CITADEL

March 15, 2019

Bundesministerium der Finanzen
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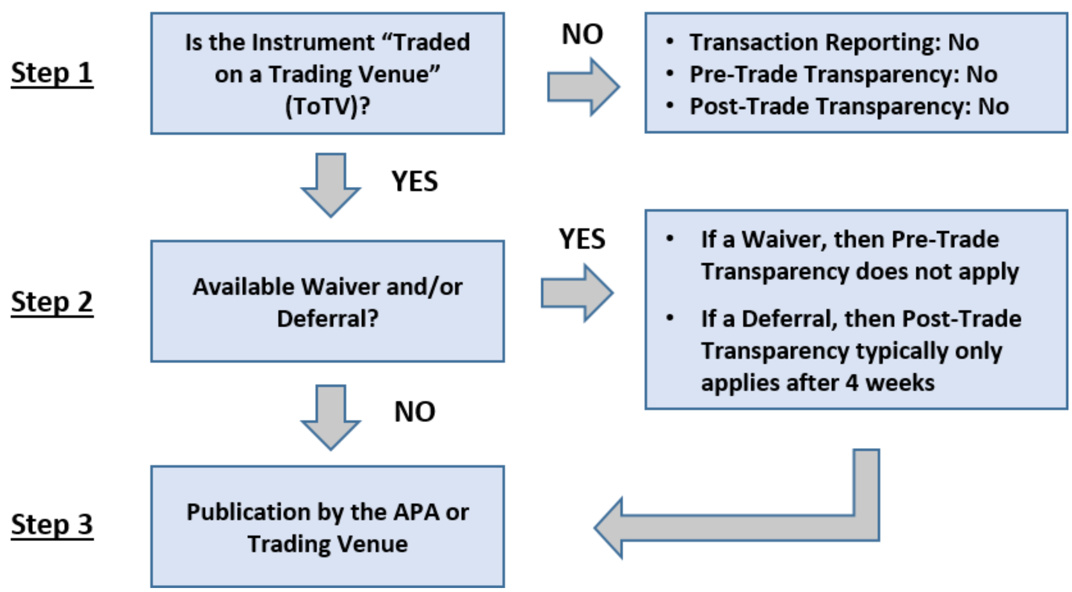
Re: MiFID II – An Assessment of the Current Transparency Framework for OTC Derivatives & Suggested Improvements

The implementation of MiFID II has been a landmark achievement for EU financial markets. As a significant participant in these markets, Citadel[1] firmly supports reforms designed to improve market transparency, efficiency, and stability. With respect to OTC derivatives in particular, these reforms are critical to increasing transparency in opaque markets that proved to be a significant source of systemic risk during the financial crisis.

However, notwithstanding the clear objectives of MiFID II to increase pre-trade and post-trade transparency for OTC derivatives, the transparency framework is not functioning as intended and has yet to deliver concrete benefits to market participants for several key reasons.

To inform the analysis of current impediments, we first illustrate the three main steps of the MiFID II transparency framework for OTC derivatives:



[1] Citadel is a global financial firm built around world-class talent, sound risk management, and innovative market-leading technology. For more than a quarter of a century, Citadel's hedge funds and capital markets platforms have delivered meaningful and measurable results to top-tier investors and clients around the world. Citadel operates in all major asset classes and financial markets, with offices in the world's leading financial centers, including Chicago, New York, San Francisco, Boston, London, Dublin, Hong Kong, and Shanghai.

For each step, the most significant observed implementation issues are:

- Step 1: ToTV has been interpreted in an overly granular manner, resulting in very few off-venue OTC derivatives transactions being subject to transaction reporting or transparency requirements. This impairs regulatory monitoring and surveillance and leaves vast sections of the OTC derivatives markets completely opaque.

- Step 2: Of the OTC derivatives that are considered ToTV, too many are eligible for waivers and deferrals from transparency requirements. A waiver provides a complete exemption from pre-trade transparency requirements, while a deferral typically provides a four week delay from post-trade transparency requirements, an overly lengthy delay that significantly reduces transparency for end investors.

- Step 3: Data that is required to be published by trading venues and "approved publication arrangements" ("APAs") is often difficult to obtain in a usable format free of charge, despite clear MiFID II requirements and subsequent guidance from ESMA. Trading venues and APAs continue to engage in a variety of practices designed to compel market participants to subscribe to expensive data packages in order to access MiFID II transparency data.

