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Discours de Robert Ophèle, Président de l'AMF - 4ème conférence annuelle virtuelle de l'AFME - 7 Octobre 2020 (en anglais uniquement)

Seul le prononcé fait foi

I am delighted to deliver this speech at the very moment when reforms of the MiFID II regime are being discussed in various fora and when ESMA, after most fruitful consultations, has delivered its two important review reports on the transparency regime for equity and for non-equity instruments.

After the time for implementation of this all-encompassing piece of legislation, comes the time for drawing some lessons.

Progress has been made on many aspects. For example, the MiFID Review on investor protection topics is well under way with the targeted amendments proposed by the Commission in its recovery package. These should make the whole regime more efficient and proportionate while preserving an adequate level of investor protection.

On the other hand, the review of the market structure and transparency aspects of MiFID will take more time and no legislative proposal is expected before next year. It is therefore time to analyse the state of the securities and derivatives markets nearly 3 years after the application of the MiFID regime, notably with regard to transparency. Today, allow me to discuss these highly controversial issues; highly controversial since views diverge between the buy-side, the sell-side and the market infrastructures. And it is true that market participants' interests are not all aligned and that it is quite a challenge achieving the adequate level of transparency which, at the same time, could enhance price formation and best execution, and will not be detrimental to market-making activities.

Before discussing possible corrective actions, let us start with some general observations.

My first observation is that we are not really where we wanted to be. If, as regards the equity market, we may be getting closer, the non-equity market picture is somewhat less satisfying.

- Let me first comment on the equity market; recent ESMA analyses featured in its MiFIR Review Report to the Commission show that, despite the share trading obligation, 1/3 of traded equity volume is still executed OTC. Moreover, ESMA notes, in terms of transparency, that the percentage of turnover of shares not subject to pre-trade transparency has remained above 60% since the entry into application of MiFID II. Overall then, the magnitude of the change from the transparency situation under MiFID I has remained rather slight. It is hard to deny that the objective of MiFID II to bring more equity trading onto lit venues has not been reached. Even if the Double Volume Cap mechanism has played its role, limiting certain forms of dark trading, it has actually triggered an increase in use of the LIS waiver and the periodic auction mechanism.

- Let me now turn to the non-equity market and in particular, the bond market. Here we are faced with deeply disappointing results. Since 2018, each quarter, around 0.30% of bonds are considered liquid and therefore subject to some degree of transparency. At the end of 2019, from a universe of more than 320 000 bonds, only around 600 were deemed to be liquid. Is it fair to say that the regime is properly calibrated when it applies to such a small proportion of instruments? I don't think so. Of course, one can say that it will gradually improve. But even in stage 2 of the liquidity phase-in approach (which has yet to be implemented by ESMA), the estimates are that it will still represent less than 0.5% of the total bond universe. This is highly unsatisfactory.

My second observation is that the transparency regime remains way too complex.

- In total, for the equity and non-equity markets, around 900 waivers have been submitted to ESMA under MIFID2. It undoubtedly questions the relevance of the transparency rules where such a high number of exceptions are granted. Not only is the number of waivers granted puzzling vis-à-vis the regime but the types of derogation are sometimes overly complex. In particular, the fact that we currently allow trading venues to combine different waivers is regrettable because it blurs the line between what should be counted under the DVC and what should not. Another example is the introduction of different waiver thresholds depending on the trading systems, like the Size Specific to the Instrument (the notorious SSTI) for RFQ or voice system. This leads to excessive complexity and a lack of harmonisation. Of course, we are not questioning the fact that some trading systems might need a different level of calibration, but currently each trading system can benefit from a different type of waiver.

- As regards the post-trade transparency obligations for non-equity instruments, levels of complexity are at their highest. First, the type of transactions that may benefit from a deferral is left very much to the discretion of the National Competent Authorities (be it for illiquid instruments, for a large in scale transaction or for SSTI). Then, on top of that, the length of time by which the publication of prices and volumes may be deferred is also open to different options. All this is clearly suboptimal as we end up with disparate practices across Europe.

Finally, despite the invitation residing in the regulation, no project has been developed to propose a consolidated tape, be it for equities or for bonds. Not to mention the cost of access to transparency data.

We have a labyrinthine-like system, with a strong technical rationale for each and every detail but with a very poor overall outcome; quite obviously, there is room for improvement.

When trying to put together some corrective actions in the field of transparency, one must first answer a very basic question: what would be the downsides of full pre- and post-trade transparency? Basically, the rationale is always the same: publicly announcing a large buying or selling interest in a financial instrument, especially if it is illiquid, would be detrimental to the market participant; in some cases, for some participants such as market makers, it could also be detrimental for them to have an immediate full post-trade transparency regime.

