ASSOCIATION FRANÇAISE DES MARCHÉS FINANCIERS

FINANCIAL MARKET PROFESSIONALS

AMAFI / 24-05
9 January 2024

EC - Transparency Register - AMAFI number:
1992865484-43

OTC derivatives identifiers
EC Consultation
-
AMAFI's answer

AMAFI is the trade association representing financial markets' participants of the sell-side industry located in France. It has a wide and diverse membership of more than 170 global and local institutions notably investment firms, credit institutions, broker-dealers, exchanges and private banks. They operate in all market segments, such as equities, bonds and derivatives including commodities derivatives. AMAFI represents and supports its members at national, European and international levels, from the drafting of the legislation to its implementation. Through our work, we seek to promote a regulatory framework that enables the development of sound, efficient and competitive capital markets for the benefit of investors, businesses and the economy in general.

Introduction and General comments

The question of the identification of derivatives financial products is an important matter for AMAFI members and their clients. Therefore, AMAFI welcomes this consultation.

➢ **What we understand about this consultation**

AMAFI understands that this consultation is carried out in relation to the provisional agreement on the compromise text revising the Markets in Financial Services Regulation (MiFIR II), which is expected to be published in Q1 of 2024.

Recital 19 (b) of the compromise text states indeed that the current transparency regime is inefficient and should be enhanced by identifying OTC derivatives instruments through the ISO 4914 Unique Product Identifier (UPI) complemented by additional identification data.

On this basis, we understand that the consultation refers to pre and post trade transparency (notably article 21 of MiFIR) with regards to those OTC derivatives that are subject to the clearing obligation.

➢ **What are our general comments on how to tackle the problem**

AMAFI acknowledges that the current transparency system based on the ISIN code is useless in practice for investors to compare the prices of OTC derivatives transactions, even the most standardized OTC derivatives products. Therefore, we fully agree with the overall goal of the MiFIR review to address this issue.

That said, the question of how to identify those products is not restricted to the MiFIR II transparency regime. Indeed, there is a need for a consistent approach on the identification of OTC derivatives, both across EU regulations and internationally.

1. Consistency among various regulations in the EU

The same identification should be used for:

- Transaction reporting (article 26 of MiFIR)
- Provision of reference data by systematic internalisers (article 27 of MiFIR)

Concerning the MiFIR review, it is not clear to us what is required from the Commission and what depends on ESMA drafting delegated acts. There is a need for the industry to understand how this subject will be tackled and according to which calendar, both in terms of the decision process and the implementation. Any change should also be implemented across the various regulations at the same date to avoid disruptions.

- EMIR Refit reporting which also imposes new identification of OTC derivatives (ISIN and UPI)

2. **Consistency at international level is necessary,** especially with the UK and the US who are also working on how to better identify OTC derivatives.

The above considerations are fundamental because the new regime will require investment firms to develop new systems. Consistency is critical (i) to ensure that there is no loophole in the EU regulation and (ii) to minimize the implementing and running costs for investment firms.

Given that, we encourage the EC to evaluate thoroughly before modifying the current framework how to identify OTC derivatives through an actual cost/benefit analysis taking into account:

a) Consistency among various regulations
b) Benefits for investors
c) Costs for investment firms
d) The future Consolidated Tape on derivatives

➢ <u>Which technical solutions could be envisaged</u>

Considering the general approach above and given the very short response time for this consultation that is crucial for the transparency and the identification of OTC derivatives within the EU, but also highly technical, AMAFI is not in a position to state an opinion on the appropriate technical solution to be implemented.

AMAFI considers that three main options are available:

1. In order to provide better transparency to investors it could be envisaged to simply require from APAs and the future CT provider to compute the tenor using the start date and end date. This solution would improve transparency, with no cost to investment firms.

When considering not only transparency but also the accuracy of transaction reporting and the task of assigning identification codes to financial instruments, the following two options are more inclusive:

2. Modifying the current ISIN rules to adapt them to OTC derivatives instruments in order to make the ISIN less granular. However, this would require a drastic change, almost a “new ISIN code”, and not solely the replacement of the “Expiry Date” attribute with “Forward Term of Contract”.

3. Introducing UPI + additional attributes according to the type of instruments (IRS, CDS). We understand from our members that this third solution is the one that stands out the most, because it would dramatically reduce the number of OTC derivative identifiers to create, but we do not have a full consensus at this stage, as some members would prefer to rely on a modified ISIN code.

RESPONSES TO THE QUESTIONS RAISED BY THE EC

Question 1 - For reporting reference data of in-scop OTC derivatives for the purpose of public transparency which option do you prefer?

- **Option 1 : mandating UPI plus additional identifying reference data**
- **Option 2 : mandating ISIN and requiring a change to the ISIN attributes to include the above-mentioned two additional product attributes "Term of Contract" and "Forward Starting Term"**
- **Don't know / no opinion / not applicable**

AMAFI's response: **Option 1**

Question 1. 1 – Do you agree with the proposal to mandate additional identifying reference data alongside the UPI (ISO 4914), such as "Term of Contract" and "Forward Term of contract" for interest rate derivatives?

- **Yes**
- **No**
- **Don't know/ no opinion / not applicable**

Please explain your reasoning regarding your answer : 5000 character(s) maximum

AMAFI'S response: **NO**

If the UPI were preferred (see our general comments attached to this response) then the following additional attributes should be envisaged: "Effective Date" ; "Termination Date" ; "Clearing house LEI" ; "Spread on the floating leg (for IRS) and Up-front payment (for CDS)".

Question 1.2 – Option 1 – Do you foresee any challenges and / or cost impacts in terms of system changes required to provide ESMA with the UPI plus certain additional identifying reference data, instead of only reporting a unique product identifier ?

- **Yes**
- **No**
- **Don't know/ no opinion / not applicable**

Please explain your reasoning regarding your answer : 5000 character(s) maximum

AMFI's response: **YES**

Any change in these rules implies significant implementation and running costs. That is the reason why it is of the utmost importance to minimize implementation and running costs by ensuring that all the planned changes (Article 8, 21, 26 and 27 of MiFIR review) are considered with consistency and are implemented at the same time. We do anticipate that having additional reference data (UPI+) will only have marginal costs compared to implementing solely UPI.

Question 2 – Are there any other additional identifying reference data that are neither part of the UPI of the ISIN attributes that appear relevant to enhance the above stated aims of price transparency and price formation for in-scop OTC derivatives – interest rate derivatives and/or credit default swap ?

- **Yes**
- **No**
- **Don't know/ no opinion / not applicable**

Please explain your reasoning regarding your answer : 5000 character(s) maximum

AMAFI's response: **YES** (see our response to Q.1.1)

In addition to the UPI plus 'Term of Contract' and 'Forward Term of Contract', the following attributes that have a material impact on the price of the contract should be added:

- For IRS and CDS:
  Clearing House LEI: This field should be added to provide visibility of differing prices between CCPs.

- For IRS only:
  Spread: the spread for certain IRS trades containing a floating leg is considered a price-impacting attribute and therefore should be included. A value of 0 should be allowed where no spread exists.

- For CDS only
  Up-front payment: the up-front payment for CDS is considered a price-impacting attribute and therefore should be included.

By adding all those attributes, firms will have flexibility to do aggregation of contracts by choosing which attributes are relevant depending on the type of analysis performed.