In the following pages, we provide a detailed description of each of these issues, along with suggested improvements to the regulatory framework. We urge regulators to take prompt action to fully realize the MiFID II objective of increasing transparency in the OTC derivatives market, which will deliver meaningful benefits for investors, including reducing systemic risk, eliminating information asymmetries, and facilitating accurate assessments of execution quality and best execution.

Respectfully,

[redacted]

Managing Director

Global Head of Government & Regulatory Policy

I. Issue #1: ToTV is Too Narrowly Interpreted

Under MiFID II, an OTC derivative will only be subject to transparency requirements if it is considered to be "traded on a trading venue" ("ToTV").[2] By definition, all transactions executed on a trading venue (RM, MTF, or OTF) should be considered in-scope. However, very few off-venue transactions executed by systematic internalisers ("SIs") or other market participants are currently being considered in-scope, significantly undermining the MiFID II transparency framework.

This is because ESMA has interpreted ToTV to mean that an instrument must share the *exact same* reference data details as an instrument on a trading venue that has been reported to the ESMA FIRDS database (i.e. all reference data fields must "match").[3] However, ongoing reference data quality issues and the fact that the ESMA FIRDS database has a one-day lag means that almost all of the off-venue OTC derivatives market is not being considered ToTV at the moment.

Market data clearly shows the impact of the current interpretation of ToTV. For example, according to data from ANNA-DSB, only ~2% of all OTC ISINs have been reported to the ESMA FIRDS Transparency System, highlighting that the vast majority of the OTC derivatives market remains out-of-scope and opaque.[4]

We note that, in addition to undermining transparency, the narrow interpretation of ToTV has other negative consequences under MiFID II, including:

- Limiting transaction reporting requirements, which hinders regulatory monitoring and surveillance capabilities;[5]
- Undermining ESMA liquidity assessments under RTS 2, as these are exclusively based on data relating to ToTV instruments; and
- Hindering ESMA's ability to calculate total volume and number of transactions executed in the EU for purposes of the SI regime, which has resulted in significant implementation delays to the SI regime for OTC derivatives.[6]

Below, we provide two solutions to address this critical issue – an immediate solution and a more strategic long-term approach.

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[2] *See* MiFIR Articles 18(1) and 21(1).

[3] *See* ESMA Opinion on "OTC derivatives traded on a trading venue" (22 May 2017) at paragraph 11, available at: https://www.esma.europa.eu/sites/default/files/library/esma70-156-117_mifir_opinion_on_totv.pdf (the "**ESMA ToTV Opinion**").

[4] *See* https://www.anna-dsb.com/2018/05/04/firds-data-analysis-for-april-2018/.

[5] *See* MiFIR Article 26(2).

[6] *See* https://www.esma.europa.eu/press-news/esma-news/esma-updates-plan-systematic-internaliser-regime-calculations-and-publications.

Solutions

A. Immediate Solution – Improving Data Quality and Revising the ToTV Opinion

ESMA specifically provided in the ToTV Opinion that it would monitor "the ratio of derivatives that are considered ToTV compared to overall OTC derivatives trading" and make adjustments as necessary.[7] Based on the data above, adjustments are clearly warranted.

As a priority matter, regulators should analyze current reference data reporting practices for OTC derivatives in order to identify the fields that are preventing accurate ToTV assessments. For each such field, regulators should evaluate whether it is necessary for ToTV assessments and (i) if so, take steps to improve reference data quality by issuing further guidance, or (ii) if not, remove the field from consideration by amending the ToTV Opinion.

ESMA recently issued additional guidance designed to improve reference data quality for two fields that are critical for interest rate derivatives – "Delivery Type" and "IR Term of Contract."[8] However, this guidance has not yet been implemented by market participants. ESMA and NCAs must ensure that the guidance is faithfully implemented to facilitate accurate ToTV assessments.

Separately, we detail in Annex A several reference data fields that we believe are preventing accurate ToTV assessments and that should be removed from consideration by amending the ESMA ToTV Opinion. These include "ISIN", "Instrument Full Name", "Expiry Date", "Underlying Instrument Code" and all optional reference data fields.

B. Strategic Long-term Approach – Eliminating ToTV

Even if the ToTV Opinion is amended to improve the assessment process, a significant portion of the OTC derivatives market will remain outside of the MiFID II transaction reporting and transparency framework. In our view, this is not the optimal approach, as it hinders regulatory monitoring and surveillance, as well as overall market transparency.

