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European Commission
Directorate-General for Financial Stability, Financial Services and Capital Markets Union
1049 Brussels
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Submitted to:
http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index_en.htm

Call for Evidence on the EU Regulatory Framework for Financial Services

London, January 31st 2016

Dear Sirs,

We welcome the publication of the C*all for Evidence paper* (the "***Paper***") *on the EU Regulatory Framework for Financial Services* by the European Commission and appreciate the opportunity to provide you with our comments. [1]

Introduction

Markit is a leading global diversified provider of financial information services and Regulatory Technology (RegTech) solutions.[2] We provide products and services that enhance transparency, reduce risk and improve operational efficiency of financial market activities. Our RegTech services facilitate and reduce the costs of firms' compliance with regulatory requirements, thus lowering barriers to entry, leveling the playing field between big and small firms, and fostering competition in the market place. Our customers include banks, hedge funds, asset managers, central banks, regulators, auditors, fund administrators and insurance companies. Founded in 2003, we employ over 4,000 people in 11 countries and our shares are listed on Nasdaq (ticker: MRKT).

Markit has been actively and constructively engaged in the debate about regulatory reform in financial markets, including topics such as the implementation of the G20 commitments for OTC derivatives and the design of a regulatory regime for benchmarks. Over the past years, we have submitted more than 140 comment letters to regulatory authorities around the world and have participated in numerous roundtables. We also regularly provide relevant authorities with our insights on current market practice and appropriate approaches to enabling a timely and cost-effective implementation of newly established regulatory requirements, for example through the use of multi-layered phase-in or by providing market participants with a choice of means for satisfying regulatory requirements.

Comments

We welcome and support the Commission's initiative on Capital Markets Union (CMU) and are pleased to respond to the call for evidence. We agree that the inclusion of the call for evidence is a vital component of

[1] This letter contains the text used in Markit's response, although the form of the formal response was different given the requirement to complete an online *pro forma* and this has also lead to some repetition. Not all questions have been answered.
[2] Please see www.markit.com for further details.

creating effective and efficient capital markets for the EU as it will help understand the combined impact and cumulative effects of the package of regulatory change necessarily introduced at great speed following the financial crisis. Whilst several pieces of legislation have not yet been implemented, making impact assessment difficult, it is already clear that the regulations will produce vast amounts of data and a significant increase in compliance requirements. This is leading to the rise in innovative RegTech solutions as a means to enable market participants to make sense of the data and to comply with added compliance burden and complexity. Many of these solutions rely on shared services, which allow secure, fast and cost efficient tools for participants to meet these new requirements. These services help lower barriers to entry and thus contribute to the continued intergration of markets that is at the heart of the CMU objective, as well as to the successful delivery of the crisis reform agenda.

The relevance of innovative RegTech solutions, including shared services

We have set out some specific points in line with the categories identified in the call for evidence but would like to also make some general points about some important conditions needed for an efficient financial market to flourish. We generally believe that the regulatory framework for financial markets should be designed to encourage competition and allow market participants to use shared solutions to reduce costs and adopt best practice. Shared solutions allow the burden of regulatory and technological challenges to be shared across the industry and so avoid wasteful duplication and free resources to focus on the services that would, in a properly functioning market, lead to greater investment and economic growth. We believe such solutions also encourage market entry and innovation by reducing the barriers that having to build new compliance systems creates to innovative new players, or by connecting market participants with a range of market infrastructures in a neutral, cost effective way. These services have proved to play a particularly useful role in reducing burdens on smaller and non-financial firms. In summary, we believe shared services offer the potential to reduce the burden of regulation on individual firms without lowering standards.

However, we have concerns that some elements of the current framework inadvertently create barriers and disincentives to the use of such shared, third party RegTech solutions. We have set out some specific examples below and, while we would not advocate the reversing of the relevant requirements, we believe that there are instances where some minor recalibration to recognise the value of shared RegTech solutions would achieve the same objectives without creating the inefficiencies and barriers that current arrangements could cause.

KYC due diligence: A good example of the effective use of a shared solution reducing duplication of resources being used to meet regulatory requirements are KYC Utilities. KYC Utilities are platforms that facilitate market participants' compliance with KYC/AML requirements by creating a common system. These services, including Markit's kyc.com platform, provide a standardised end-to-end managed service that centralises KYC data and process management and enable firms to address regulatory and counterparty requirements to a high, consistent standard.[3] Ten of the largest global banks have signed up to our service or are in contractual negotiations and over 1,400 buyside and corporate clients are registered. Without such a service, each firm would have to an individual system to collect and manage all of their KYC information and each of their clients would need to provide the relevant information for every firm. This would clearly be something extremely onerous and resource wasteful with potentially thousands of different systems for counterparties and authorities to deal with.

