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Less complexity, more transparency

Market transparency is a central pillar of the MiFID II framework and its effective application is critical for the development of competitive markets, ensuring informed investor decisions and allowing efficient allocation of assets. After two years of application of MiFIR, ESMA is assessing how transparency in EU markets has evolved and whether the new provisions have delivered on their objectives. In line with the review mandates embedded in MiFIR, ESMA published two Consultation Papers with analysis of the transparency regime applicable to equity and non-equity financial instruments and proposals for potential adjustments of the regime.

One important achievement of MiFIR is that national competent authorities and ESMA have more data at their disposal to check on market developments and assess how the law is working in practice. ESMA has made extensive use of such data in its consultation papers and the policy proposals entailed are based on in-depth data analyses.

Those analyses indicate that significant margin for improvement remains in many areas. For instance, on the equity side the majority of trading is not subject to pre-trade transparency (between 50 to 70% of trading in turnover), including on-venue trading where a large proportion of orders benefits from a pre-trade waiver (30% of turnover for shares and 50% for ETFs).

Regarding non-equity instruments, the level of both pre- and post-trade transparency appears to remain limited. This low level of transparency is partly due to the market structures prevalent in many non-equity markets but, in ESMA's view, also due to the way the MiFIR transparency provisions are designed. On the pre-trade side, MiFIR offers a broad range of waivers which, allow to be exempted from the transparency obligations under many circumstances resulting in real-time transparency being the exception rather than the norm. On the post-trade side, a complex deferral regime that is subject to national discretion has led to a patchwork of different rules applying in the Union.

Against this backdrop, ESMA is consulting on proposals reducing the complexity of the regime. As some examples, on the equity side, ESMA is considering to turn the double volume cap into a single cap, to simplify the applicable liquidity tests and to reduce the number of waivers.

For non-equity instruments, the main proposals include reducing the number of waivers and deferrals and establishing a streamlined deferral regime without national discretion.

Following the consultations, ESMA will analyse the feedback received with a view to aim at sending its final recommendations to the Commission in Q3 2020. ●