We recommend that regulators consider removing the ToTV concept for MiFID II non-equities requirements. This would ensure that all OTC derivatives transactions are subject to transaction reporting requirements, providing regulators with comprehensive data on trading activity. The available waivers and deferrals from transparency requirements should address any concerns about bringing into scope particularly bespoke or illiquid OTC derivatives. In fact, these waivers and deferrals are far more appropriate for illiquid off-venue transactions than they are for liquid on-venue transactions that meet the current ToTV standard (as discussed further in the next section).

We note that U.S. transaction reporting and transparency requirements apply to all OTC derivatives, regardless of whether transacted on a trading venue. These requirements include real-time public reporting, with only a short 15 minute delay granted to large block transactions.

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[7] ESMA ToTV Opinion at paragraph 15.

[8] *See* ESMA Questions and Answers on MiFIR data reporting at Section 16, available at: https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-56_qas_mifir_data_reporting.pdf.

II. Issue #2: Too Many OTC Derivatives are Eligible for Waivers and Deferrals

Of the OTC derivatives that are considered ToTV (primarily just on-venue transactions as detailed above), far too many are eligible for waivers and deferrals from transparency requirements. Data shows that nearly every OTC derivatives transaction that is ToTV is eligible for a waiver from pre-trade transparency (which means a complete exemption) and a deferral from post-trade transparency (which generally means a four-week delay). Below we detail the reasons for this unintended outcome and potential solutions.

A. Inaccurate Liquidity Assessments

At the moment, ESMA has determined that nearly all OTC derivatives are to be considered illiquid for transparency requirements, including interest rate and credit derivatives that have been assessed to be sufficiently liquid for the EMIR clearing obligation and the MiFIR derivatives trading obligation. For example, ESMA determined that only four sub-classes of fixed-to-float interest rate swaps are liquid, despite these being among the most commonly traded OTC derivatives in the EU.[9]

Declaring an instrument to be illiquid for MiFIR transparency requirements means that:

- Pre-trade transparency will be completely waived unless the instrument is subject to the MiFIR derivatives trading obligation (and even for instruments subject to the trading obligation, a complete waiver results anyway due to the negligible SSTI threshold for illiquid instruments, as detailed below);[10] and

- Post-trade transparency will be deferred, generally for four weeks.[11]

As a result, almost no meaningful transparency is provided to market participants for instruments that are declared illiquid.

ESMA's inaccurate liquidity assessments are a direct result of using an incomplete data set. First, ESMA solely relies on data relating to ToTV transactions for purposes of the liquidity assessments.[12] As discussed in Section I above, the narrow interpretation of ToTV results in ESMA failing to receive data relating to most off-venue OTC derivatives transactions, leading to a significant underestimation of actual trading activity. Second, ESMA continues to exempt all third-country trading venues (and EU market participants transacting on third-country trading venues) from MiFID II post-trade transparency requirements, meaning that ESMA currently has no way of

[9] *See* https://www.esma.europa.eu/policy-activities/mifid-ii-and-mifir/transparency-calculations.

[10] MiFIR Article 9(1)(c) and ESMA Questions and Answers on MiFID II and MiFIR transparency topics, Question 14 of Section 4, available at: https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-35_qas_transparency_issues.pdf.

[11] MiFIR Articles 11(1)(b) and 11(3)(c).

[12] *See* Article 22(1) of MiFIR.

including this trading activity by EU market participants in its liquidity assessments.[13] Together, these two issues result in significant data gaps that result in inaccurate liquidity assessments.

Solutions

As a priority matter, regulators should address the identified data gaps preventing accurate liquidity assessments. As detailed in Section I above, the ToTV Opinion should be revised to ensure more off-venue trading activity is considered ToTV and, therefore, able to be taken into account for purposes of the liquidity assessments. In addition, ESMA should ensure that all trading activity by EU market participants in ToTV instruments is taken into account for purposes of the liquidity assessments, even if transacted on a third-country trading venue. Finally, ESMA should provide additional clarity regarding how it is currently categorizing trading activity by sub-class under RTS 2, as set forth in Annex B to this letter.

Longer term, we recommend that regulators consider significantly recalibrating the liquidity assessments contemplated for OTC derivatives under RTS 2, including by:

- **Expanding available data**. In order to accurately assess liquidity characteristics, market-wide data that includes all transactions in a given OTC derivative should be considered. This could be achieved by removing the ToTV concept for non-equities, as discussed in Section I above, or by supplementing the ToTV data with other sources, such as Trade Repository and CCP data. Liquidity assessments should not be made on the basis of incomplete data regarding actual trading activity.