Commission management: In another example, Commission aggregation platforms such as Markit Commission Manager provide an effective tool that enables asset managers to aggregate research commissions across all of their commission sharing trading counterparties. The utilisation of such services,

[3] The Committee on Payments and Market Infrastructures Consultative Report on Correspondent Banking (October 2015) sets out a useful description of the main KYC utilities (pg 12-13) - https://www.bis.org/cpmi/publ/d136.pdf

known as Commission Sharing Arrangements (CSAs), enables asset managers to bifurcate the trading counterparty decision from the research procurement decision; thus preserving a proper focus on best execution. However it has been proposed, in the context of unbundling services under MIFID 2, that CSAs be abolished and replaced with individual research payment accounts (RPAs) and it remains unclear what will actually be allowed. This would be extremely problematic for industry participants, particularly the buy side, as they would have to manage potentially thousands of accounts themselves meaning they would have to take on responsibility for each account and how it processes the payments to each research provider. The outcome – for very limited benefit – is likely to be significantly increased cost in the system and, as firms respond to this, less money spent on research. Clearly these outcomes would conflict with the objectives of the CMU exercise.

Indices: on a different theme, we would also like to highlight the role of indices and benchmarks in the context of the CMU. Our experience as index provider, mainly in the fixed income markets,[4] has shown that indices can play an important role in improving the functioning of financial markets, particularly by establishing an asset class, broadening its accessibility and fostering its liquidity. Proper regulation and supervision of this sector is vital to building a flourishing market and Markit welcomes the recent political agreement of the EU Benchmark Regulation. However, we urge the Commission to carefully consider how the development of the Level 2 of the Benchmark Regulation can maintain the potential for innovation in this area and minimise the potential for any chilling effects.

We therefore believe that during this exercise, the Commission should:

1) Review regulation and remove potential barriers and disincentives to the use of shared services and
2) Focus more on creating the correct secondary markets position and be cognisant of the potential for benchmarks to bring liquidity and investment in certain sectors.

Rules affecting the ability of the economy to finance itself and grow

1) **Unnecessary regulatory constraints on financing**

Directive/Regulation: MIFID 2

MIFID 2 seeks to protect investors from conflicts of interest that might lead to their advisors and asset managers acting to capture inducements that are in their own interest rather than their clients. Therefore rules concerning when inducements can be paid and how unbundling should be implemented will be introduced. These are goals Markit strongly supports. However concerns about potential conflicts have also led to consideration as to whether commission sharing agreements (CSAs) should be allowed to continue. This is despite there being no consideration of this in the Level 1 debate and there being a policy objective in CMU to have more information and research on SMEs and other firms with high growth potential.

CSA management platforms, such as Markit Commission Manager, provide an effective tool that aggregates virtually research commissions for all trading partners on a single platform. This, combined with a proper voting process, results in research providers receiving payments based on how individual investment managers rate and rank the research. This process enables participants to meet regulatory objectives and minimise administrative burden most cost effectively. However, it has been proposed, in the context of unbundling services under MIFID 2, that CSAs be abolished and replaced with individual research payment accounts (RPAs). This will be extremely problematic and burdensome for the firms involved on both buy and

[4] Markit is a global index provider and administrator for both cash and synthetic indices across fixed income and equities. For example, the Markit iBoxx European ABS index for performance measurement in the European ABS market. Markit also provides index-related services to enable customers to meet bespoke index requirements. Our customers for these services include banks, asset managers, hedge funds, insurance companies and corporate treasurers.

sell side as they would have to manage potentially thousands of accounts themselves and so take on responsibility for each account and how it processes the payments to each research provider. Furthermore, given the challenges and increased burden on the buy side in managing the RPA account structure, many will likely opt out and fund research from their own P&L, but only the largest and best capitalized firms could afford to do this creating an imbalance from a competitive perspective.

Without systems like this and the mandated implementation of RPA's, research would have to be paid upfront and individually ahead of its use by asset managers and so paying and accessing research would be more onerous and expensive. Therefore asset managers are likely to focus in on the largest research providers. This would lead to research being conducted only by similar organisations, focussing only on what they believe either their own in house managers want or that can be sold ex-ante in the market. Our discussions with asset managers have also shown that a significant number of them consider the administrative burden of managing research budgets or paying for external research out of their own resources would be too high. The outcome is likely to be less diversity and increased cost in the system and, as firms respond to this, less overall money spent on research. With less money and higher costs from having to manage every account individually, sectors like SME and new technology would receive less attention from researchers, leading to less information for investors and their managers, meaning less investment in such sectors. At the same time, we believe, there is no clear evidence of investor detriment when the arrangements described to justify disproportionate action.

