

ISDA, AFME, ICMA and EBF Briefing on Post-Trade Transparency amendments in the European Commission (EC) Market Integration and Supervision (MISP) proposal

Introduction

This briefing has been prepared by the International Swaps and Derivatives Association, Inc. (ISDA), the Association for Financial Markets in Europe (AFME), the International Capital Market Association (ICMA) and the European Banking Federation (EBF) (together, “the Associations”). It addresses the European Commission’s proposal to recalibrate the MiFIR post-trade transparency regime (PTT) as part of the MISP package.

In summary:

1. The Associations welcome the EC’s re-scoping of the OTC derivatives PTT regime governed by Article 8a(2) of Regulation 600/214 (MiFIR), removing from the scope OTC derivatives for which little or no price-forming liquidity remains¹.
2. The Associations welcome the codification in the MISP proposal of relief from MiFIR PTT of EEA investment firms on suitably qualified third country trading venues², aligning MiFIR Level 1 with the July 2020 ESMA Opinion on ‘Determining third country trading venues for the purpose of transparency under MiFID II/MiFIR’³ and avoiding duplicative transparency reporting. However, we believe that EU policymakers should extend this relief to the other asset classes that benefit from the exemption under ESMA’s Opinion, to ensure consistency of application, and to transactions that are made public through third country Approved Publication Arrangements (APAs).

¹ See Article 3 of the proposed [Master Regulation] amending Article 8a(2) of the [Markets in Financial Instruments Regulation].

² See Article 3 of the proposed [Master Regulation] amending Article 21(1) of the [Markets in Financial Instruments Regulation].

³ [esma70-154-165 smsc opinion transparency third countries.pdf](#)

1. Re-scoping MiFIR PTT for OTC derivatives, recognizing the Limited Transparency Value of FRAs and Basis Swaps

The Commission's proposal appropriately recognises that Forward Rate Agreements (FRAs) and basis swaps provide limited transparency value due to their extremely low volumes; and, in the case of FRAs, what liquidity there is being of an administrative and non-price-forming nature.

- Only EURIBOR-linked FRAs meet the liquidity-linked MiFIR Article 8a criteria. **Trading in other FRAs referencing indices other than EURIBOR is negligible.**
- EURIBOR-linked FRA activity is almost entirely comprised of post-trade risk reduction (PTRR) transactions, which have no relevance for price formation and are exempt from transparency obligations. **After PTRR transactions are excluded, the remaining trading in FRAs referencing EURIBOR is negligible.**
- Basis swaps referencing EURIBOR are also illiquid, with only isolated transactions executed in the EU over extended periods.

The Associations strongly support the Commission's conclusion that imposing transparency on these instruments would not pass a meaningful cost-benefit assessment.

We note that ESMA's Final Report on derivatives transparency acknowledged the low trading volumes of FRAs and basis swaps and referred to indications received from the Commission of their policy intention to exclude these instruments from the scope of transparency. Accordingly, ESMA has not specified a transparency regime for FRAs and basis swaps in the draft RTS that accompanied the Final Report, which will apply from 1 March 2027.

Should the Commission's proposal enter into force after that date, legally FRAs and basis swaps will still be in the scope of transparency, but market participants would have no means of determining which transactions should be subject to real time transparency and which should be deferred, nor would they know how long publication should be deferred. Given the intention is to remove FRAs and basis swaps from the scope of public transparency, it seems clear that neither the Commission nor ESMA intend for reporting parties to be placed in this position.

The Associations consider that in this event, to remove legal uncertainty, it will be necessary for ESMA to provide the Commission with an opinion under Article 9a of Regulation (EU) 1095/2010 that competent authorities should not take any action in respect of this technical non-compliance.

2. Extending the Proposed Exemption from MiFIR PTT for OTC derivatives trades to achieve greater Simplification and Burden Reduction

The associations welcome the proposed exemption from MiFIR PTT for OTC derivatives trades executed on Third Country Trading Venues (TCTVs), but believe this relief should be extended:

- a) to all asset classes in scope of PTT, consistent with ESMA's existing opinion; and
- b) to transactions in all asset classes in scope of PTT that are executed away from a trading venue with non-EEA clients and made public through Third Country Approved Publication Arrangements (TCAPAs).

We applaud the codification of existing ESMA guidance effectively exempting OTC derivatives trades executed by EEA investment firms on suitably qualified TCTVs from PTT, thereby avoiding duplicative transparency reporting (under local mandate *and* under MiFIR) by these firms.

However, further burden reduction and efficiency (without reducing overall transparency), and improved data accuracy could be achieved by similarly exempting transactions in scope of PTT executed outside trading venues between non-EEA clients and the non-EEA branches of EEA firms, where publication occurs through TCAPAs. This will ensure legal certainty and consistency of application for investment firms across all asset classes for their MiFIR PTT obligations.

The reasons for the existing exemption provided under ESMA's opinion hold equally true for transactions made public through TCAPAs. By definition, such transactions are subject to similar transparency requirements applicable to their reporting through EU APAs.

Such an extension would:

- Remove duplicative reporting under EU and UK regimes.
- Improve accuracy of post-trade transparency data by avoiding double-counting.
- By avoiding double counting, enhance the value of both the EU and UK Consolidated Tapes (CTs) by delivering more coherent individual data sets that collectively cover the EU and UK markets.
- Strengthen investor confidence and enhance European market competitiveness.

We note that this change will require Article 15 of the proposed [Master Regulation] to be amended to specify a date of application for Article 3, point (13) that provides adequate time for implementation.