- **Recalibrating liquidity thresholds**. The current liquidity criteria, including average daily notional amount and average daily trade thresholds, should be recalibrated using current market data. Importantly, these liquidity thresholds should be tailored to reflect differences in trading volumes across asset classes. For example, liquidity thresholds that are appropriate for interest rate derivatives, which account for the largest segment of the OTC derivatives market,[14] are not appropriate for the smaller credit derivatives market. We note that the liquidity thresholds must also be recalibrated to the extent Brexit results in UK trading activity no longer being taken into account as part of the liquidity assessments.

- **Adding qualitative criteria**. OTC derivatives that are determined to be sufficiently liquid for the EMIR clearing obligation should always be considered liquid for MiFID II transparency purposes. Adding this qualitative criteria would avoid repeating the current problem where highly liquid OTC derivatives are not subject to transparency requirements.

[13] ESMA Opinion on "Determining third-country trading venues for the purpose of transparency under MiFID II / MiFIR", available at: https://www.esma.europa.eu/sites/default/files/library/esma70-154-165_smsc_opinion_transparency_third_countries.pdf.

[14] *See* BIS Derivatives statistics, available at: https://stats.bis.org/statx/toc/DER.html.

B. SSTI and LIS Thresholds Are Too Low

Even if an OTC derivative is determined to be liquid for transparency purposes, it may be eligible for waivers and deferrals based on transaction size. Currently, these waivers and deferrals are overly broad due to the transaction size thresholds being set at very low levels.

(i) Pre-trade Transparency

An OTC derivative transaction that is liquid (or is illiquid but subject to the trading obligation[15]) is eligible for a waiver from pre-trade transparency (a) if it is above the pre-trade "size specific to the financial instrument" ("SSTI") threshold and is executed in an request-for-quote ("RFQ") or voice trading system, or (b) if it is above the pre-trade large-in-scale ("LIS") threshold.[16]

Given that RFQ and voice trading systems account for the vast majority of OTC derivatives trading activity, and the pre-trade SSTI threshold is always lower than the pre-trade LIS threshold, the calculation of the pre-trade SSTI threshold is critical in determining how many OTC derivatives are actually covered by pre-trade transparency requirements.

Data shows the answer is not many. For those interest rate derivatives that are currently determined to be illiquid for transparency purposes but are subject to the trading obligation, the pre-trade SSTI threshold is set at EUR 4 million.[17] In practice, this results in a complete waiver from pre-trade transparency for these instruments, since almost no transactions are below EUR 4 million in size. For the four sub-classes of fixed-to-float interest rate swaps that ESMA determined to be liquid, the pre-trade SSTI threshold was set between EUR 15 million and EUR 25 million.[18] While this level was intended to ensure that at least of 30% of total transactions are subject to pre-trade transparency, data suggests that far fewer fall above these thresholds.[19]

<u>*Solutions*</u>

We recommend the following steps to increase the number of liquid OTC derivatives that are subject to pre-trade transparency requirements:

- **Add qualitative criteria**. OTC derivatives subject to the clearing obligation should always be considered liquid, as discussed above, which will prevent the pre-trade SSTI threshold from being set at EUR 4 million for these instruments.

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[15] *Supra* note 10.

[16] MiFIR Article 9(1)(a) and (b).

[17] RTS 2, Table 5.3.

[18] *See* https://www.esma.europa.eu/policy-activities/mifid-ii-and-mifir/transparency-calculations.

[19] "MiFID II Transparency Will Leave Us in the Dark," Clarus Financial Technology (Aug. 30, 2017), available at: https://www.clarusft.com/mifid-ii-transparency-will-leave-us-in-the-dark/.

- **Raise the pre-trade thresholds**. The current thresholds for waivers are far too low. The pre-trade SSTI threshold should be raised back to the 60th percentile by trade count as originally intended in order to capture a meaningful number of OTC derivatives transactions. In addition, regulators should consider adding a volume component to both the pre-trade SSTI and LIS thresholds, similar to the approach for calculating post-trade thresholds in order to ensure that a minimum amount of total trading activity is not eligible for a waiver. Relying solely on trade count leads to overly broad waivers.

- **Simplify the regime by combining the SSTI and LIS waivers**. Given that RFQ and voice trading systems account for the vast majority of OTC derivatives trading activity, the SSTI waiver is almost always available and therefore the LIS waiver becomes largely irrelevant. The transparency regime would be streamlined by combining these two waivers into one clear size-based waiver from pre-trade transparency requirements.

