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MiFIR on Pre and Post-Trading Transparency for Equities, Equity-Like Instruments, Structured Products, Bonds, Emission Allowances and Derivatives

26 October 2011

Introduction

This is the third in our series of briefings on MiFID and MiFIR. Below, we describe new obligations set out in MiFIR to make certain pre and post-trade information publicly available in relation to equities, equity-like instruments, certain structured products, bonds, emission allowances and derivatives.

Key Points

- pre and post-trade transparency requirements will apply to shares, depositary receipts, exchange-traded funds, certificates and similar instruments, bonds, certain structured products, emission allowances and derivatives;
- large in scale waivers are still available, but these will require ESMA's approval;
- permission to defer publication of large in size orders must be made public;
- systematic internalisers are to be required to give firm quotes;
- post-trade disclosure requirements will involve the application of trade identifiers to derivatives, *etc.*

Legislative Provisions

1. *MiFIR Article 3 (Pre-trade transparency requirements for trading venues in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments)*: Regulated markets, MTFs and OTFs will be required to make public on a continuous basis current bid and offer prices and depth of trading interests, including actionable indications of interest (**IOI**), for shares, depositary receipts, exchange-traded funds, certificates and other similar instruments (**Equity Instruments**).

2. *MiFIR Article 7 (Pre-trade transparency requirements for trading venues in respect of bonds, structured finance products, emission allowances and derivatives)*: Regulated markets,

MTFs and OTFs will be required to make public on a continuous basis current bid and offer prices and depth of trading interests, including IOI, for bonds and structured products admitted to trading on a regulated market or for which a prospectus has been published, emission allowances and derivatives (Non-Equity Instruments).

3. *MiFIR Article 5 (Post-trade transparency requirements for trading venues in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments)*: Regulated markets, MTFs and OTFs will make public the price, volume and time of transactions executed in Equity Instruments "as close to real-time as is technically possible."

4. *MiFIR Article 9 (Post-trade transparency requirements for trading venues in respect of bonds, structured finance products, emission allowances and derivatives)*: Again, the obligation is for regulated markets, MTFs and OTFs to make public the price, volume and time of transactions executed in these instruments "as close to real-time as is technically possible."

5. *MiFIR Article 4 and Article 8 (Granting of waivers)*: Regulators may waive pre-trade transparency requirements for Equity Instruments and Non-Equity Instruments. In particular, waivers may be granted for orders that are large in scale compared with normal market size.

Regulators must notify ESMA of any intention to grant a waiver at least six months before the waiver is due to take effect, and ESMA will (within three months of receiving the notification) give its opinion on the compatibility of the waiver with the requirements of MiFIR and of delegated legislation to be promulgated by the Commission that addresses the conditions under which waivers may be given based on market models, the specific characteristics of trading activity in a product, the liquidity profile and the size and type of orders and instruments involved. Existing waivers granted pre-MiFIR will be reviewed by ESMA within two years[1] of MiFIR's enactment.

6. *MiFIR Article 6 and Article 10 (Authorisation of deferred publication)*: Regulators may grant markets permission to defer publication of details of transactions in Equity Instruments and Non Equity Instruments based on their type or size. In particular, large in scale transactions may be allowed deferred publication. Any such arrangements sanctioned by a regulator must be disclosed to other market participants and the public, and ESMA will monitor the application of deferred publication permissions.

7. *MiFIR Article 13 and Article 17 (Obligation to publish firm quotes)*: Article 13 imposes obligations on "systematic internalisers" to publish firm quotes in Equity Instruments admitted to trading on a regulated market or traded on an MTF or OTF for which they are systematic internalisers and for which there is a liquid market. If there is no liquid market, systematic internalisers must quote on request. The obligation to quote only applies to dealing for sizes up to standard market size and the minimum quote size is 10% of standard market size.

[1] This figure is in square brackets in the current text of the MiFIR proposal.

Article 17 imposes the same obligation on systematic internalisers with regard to Non-Equity Instruments, but here, the obligation arises when the systematic internaliser is prompted for a quote by a client.

8. *MiFIR Article 19 and Article 20 (Post-trade disclosure)*: Volume, price and time for all trades concluded in Equity and Non Equity Instruments must be made public. The Commission will adopt delegated legislation specifying the time limits for publication, including any provisions for deferred reporting, as well as legislative measures that deal with trade identifiers and the application of the disclosure obligation to transactions involving the use of Equity and Non Equity Instruments as collateral.

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