ASSOCIATION FRANÇAISE DES MARCHÉS FINANCIERS

FINANCIAL MARKET PROFESSIONALS

AMAFI / 21-29
18 May 2021

MiFIR Review
AMAFI's position on the MiFIR transparency regime for non-equity instruments

More than three years after the entry into force of MiFIR, most market participants acknowledge the observed improvement in the post-trade transparency of the EU non-equity markets. However, the operational implementation of the regulatory requirements pertaining to the MiFIR transparency regime proved to be costly and brought additional complexity to the general regulatory reporting framework of all stakeholders (trading venues, investment firms, APAs, ESAs…).

In this context, we believe that further changes proposed by ESMA and the Commission as part of the MiFIR review should be subjected to thorough cost-benefit analysis, especially considering the standing dilemma between an increase in transparency and its potential negative effect on liquidity. This dilemma is particularly active for non-equity markets that rely on liquidity provided by market makers, as market makers require sufficient time and confidentiality (and hence, limits to transparency) to hedge and, when it comes to bonds, to unwind their positions. It should also be reminded that optimising the balance between transparency and liquidity for these markets is all the more important as financial markets are expected to play a bigger role in the financing of the European economy.

The current transparency regime applied to non-equity instruments is the result of the will of co-legislators to increase the level of transparency in European markets while preserving appropriate conditions for the provision of liquidity, by protecting all participants' ability to offer competitive prices, including dealers and market makers.

AMAFI is concerned that the changes recommended by ESMA in its review report[1] on this topic do not take into account this precarious and sensible balance between transparency and liquidity. This is all the more concerning as the proposed reform would severely damage the competitiveness of EU markets intermediaries, while bringing only marginal – if any – benefits in terms of price discovery and market resilience (see note on the need to preserve the competitiveness of EU markets participants[2]).

1. Avoiding unnecessary toughening of the pre-trade transparency regime

Regarding pre-trade transparency, it appears in practice that the MiFIR regime has not generated demand for such information. As a consequence, AMAFI is of the view that the current set of waivers should not be removed but rather preserved as they are, as they provide protection for liquidity providers from undue risks. We remain sceptical about the changes suggested by ESMA to the pre-trade transparency regime in the absence of any impact assessment. The implementation of the current regime already proved to be costly with very limited results. Therefore, AMAFI considers that amending the pre-trade transparency regime for non-equity instruments is not a priority.

[1] ESMA, MiFIDII/ MiFIR review report on the transparency regime for non-equity instruments and the trading obligation for derivatives, link

[2] The drafing of the note on the need to preserve the competitiveness of EU markets participants is still ongoing

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2. Preserving the delicate balance between post-trade transparency and liquidity

When it comes to post-trade transparency, before envisaging any significant modification in the scope or modalities of post-trade transparency for non-equity instruments in the Union, we call for a thorough analysis of the impacts such change could have on the subtle balance between transparency and liquidity.

Be they still manual or already automated, non-equity markets rely on liquidity provided by market makers. Market makers accept to take risks, commit their capital and need sufficient time and confidentiality to hedge or unwind their positions. Increasing the level of transparency of a market will unavoidably affect their ability to hedge and the cost to do so, and hence backfire on how they can effectively provide liquidity within the same risk appetite, with a direct impact on the market – including on the primary segment. It is worth recalling that on average in Europe, there is c. one government/SSA bond auction per day and the corporate bond primary market is vivid: in both cases, they rely on the investors being able to manage their inventories ahead of the issuance, ie finding counterparties on the secondary market.

In order to better explain trading approaches, we would like to stress the increasing importance of trading algorithms in the non-equity transparency-liquidity balance.

Algorithms enable the delivery of a better "volumes traded – i.e. market share v. risks – / capital consumption" ratio, a more cost effective solution together with a documented and objective approach of trading; changing the transparency parameters would obviously be factored in, thus any change needs to be carefully thought through in terms of cost/ benefit analysis. Analysing algorithms' documentation could result in a more robust market impact assessment of any change in the post trade transparency parameters.

How does an algorithm factor in the level of transparency for the asset on which it operates?

Algorithms perform price discovery, support the risk management of the desk, i.e. the ability to assess from a risk management perspective the added value of an incoming client request if it ends up trading the RFQ, while considering a series of technical indicators (liquidity, financing cost, RFQ imbalance, etc). For a granular group of issuers that behave similarly from a variance covariance perspective, the risk is measured by the Algo against each risk factor. By combining technical and risk factors the Algorithm derives a final skew that will drive the aggressiveness in trying to win an RFQ or not. When determining the Bid and Offer inside which the Algorithm can skew its streamed price and RFQ responded price (i.e. aggressively (inside) or defensively (outside) in order to win the trade or not), the algorithm will protect itself from the "Winner curse" which consists of automatically being adversely selected when one provides liquidity to the Market: more transparency means wider streamed bid offer. Another way to protect itself is to reduce the list of eligible securities to the algorithms.