(ii) Post-trade Transparency

An OTC derivative that is liquid is eligible for a deferral from post-trade transparency (a) if it is above the post-trade SSTI threshold, or (b) it is above the post-trade LIS threshold.[20] Since all NCAs have granted the SSTI deferral,[21] and it is always lower than the post-trade LIS threshold, the calculation of the post-trade SSTI threshold is critical in determining the scope of post-trade transparency requirements for liquid OTC derivatives.

While the post-trade SSTI threshold is supposed to be set such that no more than *40%* of the aggregate volume (by notional) in the relevant instrument is eligible for a deferral, data quality issues appear to have resulted in far more transactions being eligible for the deferral.[22] For example, the post-trade SSTI threshold for a EUR 10Y interest rate swap is set at *EUR 55 million*.[23] However, the corresponding U.S. CFTC post-trade block threshold for the same EUR 10Y swap is *USD 170 million*, a level which is calculated such that no more than *50%* of the aggregate volume is eligible for a deferral.[24] Based on this methodology, the post-trade SSTI threshold should be higher than the U.S. CFTC block threshold (as less aggregate volume should be eligible for the deferral), but instead has been set at a significantly lower level.

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[20] MiFIR Article 11(1)(a) and (c).

[21] *See* https://www.esma.europa.eu/press-news/esma-news/esma-provides-overview-mifid-ii-deferral-regimes.

[22] "MiFID II Transparency Will Leave Us in the Dark," Clarus Financial Technology (Aug. 30, 2017), available at: https://www.clarusft.com/mifid-ii-transparency-will-leave-us-in-the-dark/.

[23] *See* https://www.esma.europa.eu/policy-activities/mifid-ii-and-mifir/transparency-calculations.

[24] Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades; Final Rule, 78 Fed. Reg. 32866 (May 31, 2013) at 32942, available at: http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2013-12133a.pdf. We note that the CFTC is due to increase these thresholds such that no more than 33% of aggregate volume is above the threshold.

Solutions

We recommend the following to increase the number of liquid OTC derivatives that are subject to real-time post-trade transparency requirements:

- **Expand available data**. In order to set accurate post-trade thresholds, market-wide data including all OTC derivative transactions must be taken into account. This could be achieved by removing the ToTV concept for non-equities, as discussed in Section I above, or by supplementing the ToTV data with other sources, such as Trade Repository and CCP data.

- **Simplify the regime by combining the SSTI and LIS deferrals**. Given that all NCAs have granted the SSTI deferral, the LIS deferral has become largely irrelevant. The transparency regime would be streamlined by combining these two deferrals into one clear size-based deferral from post-trade transparency requirements.

C. The Post-Trade Deferral Period Is Too Long

As detailed above, most OTC derivatives that are considered ToTV are eligible for a deferral from post-trade transparency requirements. MiFID II provides NCAs with a variety of options regarding the length of the deferral period and the amount of transparency required to be provided during this deferral period.[25] However, in practice, most NCAs have elected to grant the maximum deferral for all OTC derivatives,[26] meaning that individual transaction details are not published for at least four weeks after execution.

Providing a four week delay from post-trade transparency for almost all OTC derivatives, even those subject to the EMIR clearing obligation and the MiFIR trading obligation, significantly undermines the MiFID II transparency regime. Four-week old transaction data is stale, and does not serve to reduce information asymmetries or facilitate accurate assessments of execution quality and best execution by investors. In contrast, we note that the U.S. post-trade transparency framework for OTC derivatives only provides a 15 minute deferral for large block transactions. Otherwise, all OTC derivatives transactions are reported to market participants in real-time.

Solutions

We recommend the following to improve the MiFID post-trade transparency deferral regime:

- **Reduce the number of available deferrals**. Instead of providing NCAs with a variety of different options, the MiFID II framework should set forth a consistent approach to post-trade transparency deferrals. This will help to ensure that inappropriately long deferrals are not granted to commonly traded OTC derivatives.

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[25] MiFIR Article 11(3) and RTS 2.

[26] *See* https://www.esma.europa.eu/press-news/esma-news/esma-provides-overview-mifid-ii-deferral-regimes.

- **Reduce the length of the deferral period and cap the reported notional of large-size trades**. A main reason cited for allowing a four-week deferral was that MiFID II does not cap the reported notional sizes of large trades, which could result in greater information leakage.[27] We recommend allowing the publicly reported notional sizes of large trades to be reported at the post-trade SSTI/LIS levels (once appropriately re-calibrated) instead of reporting the actual trade size. In connection with this change, the maximum deferral period should be shortened to more closely resemble the current U.S. deferral of 15 minutes.

