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Course corrections to illuminate the EU bond and OTC derivative markets

The European Commission and ESMA have set forward constructive proposals to put the post-trade transparency regime for bonds and OTC derivatives back on its intended course. As ESMA correctly observed in its March 2020 consultation paper: *"Whilst MiFID II/MiFIR aimed … to enhance the efficiency, resilience and integrity of financial markets notably by achieving greater transparency for non-equity instruments, it is unclear that this objective has been achieved."*

Finally shining light on these historically opaque markets will benefit EU investors and further advance the development and integration of EU capital markets. Transparency will also lower the cost of capital, and increase efficiency in the allocation of capital, for both the public and private sector.

The EC and ESMA have identified a number of concrete steps to address the scarcity, quality, timeliness, and accessibility of post-trade transparency data for bonds and OTC derivatives.

First, ESMA has recognized that very few off-venue transactions are subject to post-trade transparency requirements, despite its acknowledgement that *"MiFID II has the explicit objective to increase the level of transparency, including for OTC-transactions."* ESMA has therefore outlined numerous options to make the post-trade transparency framework more comprehensive, and to ensure a level playing field with respect to on-venue and off-venue transactions. The majority of respondents to ESMA's consultation favoured these revised approaches over the status quo.

Second, the EC and ESMA have both recognized that inconsistent and excessive deferrals undermine post-trade transparency, with ESMA noting *"that a four-week delay for the publication of a transaction provides information to market participants which is of limited use"* and that the *"patchwork of rules applying across the Union"* should be replaced by a single regime.

Indeed, ESMA has wisely laid out multiple options that would ensure that even for larger size transactions, post-trade information would be "published as close to real time as possible with the volume being masked". Experience in the US across corporate bonds, mortgage-backed securities, and OTC derivatives illustrates both the efficacy of, and widespread market support for, transparency regimes that mask the full notional of large size trades but nevertheless limit their deferred publication to no more than 15 minutes.

Third, the EC is exploring the establishment of real-time post-trade consolidated tapes across both equities and non-equities, which would ensure that EU investors can efficiently access and benefit from transparency data. Consolidated tapes should be developed for both bonds and OTC derivatives, and should be comprehensive, require mandatory contribution, disseminate information immediately upon receipt (both freely to the public via websites and via real-time data feeds at a reasonable cost), and feature targeted and limited deferral regimes for larger size block trades.

The MiFID II review process provides a critical opportunity to remedy identified implementation shortcomings that together will put the MiFID II post-trade transparency regime for bond and OTC derivatives back on track. The EC and ESMA should remain committed to adopting the common sense fixes they have identified in their consultations. Collectively, these will improve conditions for investors, strengthen EU financial markets, and more efficiently support the financing of the public and private sector in challenging economic times. ●