With this in mind, we believe that the current level of transparency for illiquid instruments and large in scale transactions is rightly calibrated to protect the ability of market participants to facilitate transactions. We believe that a limitation of the use of the deferrals provided in MiFIR would alter this balance by exposing liquidity providers (dealers, market makers) to higher risks. It would hence reduce their willingness to act as counterparty on larger transactions / less liquid instruments, thereby reducing liquidity on European markets.

Regarding the need for a uniform deferral regime, AMAFI recommends harmonizing the deferral systems by converging towards the calibration already enforced by the NCAs of the deeper EU-27 markets, eg allowing for the 4-week volume omission, the 48 hours deferral period for price information and the provisions under article 11(3), points (b), (c) and (d). AMAFI believes that this option is best suited to preserve liquidity provision under all market conditions.

Suggestions made by ESMA in this area were not backed by a solid assessment of their possible impact, notably regarding the proposed reduction of the deferral for the publication of the volume of transactions from four to two weeks.

Finally, while we consider that the current scope of instruments covered and the information required are sufficient, we believe that the main issue still limiting the value brought by post-trade transparency is the availability and quality of data. This is mainly due to the reporting delegation process and the fragmented publication of data by APAs and trading venues in divergent formats. AMAFI believes that these issues are better addressed through best practices initiated within market participants and aggregators.

3. Simplifying the transparency regime through a narrower interpretation of the SI regime

In its recently published report on transactions reporting and reference data[3], ESMA proposed an approach vowing to subject to the transparency requirements of articles 18 and 21 of MiFIR all SI quotes and transactions in derivatives belonging to the same sub-asset class as derivatives for which a firm qualifies or opts-in to be SI. AMAFI considers that this approach would lead to an unnecessary escalation of the complexity of the transparency regime and would contribute to a misleading tendency of equating SIs with Trading venues in the regulatory framework. Indeed, since these instruments are not traded on-venue, a transparency requirement cannot be justified by the intent to level the playing field between on-venue and off-venue trading.

Moreover, AMAFI does not see any benefits in disclosing quotes related to OTC instruments. When it comes to OTC derivatives, it is important to underline that, contrary to securities, the pricing of transactions is not based on the pricing of recent transactions (or orders) on similar instruments, but rather on multiple parameters that are observable in other market segments (like the price of the underlying, the volatility of the price, the rate curve, etc.). As a consequence, applying transparency provisions to those instruments would not help price discovery or set a benchmark for clients trading those non-TOTV products.

AMAFI is of the view that the transparency regime should rather be simplified, in order for market participants and supervisors alike to be able to shift their focus further into the improvement of data quality. One important step towards the simplification of the transparency regime would be the clarification of the application of the SI regime. We believe that the SI regime should only apply to ToTV instruments and exclude uToTV instruments. This step would lift the obligation to report reference data for uToTV instruments traded through SI under RTS 23, while ensuring that transactions reporting obligations are met, including for uToTV instruments.

4. Providing an adapted framework for the dissemination of pre-trade indicative prices in fixed income instruments

Trading in fixed income instruments, be it on multilateral venues or through bilateral transactions, is episodical, which makes pre- and post-trade transparency intermittent by nature, even before considering exemptions and deferrals justified by the illiquidity of most instruments and by the size of transactions.

As a consequence, many investors rely on composite indicative prices that are streamed on a continuous basis by the operators of venues operating as RFQ MTFs. These indicative levels are engineered by the MTFs operators on the ground of indicative bids and offers that the dealers active on the platform provide to attract orders. Since they are not based on firm quotes or on the price of executed transactions, composite indicative prices are not regulated under MiFID II / MiFIR.

In order to increase the level of information available to investors and other market participants in the Union's fixed income markets, AMAFI believes that the dissemination of composite indicative prices should be regulated, through the enforcement of the "Reasonable Commercial Basis" principle and the prohibition of exclusive distribution terms.

[3] ESMA, MiFIR review report on the obligations to report transactions and reference data

About AMAFI

Association française des marchés financiers (AMAFI) *is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI's members operate for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives, including commodities. Nearly one-third of members are subsidiaries or branches of non-French institutions.*