basis, ESMA published on 11 September 2017 threshold values for the various categories of bonds[59] which are deemed liquid. These will be valid for bonds and derivatives from 3 January 2018 until 31 May 2019, and will subsequently be updated once every year.

Bond Type	SSTI pre-trade	LIS pre-trade	SSTI post-trade	LIS post-trade
Corporate Bond	300,000	1,000,000	1,500,000	2,500,000
Convertible Bond	500,000	1,500,000	2,000,000	3,000,000
Other Public Bond	400,000	3,500,000	5,500,000	15,000,000
Covered Bond	300,000	1,500,000	3,000,000	7,000,000
Sovereign Bond	700,000	6,000,000	10,000,000	25,000,000
Other Bond	300,000	2,000,000	4,000,000	15,000,000

Note: Values are displayed in euro.

Liquidity assessments for individual bonds by ISIN are due to be released by 1 December 2017, as stated in the related FAQ on transitional transparency calculations.

With respect to credit derivatives, ESMA published an update on 11 September 2017 amending the initial calculations issued on 3 July 2017. Owing to erroneous data provided to ESMA by a trading venue, the number of credit derivatives considered liquid has decreased and includes only the iTraxx Europe 5-year and iTraxx Europe Crossover 5-year CDS indices. Rather than referring to a specific series, the assessment is based on maturity and encompasses respective indices with four to five years to maturity. This means that not only the on-the-run series, but also the previous series are deemed liquid.

59. Referred to as "sub-asset class" in the legislative texts, namely Corporate; Convertible; Other Public; Covered; Sovereign and Other bonds.

Underlying index	SSTI pre-trade	LIS pre-trade	SSTI post-trade	LIS post-trade
ITRAXX EUROPE 5Y	7,500,000	55,000,000	175,000,000	225,000,000
ITRAXX EUROPE CROSSOVER 5Y	5,500,000	20,000,000	45,000,000	55,000,000

Note: Values are displayed in euro.

Further provisional transparency calculations for equity and interest rate derivatives can be found on the ESMA website.

(ii) Market structure: access to trading venues and CCPs

On 7 July 2017, ESMA also provided a number of clarifications on market structure, emphasizing notably that access to trading venues should be non-discriminatory.

In practice, trading venues should refrain from setting minimum requirements in terms of trading activity. Importantly, ESMA lifted the restrictions on the number of counterparties from which quotes can simultaneously be requested in a request-for-quote (RFQ) protocol. Indeed, the market participant initiating the RFQ will have the ability to choose how many counterparties the RFQ is sent to. This paves the way for the wider adoption of what some trading venues refer to as "RFQ-to-All".[60]

With respect to clearing on trading venues, ESMA stated that "members or participants should not be required to be direct clearing members of a CCP". In addition, "for centrally cleared financial instruments, trading venues should not allow participants to require other participants to be enabled before they are allowed to trade with each other."

Regarding systematic internalisers (SI), ESMA clarified that "a system that provides quote streaming and order execution services for multiple SIs should be considered a multilateral system and would be required to seek authorisation as a RM, MTF or OTF." Even if transactions are arranged on one system and subsequently executed on another system, the entity operating those systems has to apply for authorisation as a trading venue.

(iii) Pre-trade transparency waivers

On 28 September 2017, ESMA announced that, in view of the large number of applications received for pre-trade transparency waivers, national regulators and ESMA had reviewed the approval process. Trading venues are required to apply for pre-trade transparency waivers to their national regulator. MiFIR prescribes that national regulators then submit these waivers to ESMA, who in turn will approve the waiver applications by way of opinions.

Considering the large number of waivers, ESMA stated that "it is unlikely to be in a position to issue opinions on a majority of waiver notifications" for bonds and other non-equity instruments. Therefore, national regulators will, subject to certain conditions and pending an ESMA opinion, provisionally grant waivers based on their own assessment. Q&As will be published by ESMA to address key issues and ensure supervisory convergence.

(iv) MiFIR data reporting

ESMA issued further clarifications on technical reporting requirements related to reference data for financial instruments [RTS 23], transaction reporting [RTS 22], and order record keeping [RTS 24] on 7 July 2017.

With respect to pre-trade transparency and record keeping requirements, it is worth noting that "actionable indications of interest are subject to pre-trade transparency requirements, […] along with current bid and offer prices and the depth of trading interests at those prices." Investment firms and trading venues are required "to maintain records of, amongst others, the relevant data relating to these orders, including actionable indications of interest".

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60. "In a request for quote (RFQ) protocol, a trading venue should not impose limits on the number of participants that a firm can request a quote from."