A survey conducted in 2015 highlights many of these concerns.[5] Specifically, it found that spending on research is expected to fall (potentially substantially) if commissions were no longer permitted to fund research and that most firms will end up running RPAs but, as stated above, our discussions with asset managers suggest that they will not want to manage RPAs across hundreds or even thousands. It is therefore likely to lead to a focus on a few large providers. This is shown in that the 2015 survey respondents said that cuts in research payments would be most likely to fall on mid-sized providers.

We support the work of regulators to reduce conflicts of interest and mitigate potential consumer detriment where they do exist. We would support measures that ensure investors understand and can control their spending on research and ensure any spending is not based on volumes transacted. However, we believe that transparent services such as CSA platforms should be allowed to continue as long as participants appropriately manage the conflicts they are exposed to, and that positive externalities of any arrangement should be considered in the cost benefit analysis when making regulatory decisions. It remains unclear what the final rules will be and how they will be interpreted in different member states. We would urge the Commission and national authorities to consider the benefits of CSAs to both buy side and sell side firms in its development of the final rules and their application and member state level, which could potentially be inconsistent.

2) Market Liquidity:

Directive/Regulation: CRR

It is generally accepted that new and expected capital, leverage and liquidity regulations have impacted banks' financial markets activities and added additional costs to raising equity, trading and money market funding. This is likely to result in a reduction in, or exiting of, market making activities in the more capital intensive asset classes (i.e. securitised products), increasing transaction costs, lower number of market makers and less capacity for market makers to absorb liquidity in periods of market stress. Recent analysis has also highlighted that the Fundamental Review of the Trading Book is likely to add significantly to the costs of market activity,

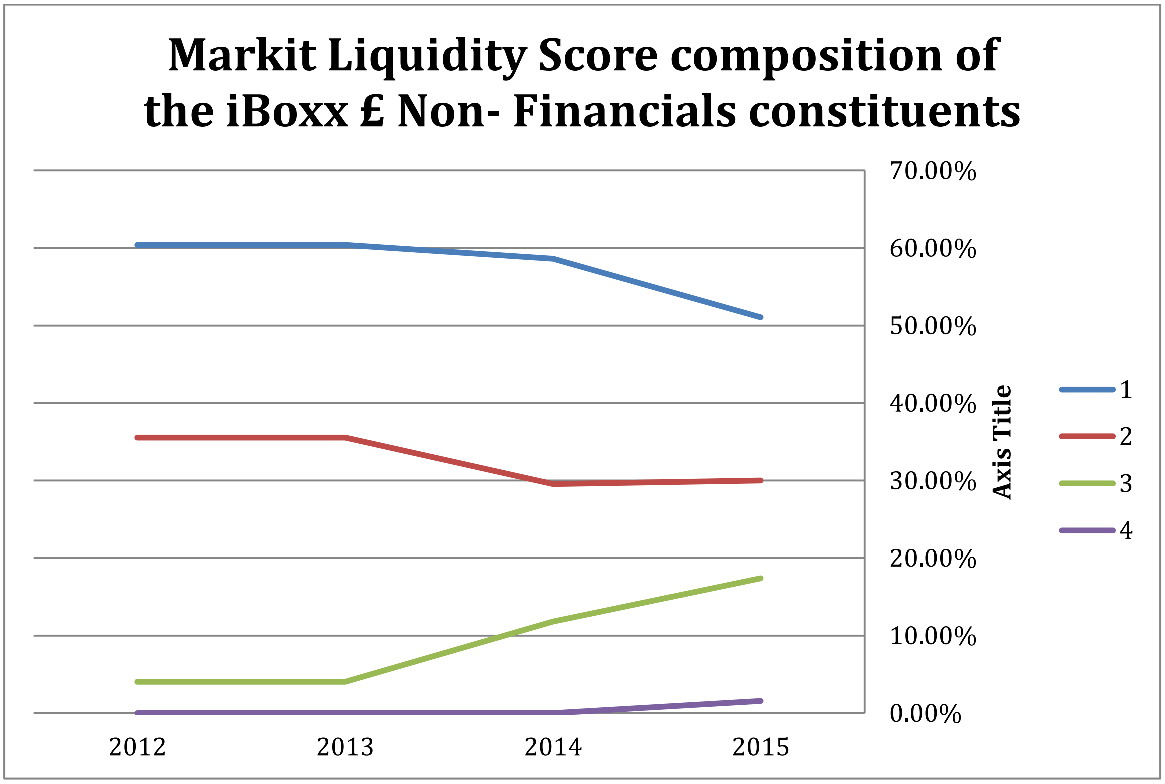
[5] Commission Management Survey, May 2015, Integrity Research Associates (pages 27-31)

including liquidity provision and hedging risk.[6]