- **Adding qualitative criteria**. To the extent NCAs retain the discretion to select among more than one deferral period, qualitative criteria should be included to ensure that more liquid OTC derivatives are only eligible for the shortest deferral. For example, OTC derivatives determined to be sufficiently liquid for the EMIR clearing obligation should only be eligible for the shortest available deferral.

III. Issue #3: Trading Venues and APAs are failing to publish OTC derivatives transparency data free of charge in an accessible and usable manner

The limited amount of OTC derivatives data that is currently being provided under the MiFID II transparency regime is required to be published by trading venues (for on-venue transactions) and APAs (for off-venue transactions) *free of charge* 15 minutes after publication.[28] While trading venues and APAs may charge for real-time data on a "reasonable commercial basis," these entities are prohibited from charging for MiFID II transparency data once it has been delayed for 15 minutes.

However, trading venues and APAs have engaged in a number of practices designed to circumvent the requirement to publish MiFID II transparency data free of charge by impeding access to, and use of, freely available data. In response, ESMA issued additional guidance in May 2018 that provided specific examples of practices that are not permissible.[29]

Unfortunately, many trading venues and APAs continue to fail to comply with their legal obligations regarding the publication of transparency data, as further clarified by the ESMA guidance. For example, (a) data is published as an "image file" that is not machine readable, with 'search' and 'copy' capabilities disabled,[30] (b) data is deleted shortly after publication,[31] and (c)

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[27] *See* ESMA MiFID II/MiFIR Discussion Paper at page 165, available at: https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-548_discussion_paper_mifid-mifir.pdf.

[28] See Article 13(1) of MiFIR (for trading venues) and Article 64(1) of Directive 2014/65/EU (for APAs). In addition, under Commission Delegated Regulation (EU) 2017/571, APAs are specifically required to publish data in "machine readable" format that facilitates the consolidation of the information with similar data from other sources.

[29] Question 10 of the ESMA Q&A on MiFID II and MiFIR transparency topics at: https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-35_qas_transparency_issues.pdf.

[30] *Id.* ("*ESMA does not consider that publishing post-trade data as an image (i.e. in such a way that the user cannot copy the data in a format that can be read by a computer) or requiring the purchase of a specific software for downloading, processing or reading the information meets the requirement of making data available free of charge*.").

[31] *Id.* ("*ESMA is of the view that the information should be available for a reasonable time and at least for 24 hours*.").

data is published in far less usable manner than the data provided for a fee.[32] A recent Risk article provided a comprehensive overview of the practices that APAs continue to engage in that are inconsistent with MiFID II requirements.[33] Similarly, a number of MTFs and OTFs continue to engage in non-compliant practices.

Solutions

As a priority matter, regulators should ensure that all trading venues and APAs are fully compliant with the MiFID II data publication requirements, as further clarified by the ESMA guidance. Market participants should not be compelled to subscribe to expensive data packages in order to benefit from the MiFID II transparency regime. Such an outcome increases costs for investors and exacerbates existing information asymmetries.

Longer term, we recommend that regulators consider eliminating the ability for trading venues and APAs to charge for regulatory-required transparency data at all, even prior to the expiration of the 15 minute delay period. The current ability to charge for real-time data incentivizes trading venues and APAs to decrease the quality of the free data in order to compel market participants to subscribe to expensive real-time data packages. We note that, in the U.S., real-time OTC derivatives data is required to be published free of charge. In our view, this is the best approach for ensuring that a baseline level of transparency is provided equally to all market participants. Trading venues and APAs would still be permitted to charge for supplementary data and analytics that are not required to be provided to market participants pursuant to the regulatory framework.

[32] *Id.* ("*The data made available free of charge should replicate the information published on a reasonable commercial basis but with a 15 minutes delay; The data made available free of charge should be published in a similar format as real-time data published on a reasonable commercial basis*.").

[33] "Mifid data publishers drag feet on Esma guidelines," Risk.net (Feb. 15, 2019), available at: https://www.risk.net/regulation/6366256/mifid-data-publishers-drag-feet-on-esma-guidelines.

Summary of Recommendations

Issue #1 – ToTV is Too Narrowly Interpreted

1. Amend the ESMA ToTV Opinion to remove "ISIN", "Instrument Full Name", "Expiry Date", "Underlying Instrument Code" and all optional reference data fields from consideration.
2. Ensure the ESMA guidance relating to "Delivery Type" and "IR Term of Contract" is faithfully implemented to facilitate accurate ToTV assessments.
3. Longer-term, consider eliminating the ToTV concept for non-equities.

