Tilman Lueder
Head of Unit
Securities Markets
Financial Stability, Financial Services and Capital Markets Union
The European Commission,
2 Rue de Spa.
B-1000 Brussels

Carsten Ostermann,
Head of Markets and Digital Innovation,
ESMA,
201-203 Rue de Bercy,
75012 Paris

Brussels, 25 March 2024

Dear Mr. Lueder,

Dear Mr. Ostermann,

Implementation and effective dates for transaction reporting and post-trade transparency requirements under the revised MiFIR

ISDA welcomes the publication of the amendments to MiFIR and MiFID in the Official Journal of the European Union. We believe these revisions have the potential to improve the functioning of OTC derivatives markets by enhancing liquidity in markets and proportionality within the regulatory framework.

Considering the application date of MiFIR on 28 March 2024, we would like to share our members' view on implementation of MiFIR Article 8(a)(2), 10, 11a and 21 in relation to trade transparency and Article 26 regarding transaction reporting. ISDA notes that MiFIR Article 54(3) of revised MiFIR states that *'the provisions of the delegated acts adopted pursuant to Regulation (EU) No 600/2014 as applicable before 28 March 2024 shall continue to apply until the date of application of the delegated acts adopted pursuant to Regulation (EU) No 600/2014 as applicable from that date.'*

ISDA supports the approach articulated in Article 54(3). Where the Level 1 text includes mandates for ESMA and the EC to adopt technical standards providing operational detail on changes in MiFIR Level 1, transition to the new MiFIR regime will be more orderly and cost-efficient with these changes applying from the effective date of the relevant Level 2 legislation. The greatest uncertainty as to how and when revised MiFIR Level 1 takes effect relates in particular to areas of Level 1 which have been subject to significant change but where there is no mandate for ESMA to draft or revise technical standards detailing the practical application of these areas of MiFIR.

ISDA has provided further detail on revision of MiFIR Level 1 and provision or otherwise for related Level 2 mandates, with this letter.

Post-trade transparency

The MiFIR Level 1 text re-scopes derivatives trade transparency. Article 8(a)(2) refines pre-trade transparency for derivatives and adapts the scope of OTC derivatives that will be covered by post-trade transparency in Articles 10 and 21. Article 11a also adapts the deferrals regime. For example, the Large-In-Scale and Size-Specific-To-An-Instrument thresholds, above which certain details of trade could be deferred under 2014 MiFIR, are deleted, and ESMA is instead mandated to address the detail of deferred publication based on size and liquidity parameters within five categories of OTC derivative. ESMA is required to submit Regulatory Technical Standards to the EC by 18 months after entry into force i.e. 28 September 2025.

ISDA believes that the current post-trade transparency regime, in terms of scope and deferrals, should continue to apply until the revised RTS setting out the details of post-trade transparency and related deferrals is in effect. This will have the benefit of a more orderly and cost-effective transition to a single effective date.

Transaction reporting

New MiFIR Article 26(2) redefines the scope of transaction reporting, in part by reference to the scope of derivatives subject to post-trade transparency under Article 8(a)(2). As is the case for trade transparency, ESMA is required to submit draft RTS to the European Commission by 28 September 2025.

Again, we interpret it that the current transaction reporting regime, including in terms of product scope, should continue to apply until the RTS on transaction reporting referred to in the previous paragraph enters into effect. It will be more orderly and cost-efficient if market participants can prepare adequately for a single effective date.

Submission of reference data by Designated Publishing Entities (DPEs) to FIRDS

ISDA members share similar concerns with respect to the application of the DPE regime and the requirement for DPEs to submit reference data to FIRDS, as articulated in the AFME-ISDA letter to ESMA and the EC of 13 March 2024.

ISDA and its members would welcome the opportunity to discuss this issue with the European Commission and/or ESMA at the earliest convenience.

ISDA and its members have noted (and welcome) last week's ESMA statement signalling upcoming EC and ESMA interpretive guidance relating to these issues.

ISDA and its members look forward to assisting ESMA and the European Commission with respect to the development of relevant Level 2 legislation for the purpose of defining transparency and transaction reporting requirements for OTC derivatives.

Yours sincerely,

Scott O'Malia,

CEO,

ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 77 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org. Follow us on Twitter, LinkedIn, Facebook and YouTube.