



Steven Maijoor
Chair, European Securities and Markets Authority
103 Rue de Grenelle
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17 April 2015

Dear Sir,

We note the joint letter sent to you by the LSE Group, NASDAQ and ICAP on 30 March 2015 regarding the MiFIR reforms in respect of mandatory open access requirements. We would like to offer a broader perspective on this issue. We believe that commercial concerns should not cloud the potential risks that the mandatory access requirements present to financial stability and to the protections afforded to end users of derivatives exchanges.

Following the financial crisis, improving the safety and integrity of financial markets and encouraging sustainable growth has rightly been the overriding objective of the G20 in guiding global market reform. One element of this is the mandatory market access requirements of MiFIR. While we understand that the parties above have a strong commercial interest in expanding their business franchises, exchange and clearing house operators already compete today across the globe to offer choice to users. However, forcing the interconnectedness of systemically important financial market infrastructures in derivatives poses a threat to market stability, especially in distressed market conditions.

The Level 1 provisions of MiFIR address this risk and state that mandatory access may only be granted where it would not threaten the smooth and orderly functioning of markets, in particular due to liquidity fragmentation, and would not adversely affect systemic risk. The Level 1 text requires ESMA to specify the conditions under which these grounds may be used to deny an open access request.

We appreciate ESMA's understanding that the Level 1 provisions on mandatory access will need to be calibrated differently for different asset classes¹; it is important not to risk the stability of derivative markets when introducing mandatory access requirements nor to downplay the unique features of derivative markets. EMIR and the CPMI-IOSCO principles further require CCPs to ensure that they are not exposed to unmitigated risk.

¹ Rec. 2 RTS 24: Articles 35 and 36 of Regulation (EU) 600/2014 mandate granting access in relation to financial instruments. The application of the requirements in this Regulation has to take into account the differences resulting from the whole spectrum of different financial instruments. For example, managing risks in relation to derivatives may be more complex and challenging than in relation to securities. The differences between financial and commodities and other non-financial derivatives have also to be taken into account.

As operators of regulated markets and CCPs, our primary responsibility is to ensure that markets remain safe and secure; our overarching concern is to ensure that the implementation of the MiFIR reforms does not create undue risk for CCPs and the markets they serve, and in particular for Clearing Members. In this regard we want to highlight the clear mandate to consider risk agreed by the EU Commission, the Council and the European Parliament. We are concerned that the potential risk arising from the access provisions may be neglected.

We encourage ESMA, in line with its objective of safeguarding the stability of the European Union's financial system, to fully implement the Level 1 mandate which is to clearly define objective and applicable conditions for denying and accepting access requests.

The draft Regulatory Technical Standard (RTS) addressing this mandate does not yet fully meet these requirements. The ability of National Competent Authorities to deny access is disproportionately and unreasonably limited. The draft Regulatory Technical Standard suggests that a CCP is required to accept exposure to legal risk, economic viability and inability to meet capital requirements, except where this risk is undue and significant. This requirement runs counter to EMIR and the CPMI-IOSCO principles. This is further compounded through the obligation for CCPs to apply for an extension of their authorisation and the extremely broad determination of "economic equivalence" as enabler for netting processes. We believe that such requirements are inappropriately narrow and inconsistent with the Level 1 text.

The MiFIR text does not require the RTS to artificially fragment liquidity by imposing new market structures which inject additional risk. A fragmented market is not what the real economy needs. The end users of markets - from pension funds to asset managers, from miners to industrial companies, from farmers to manufacturers - want deep, liquid markets where they can effectively and efficiently manage price risks. These markets are an essential foundation of their ability to invest and grow their businesses.

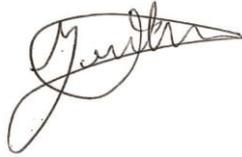
The creation of a Capital Markets Union is a great opportunity to create a stable, fair and competitive Single Market, supporting Europe's jobs and growth agenda. MiFID II / MiFIR as well as other key financial dossiers such as EMIR and the CRD IV provide an important basis for supporting it. However, it should be undisputable that sustainable growth for Europe as envisaged by the Capital Markets Union can only be built on stable financial markets.

For further details of our comments we refer to our respective responses in the context of the latest ESMA Consultation on MiFID II / MiFIR.

Yours sincerely,



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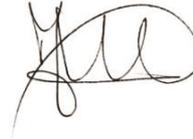
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