Association of Proprietary Traders
Beursplein 5
1012 JW Amsterdam
E-MAIL: pars@aptraders.nl

ESMA
201-203 Rue de Bercy
75012 Paris

12 June 2020

Subject: Response to the ESMA Consultation Paper on the MiFID II/ MiFIR review report on the transparency regime for non-equity instruments and the trading obligation for derivatives

Dear Sir, Madam,

The Association of Proprietary Traders (APT) would like to give a general response to ESMA's Consultation Paper regarding the MiFID II/ MiFIR review report on the transparency regime for non-equity instruments and the trading obligation for derivatives APT represents 23 independent proprietary trading firms based in the Netherlands (see Annex). Amsterdam is a global centre for proprietary trading, with a concentration of bigger and smaller firms. Our members commit to continuously providing liquidity to the market under all circumstances. To the benefit of institutional and retail investors alike, our activities contribute to transparent and liquid capital markets and tightening spreads between bid and offer prices.

Improvements in transparency

While the transparency regimes for equities and equity-like instruments work reasonably, transparency in relation to derivatives and bonds is lacking. Inconsistent and liberal use of the post-trade deferral regime for non-equities has effectively denied the market meaningful post-trade transparency. Only 5% of off-venue trading activity in OTC derivatives is subject to post-trade transparency. This is due in large part to problems in the interpretation of Traded on a Trading Venue (ToTV). Furthermore, 90% of on-venue trading activity in OTC derivatives is being granted a four-week deferral while 85% of trading activity in EU bonds is not being published in real-time. This hampers our members' ability to price and trade these instruments (and other instruments for which the prices are influenced by those products, such as ETFs and derivatives). This negatively impacts liquidity and price formation, increasing spread. Independent liquidity providers can better provide the necessary liquidity when - post-trade information in particular - starts to become available. In summary:

- Deferred publication should be limited to large-in-scale trades only and confined to the minimum time necessary to allow the buyside and the market maker to complete their transaction and manage their risks safely. This is a matter of minutes, not weeks for most tickets.
- More instruments, many of which are currently deemed illiquid, should be in scope of the transparency regimes – particularly bonds that are included in indices, to provide the market with a better picture on actual, current pricing.

We therefore support ESMA to ambitiously pursue reduction of waivers (except for LIS) and shorten deferral periods, increasing transparency to a maximum extent across non-equity instruments. Any efforts for a consolidated tape for non-equities would carry much more improvement compared to further tweaking the – comparatively fairly effective – post-trading disclosure regime for equities.

Improvements to APA landscape

The APA landscape is highly fragmented and APA outputs do not enable market participants to have a full view of the market as intended by MiFID II. Achieving data consistency and harmonisation of data formats and delivery methods should help make markets more transparent post-trade and enable APA outputs to be used for the purpose of a consolidated tape.

Application of the Derivatives trading obligation (DTO)

The DTO is critical to bringing more competition to derivatives trading, allowing investors increased choice and better pricing and at the same time increasing transparency. The application of the DTO in the market is still in its early stages and we see three main areas for improvement:

- Scope of instruments. Across the market, many of the derivatives traded today are very much standardized contracts. Those that are created as bespoke instruments are often small changes to standardized contracts that allow issuers to avoid the DTO. Furthermore some on-exchange derivatives instruments (such as warrants, sprinters and turbo's) are still highly illiquid "closed shops" due to advantages held by the issuer (such as only the issuer can short sell the instrument). The DTO should extend to bespoke instruments that have limited bespoke qualities and seek to push for further standardization and usage of truly competitive multilateral listed instruments, discouraging/ eliminating look-alike products, in order improve competition and tighten spreads for investors.
- Scope of counterparties covered. The DTO currently has an exemption for "small financial counterparties". There appear to be large volumes trading under these exemptions in SIs. We question whether these volumes truly represent small counterparties. APT recommends monitoring off-venue trading volumes in derivatives to ensure the volumes transacted under exemptions is not out of line with the intended thresholds.
- Pre-arranged trades. Pre-arranged trading is currently permitted for derivatives subject to the trading obligation as long as the transaction is eligible for the large-in-scale waiver from pre-trade transparency. In our view, allowing transactions to move away from an MTF or OTF undermines the DTO. The current exemption allows for significant volume to be traded off-venue because these pre-trade levels are very low. At a minimum, we believe that pre-arrangement should only be permitted above the post-trade LIS threshold, which would be more consistent with the US approach, if such an exemption is retained at all.

We trust the above comments will be helpful with the review of the current framework. I would be very happy to answer any further questions which you may have or provide you with additional information.

Yours sincerely,

Matthijs Pars
Director APT