



Commissioner Hill
Steven Maijoor, Chair of ESMA

Paris, 9 December 2014

Subject: ESMA Cost-Benefit Analysis of Draft Implementing Measures for MiFID 2 and MiFIR

Dear Commissioner Hill and Chairman Maijoor,

The members of the European Forum of Securities Associations (EFSA) who collectively represent the leading securities firms in Europe and the International Swaps and Derivatives Association (ISDA) would like to bring a number of issues to your attention.

In the context of MiFID 2 and MiFIR implementing measures, we refer to the appointment by the European Securities and Markets Authority (ESMA) of a consortium of consultants to carry out a cost-benefit analysis (CBA) of ESMA's proposed draft technical standards and to collect data to be used by ESMA for preparing its technical advice to the European Commission (EC).

Concretely, the consortium completed the first round of data and information collection in October 2014 on the basis of questionnaires sent to many of our member firms. We welcome the opportunity to help ESMA and the EC calibrate MiFID 2 and MiFIR implementing measures and would in light of the recent consultation like to offer constructive suggestions for improving the process of collecting supporting data and information and thus its suitability for CBA purposes,

Firstly, we suggest that requests for information and documentation be aligned and provided to firms in a manner and along a timeline that enables these to provide an effective response. In particular:

- A standard and timely "non disclosure agreement" in advance of the formal consultation process would in light of the often market sensitive data being requested, have helped firms make a preliminary assessment as to the extent to which they could respond to the questionnaire
- A pre-consultation exploratory dialogue with industry representatives before distributing the questionnaires would enable firms to suggest amendments to the questions to help frame them in specific terms, thereby making a comprehensive and meaningful response possible, as

European Forum of Securities Associations

EFSA members:

- Asociación de Mercados Financieros (AMF)
- Association for Financial Markets in Europe (AFME)
- Association française des marchés financiers (AMAFI)
- Associazione Italiana Intermediari Mobiliari (ASSOSIM)
- Bundesverband der Wertpapierfirmen (bwf)
- Danish Securities Dealers Association (DSDA)
- The Polish Chamber of Brokerage Houses (IDM)
- Swedish Securities Dealers Association (SSDA)

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well as avoid requesting data which was not readily available and/or meaningful data.

- It would be helpful for the questionnaires to take sufficient account of the evolution of the market structure that will result from the MiFIR / MiFID 2 framework. For instance, a lack of consistency in terms of the meaning of OTC trading as it is now and what it would comprise after MiFIR / MiFID 2 enter into application creates difficulties as to how to interpret what is meant by OTC for the purposes of the questionnaires.

Secondly, given the breadth and depth of the questions and requests for data, recipient firms require sufficient time to carry out analysis and to draft their responses. While we fully understand that the constrained consultation period was in part driven by the very tight time limits imposed upon ESMA and the EC by the MiFIR / MiFID 2 Level 1 texts, we believe more tailored and targeted questionnaires would be beneficial.

On the basis of the past data gathering exercise, EFSA and ISDA members are concerned that the quality, accuracy and validity of the data and other information collected via the questionnaires may not be fully suitable for ESMA to rely on with regard to their analysis. This may for example be the case with respect to ESMA's calibration of the transparency regime for non equity instruments where the collection of relevant data has turned out to be problematic.

In this context and given the importance of cost-benefit analysis for the development of appropriate regulation, EFSA and ISDA members would like to make the following framework suggestions to support the orderly, scalable and timely execution of this and future assessments at the European level. At a minimum, we consider that the framework should comprise:

- Preliminary dialogue with industry bodies and firms to determine what data is most meaningful and possible to obtain - and the time frame it is possible to obtain it in.
- A clear, robust and (where more than one consultancy company has been engaged) consistent "non disclosure agreement" policy.
- Sufficient time and clear notice to be given to potential respondents to consider the data requested and complete their internal approval processes for a decision in whether or not to respond.
- Sufficient time for firms and industry bodies to complete the data submissions
- A compulsory consultation period to be provided by the entity in charge of data and information collection and the industry in order to ensure the quality, feasibility and understanding of the data and information gathering.

We would be grateful if ESMA and the EC could consider the above concerns and proposals in relation to the manner in which data requests are conducted in the future.

We would be happy to discuss this matter further with you at your convenience as well as providing more details and examples regarding the high-level points raised in our letter.

Yours sincerely,

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

Pierre de Lauzun, on behalf of EFSA and ISDA

Copy to:

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Shadow Rapporteurs for MiFID 2 and MiFIR

ESMA Board of Supervisors