

ESMA
103 rue de Grenelle
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London, April 22nd 2016

ESMA Discussion Paper on Securities Financing Transactions Regulation

Dear Sirs,

Markit is pleased to submit the following comments to ESMA in response to its Discussion Paper on *Securities Financing Transactions Regulation* (the “**DP**”).

Markit¹ is a leading global provider of financial information services. Many of our products are RegTech services that are designed, often in consultation with market participants, to help them comply with regulatory requirements in an effective and efficient manner. As such our services help financial markets function properly while also levelling the playing field and ensuring that competition is effective. 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 150 comment letters to regulatory authorities around the world and have participated in numerous roundtables.

Introduction

The securities financing markets play a key role in supporting the liquidity of financial markets and allowing for the effective management of collateral. However, the financial crisis has demonstrated that these markets can also lack transparency and contribute to systemic risk.

We welcome the EU Securities Financing Transaction Regulation (the “**SFTR**” or “**the Regulation**”) as an important framework to increase transparency in the securities finance markets, enable regulators to monitor systemic risk in these markets and to protect investors while allowing for the development of the sector. In the context of this DP we recommend that ESMA ensure the final rules are proportionate and workable so they do not damage activity in the securities finance markets which could negatively impact liquidity in underlying markets.

Several of Markit’s services are relevant in the context of the SFTR:

- Markit Securities Finance aggregates securities lending transaction information from a large number of market participants and uses this information to provide transparency and assist in efficient price

¹ See www.markit.com for more details.

discovery and risk management in these markets. Over the past 10 years we have gathered the world's biggest Securities finance transaction database.²

- Markit's derivatives processing platforms are widely used by market participants to increase operational efficiency, reduce cost, and ensure legal certainty and facilitate compliance with various regulatory requirements, including trade reporting and trade confirmation. Globally over 2,000 firms use Markit's trade processing platforms that process, on average, 90,000 derivative transaction processing events per day. Markit's trade processing platforms form an important element of derivatives workflows, particularly in the credit, equity, interest rate, and foreign exchange asset classes. Markit currently performs delegated reporting to Trade Repositories under regulatory regimes for OTC derivatives in Europe, the United States, Singapore, Hong Kong, Japan, Australia and Canada. We believe that third party processing services will also be instrumental in the context of SFTR by providing trade verification and delegated reporting services to market participants. Importantly, they will facilitate implementation of these requirements and reduce the cost of compliance for market participants.

Comments

We support the creation of additional transparency that reporting to TRs provides to regulators and to the public. Markit's various reporting and transparency services across asset classes have been focussed on facilitating firms' compliance whilst securing data quality at the same time.

The Regulation establishes a framework for the reporting of securities finance transactions ("SFTs") to Trade Repositories in Europe to increase regulatory (and public) transparency in these markets. Although the Regulation has similar objectives as reporting requirements for derivatives established in Europe under EMIR,³ we believe the nature and structure of SFTs will make regulatory reporting far more complicated. At the same time, the Regulation requires market participants to report not only the transaction itself but also the underlying collateral in a dual sided manner. The Regulations further specify the need of regulators to match transactions and monitor positions down to each and every beneficial owner and also to match the collateral pool with the respective transaction. Given these complexities, we believe that the needs of regulators can only be satisfied if appropriate mechanisms are in place that ensures that high quality data is being reported to the Trade repositories (TRs) on a consistent basis. As the experience with derivatives reporting globally has shown the verification of trade data before being reported and the existence of central matching or confirmation platforms can play a key role in this context.

Questions

Q2. Are these procedures sufficient to ensure the completeness and correctness of the data reported under Article 4(1) SFTR? If not, what additional provisions should be envisaged?

To ensure the quality of the SFT data that is reported to TRs, ESMA has been asked to develop draft regulatory technical standards that would specify:

The procedures referred to in Article 5(2) SFTR and which are to be applied by trade repositories in order to verify the completeness and correctness of the details reported to them under Article 4(1) SFTR.⁴

² Markit's SFT database contains information on USD 15tn lendable inventory which includes transaction information on USD 2tn worth of securities financing transactions which comprises an average of 3mn transaction daily and covers over 200,000 equity and fixed income instruments.

³ Article 9, European Market Infrastructure Regulation

⁴ Pg. 15, Par. 32(a)

We believe that, in this context, ESMA should recognise the activities of third parties in various derivative reporting regimes which assist in the verification of data prior to it being reported to TRs. Electronic confirmation of the trades help ensure high quality of reported data as all the terms of the trade are agreed by all parties to the transaction. Third parties such as Markit's derivative processing platforms currently confirm the agreement from both parties on the details of the reported data for derivative transactions. We believe such platforms could play a similar role in verifying SFT transactions and collateral data. ESMA should therefore explicitly allow TRs and market participants to benefit from the services of these specialist providers. Furthermore, we believe that there should be no requirement for verification of transaction data if the report has come from a verified trade record that has been agreed by all parties to the transaction.

In addition to providing trade verification/confirmation services, third parties also provide delegated reporting services to market participants. We welcome that ESMA has acknowledged the role such third party service providers play in the reporting of SFTs.⁵ We recommend that ESMA also specify that an explicit and prior delegation of reporting to third parties would be allowed.

Q3. What are the cost implications of the establishment of the provisions referred to in paragraph 56 to ensure the completeness and correctness of the data reported under Article 4(1) SFTR? Please elaborate and provide quantitative information to justify the cost implications.

To ensure the completeness and correctness of the SFT data reported to TRs, ESMA proposes requiring TRs to “put in place a procedure to ensure that the reporting entity, i.e. the one submitting messages to the TR, is permitted to report for the entities/parties to the contract which indicated on the trade”.⁶ We agree with ESMA that TRs should have robust procedures in place to ensure that the entity responsible for reporting is authorised/permissioned to report.

Further, ESMA has proposed that TRs validate the authorisation/permission in two phases.

The first validation, “prior to the reporting” phase of the authorization/permission procedure entails that the TR ensure the conditions laid out in Paragraph 56 (c) (i)⁷ are met. We support the proposed requirements since this would help TRs establish unequivocally the identity of the reporting entities and/or third parties performing delegated reporting on their behalf. These procedures are also consistent with other regulatory regimes, such as EMIR reporting, where trade repositories require reporting entities to establish an account with them and then only be permissioned to submit trade reports to them. The same procedures are required by TRs of third parties reporting on behalf of either party to the transaction

However, we believe that the procedures outlined in paragraph 56 (c) (ii), in “during the reporting” phase, are superfluous since the TRs have already established the identity of the reporting entities and/or third party reporting on their behalf. Also, the verifications conducted in the prior to reporting phase would ensure that only reporting parties have established secure connections with the TR. Furthermore, they would create unnecessary cost for all parties involved in the process since the TRs would have no other way but to send messages to either the parties to the SFT or third parties reporting on their behalf as the case may be and await confirmation to ensure compliance with their verification obligations as proposed in the DP. This would also delay the processing of the reports and hence delay submission to the regulators. We therefore recommend that ESMA ensures TRs have robust procedures to ensure that the reporting entities have the necessary authorisations prior to reporting.

We therefore recommend that the validation/authorisation procedure be limited to “prior to reporting” phase since this would achieve the objectives set forth by ESMA.

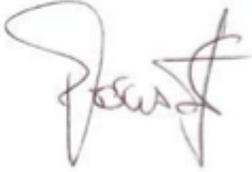
⁵ Pg. 20, Par. 56 (c) (i)

⁶ Pg. 19, Par. 56

⁷ Pg. 20

We hope that our above comments are helpful. 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.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Schüler', with a stylized flourish at the end.

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