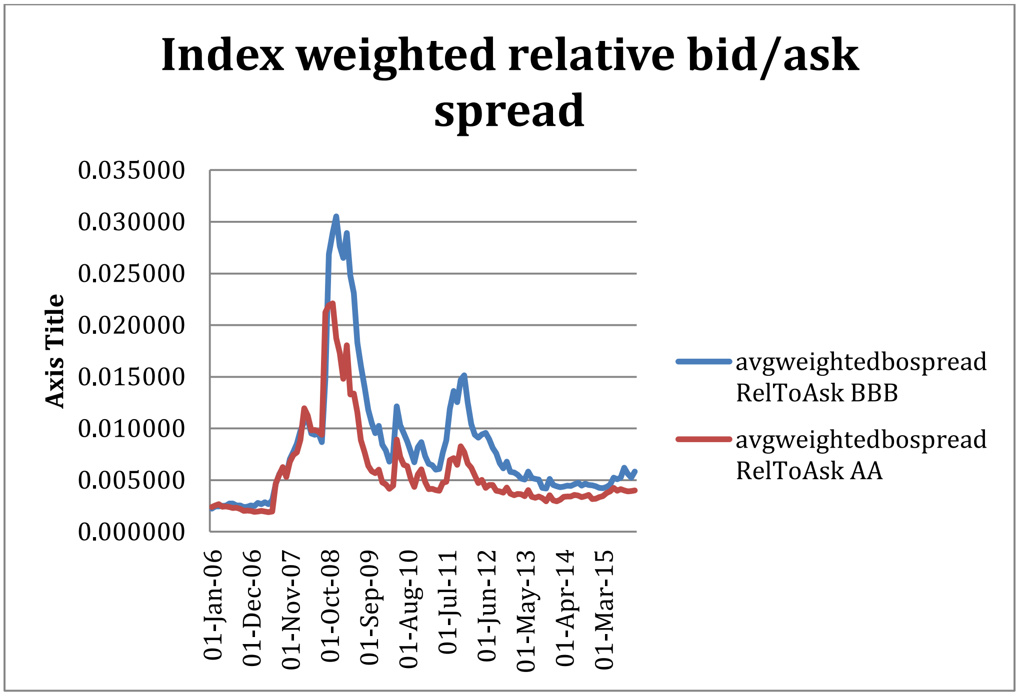
This aligns with evidence that liquidity has diminished over recent years, particularly in secondary bond markets. We understand that CMU focusses largely on primary markets, but the Commission should note that without flourishing secondary markets the vision of CMU will not be realised. For liquidity to grow in secondary markets, sufficient transparency needs to be provided to investors, not simply price transaction transparency but also contextual information about the liquidity of the assets from which funds are composed. Without such information being provided, the funds' investors are likely to misunderstand risks and so be overly cautious in their behavior during times of stress, something which is likely to lead investors seeking to exit at the same time, herewith increasing systemic risk.

Markit tracks changes in underlying market liquidity in a number of ways. For example, Markit produces liquidity scores ranging from 1-5 on all Bond products it prices, 1 representing the highest liquidity characteristics and 5 the lowest. When looking at the iBoxx EUR Benchmark Non-financial (a cross section of the most representative liquid bonds in the market) we find evidence of decreasing liquidity in the most important cohorts in the governmental and corporate market. We have seen that the proportion of the indices securities with a liquidity score of 1 decreased from 96% in January 2012 to 89% in January 2016. The graph below highlights a similar trend in the equivalent Sterling index, showing falls of the number of indices securities with high liquidity scores and the growth of those with lower scores.

[6] www2.isda.org/attachment/Nzk4OQ==/FRTB%20Letter%20to%20GHOS%20%2030%20October%20FINAL%20(2).pdf



Another method Markit uses to track liquidity changes in the market is via dealers bid/ask spread changes. Again changing liquidity conditions in the secondary market can be seen through relative bid/ask spreads in key indices (based on firm prices). The weighted index spread for iBoxx EUR Corporates AA (by notional of underlying assets) was 59.7% greater at year end 2016 when compared to year end 2006 and the BBBs where similarly 38.4% wider over the same period. This again highlights poorer liquidity in the key cohorts of non-financial funding across Europe and can be seen in the graph below.



We can also make use of Euroclear holding data to provide further evidence of falling liquidity. At the end of October 2014, the average number of institutions holding Euro Benchmark index bonds was 86; however by the end of October 2015 this had fallen to 81, a fall of over 5 percent. We see a similar trend for the same index in the number of trades over the same period, with it falling from 38,153 trades in October 2014 to 35,656 trades in October 2015 – a 7.6 percent reduction.