Issue #2 – Too Many OTC Derivatives are Eligible for Waivers and Deferrals

A. Inaccurate Liquidity Assessments

1. Revise the ToTV Opinion to take into account more off-venue trading activity.
2. Ensure that all trading activity by EU market participants in ToTV instruments is taken into account, even if transacted on a third-country trading venue.
3. Provide additional clarity on how trading activity is being categorized by sub-class under RTS 2.
4. Longer term, (a) expand available data, (b) recalibrate the liquidity thresholds, and (c) add qualitative criteria, such as deeming OTC derivatives subject to the clearing obligation as liquid.

B. SSTI and LIS Thresholds are Too Low

Pre-trade transparency

1. Add qualitative criteria, such as deeming OTC derivatives subject to the clearing obligation as liquid.
2. Raise the pre-trade thresholds.
3. Simplify the regime by combining the SSTI and LIS waivers.

Post-trade transparency

1. Expand available data, such as by revising the ToTV Opinion to take into account more off-venue trading activity.
2. Simplify the regime by combining the SSTI and LIS deferrals.

C. The Post-Trade Deferral Period is Too Long

1. Reduce the number of available deferrals.
2. Reduce the length of the deferral period and cap the reported notional of large-size trades.
3. Add qualitative criteria, such as deeming OTC derivatives subject to the clearing obligation as eligible for only the shortest available deferral.

Issue #3 – Trading Venues and APAs are failing to publish transparency data free of charge in an accessible and usable manner

1. Enforce MiFID II publication requirements, as further clarified by ESMA guidance.
2. Consider eliminating the ability for trading venues and APAs to charge for regulatory-required transparency data.

Annex A
Reference Data Fields to be Removed from ToTV Assessments

Data Field (RTS 23)		Reason for not being relevant for ToTV
ISIN (Field 1)	⇨	Certain fields in the ISIN are populated in a more granular manner than they are under RTS 23. For example, a separate ISIN is created for the "EURIBOR-Reuters" and "EURIBOR-Telerate" reference rates even though both are economically equivalent and documented as "EURIBOR" in the "Reference Rate" field in RTS 23. Therefore, requiring the ISIN field to "match" would result in the ToTV assessment being more granular than RTS 23, which is not intended. In addition, removing the ISIN field from ToTV assessments will help mitigate the one-day lag in the ESMA FIRDS database. For interest rate derivatives, the inclusion of an "Expiry Date" field in the ISIN results in a new ISIN being created each day for the same instrument (as its "expiry date" changes each day).[34] If the ISIN field is required to match and the FIRDS database is only updated with a one-day lag, then a given interest rate derivative is unlikely to ever be ToTV since a new ISIN is being created on every trading day but that ISIN will not actually appear in the FIRDS database until the next trading day.
Instrument Full Name (Field 2)	⇨	The "Instrument Full Name" field is a free text field that enables market participants to input different names for the identical instrument. We instead recommend that the "Financial Instrument Short Name" field (Field 7) be referenced, as it is standardized in accordance with ISO 18774.
Expiry Date (Field 24)	⇨	As noted above, the same interest rate derivative (e.g. a 10-Year EUR swap) has a new expiry date each trading day. If the "Expiry Date" field is required to match and the FIRDS database is only updated with a one-day lag, then a given interest rate derivative is unlikely to ever be ToTV. We instead recommend referencing the "IR Term of Contract" field (Field 41), which will differentiate among interest rate

[34] We also recommend engaging with ANNA-DSB to remove the "Expiry Date" field from the ISIN in order to significantly reduce the number of ISINs being created, which will simplify the transparency regime and make the data more accessible and useful to market participants. *See* "15 Million ISINs and Growing," Clarus Financial Technology (7 November 2018), available at: https://www.clarusft.com/15-million-isins-and-growing/.

		derivatives by tenor (length of the contract) once populated in accordance with ESMA's recent guidance.[35]
Underlying Instrument Code (Field 26)	⇨	For index CDS derivatives (CFI Code: SCICCC), it appears that the field "Underlying Instrument Code" is being populated with the same ISIN used for RTS 23 Field 1. As a result, to the extent ISIN is not required to "match" (see above), Field 26 should not be required to "match" either for index CDS.
All "Optional" fields	⇨	ESMA has designated several RTS 23 fields as optional to complete, such as "Floating rate of leg 2" (Field 45) for interest rate derivatives and "Underlying index name" (Field 28) for CDS. Including these fields in the ToTV assessment process means that an identical instrument can fail to "match" if one market participant chooses to complete an optional field and another chooses to leave it blank. Fields should be designated as mandatory to complete if they are sufficiently important for ToTV assessments.