Further opportunity for simplification

The Associations note that ESMA's opinion imposes significant overheads on ESMA itself, by requiring it to assess whether a TCTV meets certain criteria and to maintain a list of suitably qualified TCTVs in an Annex to the opinion. This consequently requires investment firms to have systems in place to query that list on a transaction-by-transaction basis to determine whether a given transaction has been executed on a suitably qualified TCTV and is therefore not required to be made public through an APA.

We believe that there has been little practical benefit in applying this distinction and recommend that the Commission instead considers adopting a general exemption for transactions carried out on any TCTV.

This would remove the burden on ESMA of assessing individual TCTVs (and monitoring whether they continue to meet the criteria), as well as allowing investment firms to simplify their processes.

We note that the opinion itself has had to be supported not only by the Annex, but a Delegation Decision by the ESMA Board of Supervisors and guidance to the Annex which extends to several pages, and that ESMA has to date assessed 361 TCTVs as suitably qualified. If the proposals in MISP instead provide for general exemption in respect of all TCTVs, this supporting architecture could be removed.

The Associations also note that as stated above, any transaction made public on a TCAPA is subject to similar transparency requirements applicable to its reporting through an EU APA, so even if the Commission opts to retain the requirement for a list of suitably qualified TCTVs, there is in any case no need for a list of TCAPAs to be maintained, as these are by definition suitably qualified.

Review of ESMA Opinion

The Associations reiterate their strong support for the proposals related to PTT in MISP, and for the extension of those proposals as described above. However, we note that should these proposals be incorporated into MiFIR, their eventual entry into force is likely to be many months in the future. We believe that it would be highly beneficial for ESMA to amend its opinion immediately, to eliminate regulatory uncertainty and to begin reaping the benefits of removing additional duplicative reporting as soon as possible.

i. Amending scope to refer to MiFIR Article 8a(2)

The Associations understand that the Commission has proposed to codify ESMA's Opinion as it pertains to OTC derivatives in the MiFIR text because paragraph 3 of the Opinion identifies financial instruments traded on a trading venue (ToTV) as the scope of instruments subject to PTT, transactions in which must be made public through an APA under MiFIR Articles 20 and 21.

Under revised MiFIR, determination of which OTC derivatives are in scope of transparency no longer relies on the ToTV concept. This scope is now explicitly set in MiFIR Article 8a(2), with a cross-reference to this article in MiFIR Article 21. The Commission's proposal would, from the time it enters into force, remove any uncertainty whether OTC derivatives still benefit from the exemption provided by ESMA's Opinion.

We believe that if ESMA were to revise paragraph 3 of the Opinion immediately to include reference to MiFIR Article 8a(2) along with the existing ToTV reference, this would avoid any uncertainty in the interim, and provide comfort to Designated Publishing Entities that transactions in OTC derivatives executed on suitably qualified third country trading venues continue to be exempt from any obligation to make them public through an APA.

ii. Extending relief to transactions made public through TCAPAs

The Associations believe that should ESMA revise its opinion such that investment firms transacting with non-EEA clients away from trading venues and making those transactions public on a TCAPA should no longer be required to also make those transactions public on an (EU-regulated) APA, this would immediately begin to provide the benefits of reducing burden on investment firms and duplicative reporting, thereby improving the accuracy of PTT data and enhancing the value of the CTs from their commencement of operation, and helping to achieve the objectives of the Savings and Investment Union.

The Associations will engage with ESMA on both these points.

Conclusion

The proposed MiFIR transparency recalibration is a welcome and pro-competitive step toward a more efficient and meaningful transparency regime. Extending the third country venue PTT exemption as detailed herein will further enhance regulatory coherence and ensure high-quality transparency data across EU and UK markets.



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About ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 78 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org. Follow us on [LinkedIn](#) and [YouTube](#).

About AFME

The Association for Financial Markets in Europe (AFME) is the voice of the leading banks in Europe's financial markets, providing expertise across a broad range of regulatory and capital markets issues. We represent over 150 leading global and European banks and other significant market players. Our members play a vital role in Europe's financial ecosystem, underwriting around 90% of European corporate and sovereign debt, and 85% of European listed equity capital issuances. Importantly, AFME members are market makers, providing liquidity, which is essential for ensuring financial markets can function efficiently. We also represent law firms and other associate members which advise market participants and support AFME's legal and regulatory initiatives. For more information please visit the AFME website: www.afme.eu.

About International Capital Market Association (ICMA)

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ICMA promotes well-functioning cross-border capital markets, which are essential to fund sustainable economic growth. It is a not-for-profit membership association serving over 630 members in 71 jurisdictions globally. Its members include private and public sector issuers, banks and securities dealers, asset and fund managers, insurance companies, law firms, capital market infrastructure providers and central banks. ICMA provides industry-driven standards and recommendations, prioritising three core fixed income market areas: primary, secondary and repo and collateral, with cross-cutting themes of sustainable finance and FinTech and digitalisation. ICMA works with regulatory and governmental authorities, helping to ensure that financial regulation supports stable and efficient capital markets.

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About EBF

The **European Banking Federation (EBF)** is the voice of the European banking sector, bringing together national banking associations from 45 countries. The EBF is committed to a thriving European economy that is underpinned by a stable, secure and inclusive financial ecosystem, and to a flourishing society where financing is available to fund the dreams of citizens, businesses and innovators everywhere. Website: www.ebf.eu Twitter: [@EBFeu](#).