Of course, liquidity is a controversial subject with much debate over its reliability and what is desirable for regulation when it comes to liquidity.[7] However we believe that introducing a concept of liquidity 'bucketing' of the assets underlying a fund would significantly improve the information available for investors and help the market better understand funds and how liquid they might remain under situations of market stress. This information should be presented in a standardised form and might even form part of a KID under PRIIPS or similar information for profession investors. Such qualitative liquidity data sets would reduce the reliance of institutions' internal risk frameworks on transaction data for OTC markets. Current transaction data is typically concentrated in very few assets and dispersed across many different platforms (in the absence of public tapes). The use of qualitative data, which would cover a broad part of the market and not just the areas where there's transaction data, would demonstrate a more useful, broader view of the health of financial markets.

A qualitative approach could focus on the need for firms to demonstrate the quality and uncertainty of the prices in the marketplace, by reliable, repeatable and recognised means. Such means could include, for example, the number of different data sources that are available as inputs, the range of the input prices available, analysis of data from venues different trading mechanisms or the relevant Additional Valuation Adjustments ("AVAs") that many sell-side firms already calculate to comply with Prudent Valuation requirements.

It is worth noting that in the U.S., the Securities and Exchange Commission ("SEC") in October 2015 published a proposal regarding "Open-End Fund Liquidity Risk Management Programs; Swing Pricing."[8] The SEC's proposal is intended "to create a regulatory framework that would reduce the risk that a fund will be unable to

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[7] For example, the IMF's work on liquidly - http://www.imf.org/External/Pubs/FT/GFSR/2015/02/pdf/c2_v3.pdf and Martin Wolf's caution: https://next.ft.com/content/c8c2cc44-68fa-11e5-a57f-21b88f7d973f

[8] www.gpo.gov/fdsys/pkg/FR-2015-10-15/pdf/2015-24507.pdf.

meet its redemption obligations and minimize dilution of shareholder interests by promoting stronger and more effective liquidity risk management across open-end funds."[9] Among other things, the SEC proposal would require each fund to establish liquidity risk management program.[10] The liquidity risk management program would include a requirement to classify and engage in an ongoing review of each of the fund's positions and categorize asset positions into six proposed liquidity categories based on the time it takes to convert an asset position into cash at a price that does not materially affect the value of the asset immediately prior to sale.[11]

4) Proportionality / Preserving Diversity in the EU financial sector:

Directive/Regulation: Benchmark Regulation, MIFIR

Our experience as index provider, mainly in the fixed income markets, has shown that indices can play an important role in improving the functioning of financial markets, namely by establishing an asset class, sector or region, by broadening its accessibility and fostering its liquidity. Many market participants only become aware of an asset class' performance through the publication of an index. Further, institutional investors that the Commission would like to see do more to fund the EU economy[12] will typically be required by their clients to measure their performance against an index. Therefore the existence of an index will often be a precondition for active asset managers to access the asset class.

Also, the existence of an index enables the creation of derived financial products such as ETFs that provide access to the asset class for an even broader range of investors, including retail. What is particularly useful for the retail consumer is that the packaging of a basket of investments into an ETF provides the opportunity for more balanced investments in a cost effective way. Again this is in line with the stated objectives of the Commission. Further, the creation and publication of an index tends to increase the liquidity of its individual constituents, and it is likely that it will ultimately allow for broader and cheaper financing for the entities that issue in this market segment. A good example would be the constituents of Markit's CDS and bond indices some of which might have become more liquid on the back of their index inclusion. The Commission should note that these beneficial effects tend to be most pronounced in the less liquid market sectors, including those for medium-sized and smaller issuers. Indices also play an important role in reducing risk through allowing for market hedging where tradable products exist that reference the indices. For example, Markit's CDS indices have remained liquid at a time when the underlying single names have seen a drop in liquidity.[13] Our experience also suggests that some buyside firms prefer trading only those CDS that are part of an index.

Proper regulation and supervision of the index industry is vital to building a flourishing market and we welcome the recent political agreement of the EU Benchmark Regulation. However the Commission should carefully consider how the regulatory framework can support the development of the industry. Particularly we would urge the Commission to carefully consider how the development of the Level 2 of the Benchmark Regulation can maximise the potential for innovation in this area and minimise the potential for any chilling effects. Specifically the Commission should ensure that the Regulations application is clear, implementable, and proportionate. There are some specific requirements, particularly around the requirements for an administrator to report the usage of its benchmarks but without providing them with the means to collect the information and leaves the question open about whether some administrators could claim that their benchmark is not subject to the regulation because of uncertainty over what public will mean. We hope that issues such as this could be clarified for the final text and in the Level 2 discussions.