[35] *See* "Questions and Answers on MiFIR data reporting" at Section 16, available at: https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-56_qas_mifir_data_reporting.pdf.

Annex B

Further Clarity Required for Assigning Trading Activity to Sub-Classes Under RTS 2

A. Interest Rate Swaps – Time to Maturity Buckets

ESMA should clarify how it is assigning interest rate derivatives to specific sub-classes under RTS 2 based on "time to maturity," which we assume is being calculated based on the difference between the Effective Date and the Maturity Date.

Example 1: Spot-starting EUR 10Y IRS

- Trade Date: 2018 June 11
- Effective Date: 2018 June 13 *[Note: EUR and USD spot-starting swaps have an effective date of Trade Date+2. In contrast, GBP spot-starting swaps have an effective date of Trade Date]*
- Maturity Date: 2028 June 13 *[Note: The "tenor" of a swap (in this example 10 years) is calculated from the effective date]*

Using the example above, a EUR 10Y IRS could be classified in the 10Y-11Y bucket under RTS 2 if the calculation was based on the difference between the Trade Date and the Maturity Date (since this period would be 10 years and 2 days). However, given that the spot-starting 10Y IRS is one of the most liquid benchmarks, it appears that the intent was for this instrument to be classified in the 9Y-10Y bucket, which was one of the four sub-classes to be determined liquid. As a result, it appears that "time to maturity" under RTS 2 should be calculated based on the difference between the Effective Date and the Maturity Date, which is consistent with standard industry practice. Going forward, the "IR Term of Contract" field should reflect the correct tenor of the instrument as well.

B. Index CDS – Time to Maturity Buckets

Similar clarification should be provided regarding how to assign index CDS to specific sub-classes under RTS 2 based on "time to maturity."

Example 1: iTraxx Europe 5Y Index CDS

- Trade Date: 2018 June 11
- Index: iTraxx Europe
- Index Series: Series 29 *[Note: Typically CDS indexes are updated every 6 months, on March 20th and September 20th]*
- Tenor: 5Y
- Maturity Date: 2023 June 20 *[Note: Standard industry practice is for index CDS to have the same maturity date (regardless of when executed) so that they are fungible. The standard maturity date is June 20th for the March 20th index series, while the standard maturity date is December 20th for the September 20th index series. This staggered approach means that a*

standard 5Y Index CDS can have a length of anywhere from 4 years and 9 months to 5 years and 3 months when calculated from trade date to maturity date.][36]

Example 2: iTraxx Europe 5Y Index CDS

- Trade Date: 2018 July 20
- Index: iTraxx Europe
- Index Series: Series 29
- Tenor: 5Y
- Maturity Date: 2023 June 20 *[Note: Since the March 20th index series is still the current on-the-run, the standard index CDS contract still uses June 20th as the maturity date.]*

Example 3: iTraxx Europe 5Y Index CDS

- Trade Date: 2018 September 25
- Index: iTraxx Europe
- Index Series: Series 30 *[Note: The new September 20th index series is now in effect.]*
- Tenor: 5Y
- Maturity Date: 2023 December 20 *[Note: The standard maturity date is December 20th for the September 20th index series.]*

ESMA has determined that iTraxx Europe 5Y with a "time to maturity" bucket of 4Y-5Y is liquid. We assume that this is intended to capture all index CDS with a tenor of 5Y referencing the latest index series of iTraxx Europe, even though as described above these instruments can have a length of anywhere from 4 years and 9 months to 5 years and 3 months when calculated from Trade Date to Maturity Date. The reference data field "term of the underlying index" should contain the 5Y "time to maturity" to be used for RTS 2 classification purposes.

In addition, the qualitative liquidity criteria in RTS 2 states that the underlying index is considered to have a liquid market while it is "on-the-run" and for the first 30 working days when it is the most recent off-the-run. We assume this means that, on 2018 September 20 when Series 30 of iTraxx Europe was introduced, all 5Y contracts referencing Series 30 were considered liquid, as well as all 5Y contracts referencing Series 29 for the first 30 working days following 2018 September 20. It would also be useful for ESMA to clarify this publicly.

[36] *See* http://www.markit.com/Company/Files/DownloadFiles?CMSID=d482583edb58464697a2003002728c53 for the documentation for Series 29 of iTraxx Europe.