Therefore, for every financial instrument – equities, bonds, derivatives – the regulation embarks on the difficult task of calibrating what Large Trade means and of measuring and calibrating the liquidity of these instruments. Both exercises being complementary since the calibration of large trades depends, to some extent, on the liquidity of the market.

In order to determine if a trade is “large” it is understandable to take into account its absolute value but the regulation has also introduced the statistical repartition of the transaction (currently a transaction is large when it is above a certain percentile of the trades for the asset-class) and also the trading scheme, RFQs and Voice trading systems benefiting from reduced thresholds.

However, the main outcome of liquidity tests is to determine the perimeter of illiquid instruments, which have reduced transparency requirements.

And one should recognise that, due to the many ways of measuring liquidity and the very volatile pattern displayed by many of them, the exercise could lead to considerable sophistication which could, in turn, blur the broader picture.

When it comes to equities, liquidity taken into account in the regulation is based on four criteria: the free float, the average daily turnover, the average daily number of transactions and, lastly, the percentage of days traded.

For bonds, it refers, in addition to the size of the outstanding which is used for the first three months of a bond's issuance, to "only" three criteria the average daily turnover, the average daily number of trades and the percentage of days traded.

At the end of the day, we have in front of us 150 pages of delegated regulations for the two RTSs.

I must admit that my natural inclination is to be in favour of a drastic simplification.

Regarding equities, the idea could be to just keep waivers for Large in Scale, Order Management Facility and Negotiated Trades allowing for the execution of technical trades; and, in parallel, one would limit to LIS trades the recourse to Systematic Internalisers when it comes to the trading obligation. In this framework, the Double Volume Cap could obviously be removed since without any application.

As you may have seen, ESMA's recommendations are more balanced but nevertheless ambitious. ESMA proposes to leave almost all waivers as they are, including their possible combination, just adding a threshold to the Reference Price Waiver, this threshold being lower than the LIS threshold. If you keep all these waivers, the volume cap is still relevant and ESMA proposes three small but welcome adjustments in such a context: first, deleting the Venue 4% threshold, second, reducing the EU threshold from 8 to 7% and, third, broadening the perimeter of liquid shares that are targeted by the Cap by focusing only on the average daily turnover and the average daily number of transactions; therefore abandoning the free-float and the existence of trades on a daily basis.

As regards the non-equity market, you could imagine that my simplification frame of mind would provide for a similar outcome, just keeping a recalibrated LIS waiver and abandoning the liquidity approach and the SSTI concept. For post-trade transparency purposes, real time transparency would be requested allowing a deferral on volume only for transactions above the recalibrated LIS threshold.

Here again, ESMA recommendations are more prudent regarding liquidity criteria, proposing to further elaborate on three options. In addition to the radical solution already mentioned, the acceleration of the current staged approach (jumping to stage 4), and a simplified option (COFIA like) could be contemplated and further fine-tuned.

Enhanced transparency usefulness would be magnified by consolidated tapes. We should focus our efforts on the building of such tapes, first for equities and then for bonds. I do believe that, as demonstrated in US, these would be key to an efficient pan-EU market.

As highlighted by the European Commission in its February consultation on MiFID II review “The EU has a competitive trading environment but investors and their intermediaries often lack a consolidated view of where financial instruments are traded, how much is traded and at what price”.

This is why the possibility to build an EU Consolidated Tape is now one of the firm goals announced by the Commission in its CMU Action Plan. We are particularly happy to see that the Commission has put it on top of its list of priorities, despite the fact that the subject had failed to gain sufficient traction among the High Level Forum earlier this year.

The Consolidated Tape envisaged in MiFID II texts has so far not emerged. However, we are convinced it can be a useful tool for European markets, and all the more so when considering their highly fragmented nature. For this consolidated view of the market to be beneficial, the quality of data is key. Improving the transparency regime will certainly help to ensure that a future CT delivers the consolidated view needed.

Building such a Consolidated Tape will certainly need to be a step-by-step process, with a strong governance arrangement that ensures collaboration from all stakeholders. As a first step, the consolidated tape could provide consolidated post-trade transparency for equity instruments. This will enable the system to be operationally based upon a subset of instruments while being able to provide meaningful information. Once operational this could be extended to bonds, and then to other types of instruments. The CT would ensure that transaction information is published in near real time. An overview of the liquidity status, along with prices and volumes, will therefore allow actors to document their best execution policy and to value their assets.

We are aware that this Consolidated Tape represents a challenge for all market participants and regulators, but I can hardly imagine how a well-developed equity and bond market can still function without a Consolidated Tape. With this firmly in mind, I welcome the publication today of the Market Structure Partners report on the Study of the creation of the EU Consolidated Tape to the European Commission. At first glance, this report would seem to clearly highlight strong demand from industry stakeholders, suggesting first the development of a post-trade real-time tape for equities and bonds.

Thank you for your attention.

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