[9] Id. at 62,274.
[10] Id. at proposed SEC Rule 22e-4(b)(1).
[11] Id. at proposed SEC Rule 22e-4(b)(2).
[12] For example the EC Green Paper "Boosting institutional investment".
[13] In 2015 between $100 and $500 billion in gross notional was traded on these indices every week, with very tight bid/ask spreads, providing cost effective efficient tools with which to hedge risk or gain credit exposure. DTCC Market Risk Transaction Activity – Section IVb: http://www.dtcc.com/repository-otc-data.aspx

5) **Excessive compliance costs and complexity:**

Regulation: MiFIR

MIFIR Article 29 states that CCPs, trading venues and clearing members should ensure transactions are submitted and accepted for clearing as quickly as technologically possible. This article also empowered ESMA to specify the requirements and timeframes, taking into account the need for proper management of risks.

ESMA has proposed[14] that all 'electronically traded' cleared derivatives should be cleared within 10 seconds in something known as straight through processing (STP). In principle we support the idea that trades should be moved into clearing as soon as reasonably practicable. However, we are concerned that overly demanding STP requirements provide little marginal benefits while not allowing for proper management of risks. They could lead market practitioners to abandon sensible pre-clearing checks, such as affirmation, used to identify booking errors prior to clearing, that ensure the details of trades are accurate and both agree all the trade details rather than clearing erroneous trades and suffering the cost and consequences (for example, erroneous margin calls, and a burdensome correction process booking an offsetting reversal of the erroneous trade followed by rebooking the corrected trade, this correction process itself open to further error).[15] Also STP requirements need to take into account the reality of different ways of executing transactions; examples include RFQ, voice trading and hybrid (with one side electronic and the other voice), on which the MIFIR level one text was clear should be able to continue. Indeed hybrid execution can be a staging post in the development of more electronic trading.

Lack of clarity around the treatment of trades where only an element is electronic, or requirements that are extremely difficult to actually meet, could actually act as a disincentive to trade electronically and would increase the number of errors as counterparties either seek to avoid impractical requirements or make costly mistakes rushing to enter trades. Finally, these challenges are also likely to help providers structured in vertical silos as disproportionate requirements would push market users into having to use trading and clearing services from the same provider as they could be presented as being the only way that STP requirements can be met. This would work against the objective of the MIFIR and EMIR 'Access' provisions which seek to promote competition and reduce systemic concentration risk through open access.

We would draw attention to the fact that, in the context of its STP requirements, US regulators appear to acknowledge the valuable role that third party service providers provide, recognising their potential use and the need to ensure facilities for the checking of erroneous trades.[16]

We therefore recommend the level 2 regulation specifically state or, if this is not possible, regulators should be clear that: (a) the use of third party affirmation is allowed; (b) the most demanding STP timeframes are only required for trades that are executed 'wholly' electronic; (c) the timing requirements apply to "the majority of trades" so that the small number of trades with errors can be identified; and (d) additional time be provided to

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[14] MIFIR RTS 26 - www.esma.europa.eu/sites/default/files/library/2015/11/2015-esma-1464_annex_i_-_draft_rts_and_its_on_mifid_ii_and_mifir.pdf

[15] We support arrangements that allow affirmation to take place but would not support proposals around negative affirmation, which is a less sound approach to achieving confirmation that introduces risks due to a lack of a positive feedback loop. Specifically, without the use of a centralised confirmation platform the acknowledgement recipient may not receive the trade acknowledgement or, even if it does, the acknowledgment sender may not receive feedback on a possible correction of the trade acknowledgement. As a consequence, counterparties might not become aware of any disparities between their views of the trade until trade reconciliation, a margin dispute or at the time of settlement which, for some products, may be years after the date of execution of the transaction. Negative affirmation can only reduce risk in specific, clearly defined situations, namely in a legally binding framework where a centralized platform to achieve electronic confirmation is not available and if one of the parties to the trade is a non-financial counterparty.

[16] See CFTC Staff Letter 15-67, Straight Through Processing and Affirmation of SEF Cleared Swaps, Dec. 21, 2015, http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/15-67.pdf (noting that according the International Swaps and Derivatives Association (ISDA), "the manual post-execution affirmation process is useful to identify errors before a trade is submitted for clearing because some methods of execution currently have higher error rates" and further continuing to allow the use of manual affirmation so long as the affirmation is completed within 10 minutes unless an error is discovered).

market participants to correct a trade in need of correction if an error is discovered in the allotted timeframe for processing to clearing, similar to an interpretation of similar STP requirements made by CFTC staff.

Unnecessary Regulatory Burdens

6) Reporting and disclosure obligations:

Directive/Regulation: MIFIR

MiFIR Article 26 requires investment firms to report a designation to identify clients for whom transactions were executed and a designation to identify natural persons who were responsible for making the investment decision and execution. The Level 2 advice published by ESMA further develops this and appears to mean that clients which are natural persons should be identified using their full name and date of birth. ESMA also advises that persons responsible for the investment and execution decision should be identified using “unique, robust and consistent identifiers”. [17] This personal data is often referred to as non-public personal information (NPPI).

Although it remains unclear, draft Level 2 can be read as meaning the management and transmission of NPPI will be required by firms involved in reporting. Although the primary obligation of reporting lies with the investment firms, this requirement is going to mean legal uncertainty for various firms involved in supporting and improving the trade workflow and who would be required to store and transmit such information in transaction reports, approved reporting mechanisms (ARMs) and firms providing expert shared services, such as Markit. The management of NPPI would cause additional costs and administrative burden and introduce additional risks. Furthermore an investment firm disclosing such data to third parties that they have delegated the task of reporting to could potentially be in contravention of national law in some countries. As a consequence, firms may not be willing to work with anyone in the reporting chain that provides services to improve the efficiency and effectiveness of process, the quality of the data and reduce costs. This could be highly disruptive to current arrangements and lead to reporting being of poorer quality and more costly in the future as firms would be less likely to be able to benefit from the shared services as described above.

We believe that there are several approaches that could be used to mitigate such concerns around legal risks and provide certainty to market participants. One option would be the use of a trader ID, which would not constitute NPPI and could be used and passed between firms involved in meeting the reporting requirements (such as the investment firms, service providers such as Markit, ARMs and national authorities). Investment firms would provide the associated NPPI regarding the trader associated with that trader ID directly to the NCAs, perhaps on an annual basis. Therefore, clarity should be provided that designations of NPPI can be used by ARMs and expert service providers and that these designations can be ‘decoded’ by NCAs without the need for actual transmission of specific NPPI. This would provide comfort to the users of these services and significantly reduce compliance costs and legal risk. These kinds of solutions were recognised under Level 1 when it specifies the use designations,[18] something that does not seem to be explicitly recognised in ESMA’s advice.

8) Barriers to Entry:

Regulation: EMIR, MIFIR and others

[17] MIFIR RTS 22 - https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-esma-1464_annex_i_-_draft_rts_and_its_on_mifid_ii_and_mifir.pdf
[18] For example, MIFIR 26(9)(c)

Markit welcomes and supports the objectives of the regulatory regime put in place in Europe since the crisis. However, it is widely understood that regulation can act as a barrier to entry and so Markit believes that regulators should be careful to ensure that provisions are appropriately calibrated to not hamper competition and development of markets without proportionate offsetting benefits.

Markit, and its competitors, offer a number of services which are designed to reduce the costs of complying with regulation for firms and the economy while strengthening regulatory standards. This is done by providing shared services which enable firms to contract high quality, flexible but standardised solutions that ensure they meet their regulatory requirements but without the need to build entire systems and solutions themselves. This also benefits the regulator as they have some confidence that standards and consistency of approach being maintained.

If such shared solutions were not available then each and every firm entering the market would, regardless of its size, have to design and build its own system which would be costly and likely to produce a variety of different approaches. This situation would ultimately mean that only few established players in the market would have such systems and other potential providers would have significant costs to entry. There are numerous examples of where such services, including Markit's KYC and regulatory reporting services, are helping firms and the regulators should carefully calibrate regulation to avoid anything that stops market participants being able to use such services to ensure efficient and high quality compliance.

The European framework does contain provisions that seek to facilitate market entry and protect consumers from monopolistic behaviour. For example, the 'Access' provisions in EMIR and MIFIR, seek to ensure that regulation does not create or reinforce barriers to entry. However we believe there could be specific unintended consequences because of the way these Access provisions are constructed, particularly that they do not explicitly accept that it is possible to use third party providers, something that, in our experience, diminishes their effectiveness.

The Access provisions in MIFIR Articles 35 and 26 make it clear that, inter alia, a trading venue must consider a request for a CCP to connect to another provider's trading venue. Firms like Markit have experience in building technology systems that connect market infrastructure in an efficient and technically effective way, in line with the policy intent of these regulatory provisions. Often these kinds of firms are called RegTech providers. However as the requirement is only for a firm to allow – in the case of this example – another CCP to connect to its trading venue, it could potentially refuse a request for access by a third party RegTech provider simply because they were not a CCP or arguing it adds undue risks to its operation. In this way the incumbent firm can significantly raise the costs of the CCP connecting to the trading venue as it would need to build the connection itself, meaning it is less likely they would seek to provide competition investment. The outcome of this is to provide the incumbent with a way to increase the costs of using the Access provisions and further protect its position as a vertical silo. Markit would be happy to meet with the Commission to discuss the specifics of this kind of practice.

Furthermore the requirements for reporting to include NPPI (non-public personal information) is likely to make the use of shared solutions unattractive for legal and confidentiality reasons and onerous straight through processing (STP) are also examples (as explained earlier in this response) where regulatory requirements potential stop the use of shared solutions that would reduce cost (and so increase the likelihood of market entry) and raise quality for those subject to the requirements and regulators.

We therefore believe that competition measures should specifically recognise the role of third party shared solutions.

13) **Gaps:**

Regulation: MIFID, MIFIR

Markit fully supports the need for regulation to promote transparency, clearing and electronic trading on venues when the conditions are appropriate and there is sufficient standardisation and liquidity. In general we support the phase-in approach that has been taken in relation to various newly established requirements, including the clearing of IRS and CDS contracts. We believe that contracts involving foreign exchange and loans should also be part of the regulatory reform agenda given they tend to be liquid and standardised contracts and current practices may result in undue risks to market participants and the financial system.

The argument has been raised that such contracts are different to other financial instruments as the risks of manipulation and system events are not as great and the infrastructure does not exist to promote more formalised trading and processing with greater oversight. However, services to address weaknesses in the infrastructure and workflows of these asset classes have been developed in recent years and help to mitigate the human error and legal risks that concern participants in these markets. These services include a centralised matching service which all market participants can use to legally confirm their foreign exchange derivative trades, with full straight through processing (STP) where necessary. Nine global banks are already actively using this centralised matching service to clear thousands of foreign exchange non-deliverable forwards every month through LCH. The remaining Tier 1 global banks are also connected, all in preparation for a potential clearing mandate and for operational and capital requirement benefits. Markit's centralized services connect to multiple clearing houses and trade repositories, thereby promoting competition and reducing single point of failure risks, while providing a single interface to the trade participants which lowers the cost of integration. The centralized matching service is in the process of being extended to cover FX Options clearing in Q3 2016.

Markit also actively facilitates greater automation in pre- and post-trade processes by offering services which automate the linking of pricing, trading, execution, trade booking into risk and, further downstream, onto post-risk systems which deal with confirmations, clearing and reporting. These managed services can be hosted or deployed for customers who wish to reduce operational risk by avoiding double-keying and reduce market risk by ensuring trades flow from execution to confirmation (and onwards to clearing and reporting) in a matter of seconds where appropriate. Moreover, by plugging into Markit's centralised confirmations services, participants are able to adopt more standardised workflows and processes, something which has previously been very difficult to achieve due to the foreign exchange market's traditionally fragmented nature. Markit is actively engaged in conversations with other foreign exchange market infrastructure providers to ensure as many participants as possible have access to these standardised processes.

We therefore believe that the circumstances now exist when consideration should be given to whether regulatory expectations for the processing of transactions in foreign exchange and leveraged loans should be brought up to the same standard as similar derivatives and fixed income instruments.

As well as highlighting the development of the foreign exchange market, we would also like to draw attention to some areas where, we believe, the absence of regulation is causing some risks and inefficiencies.

First, there are issues around time stamping not being applied to all trades. If applied, this would then create an audit trail that can be used to see what the other rates in the market were when the price dealt on was quoted, what was done with the trade, when it was done and who had access to what information. This has relevance for both market manipulation and best execution issues and would help address potential concerns and increase confidence in foreign exchange markets.

Second, the question of whether venues and banks should be allowed to perform a ‘last look’ needs to be addressed, so that issues around latency protection can be differentiated from front running client orders. Last look when used for its intended purpose, allows liquidity providers to offer tighter prices, which in turn benefits smaller market participants who may otherwise be priced out. Take away the ability for a liquidity provider to perform last look and prices will inevitably widen, increasing the cost of trading. Instead, more transparency is needed by analysing hit ratios and the time taken to fill orders. This data can be used to determine the real cost of last look and acknowledging the venues and liquidity providers that have a high hit rate, thereby rewarding good behaviour. More transparency is also needed of which market participants perform last look and exactly how this is applied.

Finally, the lack of pre-trade credit checking of trades entered by high frequency traders under prime broker agreements with large limits on platforms is leading to significant over allocation of credit and increased risks for prime brokers, and the markets in which they operate. Currently, many checks are performed post execution and so an algorithm (or fat finger) could create huge potential exposures in the deepest inter-bank liquidity pools, with a post trade limit update based on post trade notice of execution coming in with a delay between 1 and 10 seconds. Evidence that this risk is not simply hypothetical can be seen in some market exits, for example Rabobank in 2014. This is an issue that, we believe, can only be addressed through regulatory action because when prime brokers insist on pre-trade credit checking, the high frequency traders will often move to another prime broker who does not enforce pre-trade checks.

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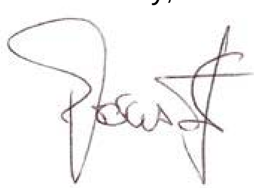
We hope that our above comments are helpful to the European Commission. We would be more than happy to elaborate or further discuss any of the points addressed above in more detail. If you have any questions, please do not hesitate to contact the undersigned or David Cook at david.cook@markit.com.

Yours sincerely,



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