Stephen McGoldrick
Financial Conduct Authority
12 Endeavour Square
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Sent via email: cp25-20@fca.org.uk

Dear Stephen,

Response to FCA CP25/20 on the SI regime for bonds and derivatives

The International Swaps and Derivatives Association, Inc. (ISDA) and the Global Foreign Exchange Division (GFXD) of the Global Financial Markets Association (GFMA), together "the Associations", welcome the opportunity to respond to the FCA's CP25/20 on the SI regime for bonds and derivatives.

Overview and summary

The Associations have long maintained that the inclusion of OTC derivatives in the SI regime is not appropriate for the structure of this market, and so are both grateful for and highly supportive of the FCA's proposal to remove the SI regime for these instruments. We respond below to the questions related to this proposal and that are within the Associations' collective remit.

We also respond to those questions in the discussion paper on the structure and transparency of UK equity markets that contemplate the inclusion of OTC equity derivatives in the scope of cash equity post-trade transparency.

Question 1: Do you agree with our proposal to remove the SI regime for bonds, derivatives, structured finance products and emission allowances?

As stated in the overview and summary above, the Associations are highly supportive of the proposal to remove the SI regime for derivatives.

While the other products also proposed for removal are outside of the Associations' remit, we strongly consider that non-equity market structure as a whole is not compatible with the SI regime, so on that basis we are also highly supportive of the removal of the SI regime for bonds, structured finance products and emission allowances for consistency.

The Associations also note and agree with the FCA's points in CP25/20 that other changes to the pre- and post-trade transparency regimes for derivatives and other non-equity instruments (namely, the transfer of post-trade transparency reporting obligations to Designated Reporters and the removal of pre-trade transparency obligations from SIs for derivatives and other non-equity instruments) have removed any remaining material reasons to retain the SI regime for derivatives, bonds, structured finance products and emission allowances.

We note that there is a residual reference to systematic internalisers in the UK Benchmark Regulation ("UK BMR"), Article 3(1)(16) of which defines "financial instrument" with reference to both systematic internalisers and the concept of "traded on a trading venue". The Associations are aware that UK BMR is now coming under review by HMT, and believe that this reference to SIs should be deleted from UK BMR as one of the outcomes of any future reform thereof.

The Associations note that the FSMA 2023 definition of SI retains the possibility of opting in as an SI. However, we believe that it is not the intent of the FCA for the reformed regime to enable investment firms to opt in as SIs for derivatives, bonds, structured finance products and emission allowances. We further note two proposed changes to the FCA Handbook that appear to support this understanding.

Firstly, the proposed changes to MAR 6.4.1R preclude an investment firm from notifying the FCA of changes relating to anything other than its status as an **equity** SI, and we infer from this that it will no longer be possible for an investment firm to opt in as an SI for non-equity products.

Secondly, the proposed changes to SUP 17.A.2.1AG would mean that only **equity** SIs would have an obligation to establish a technology connection with the FCA in order to supply it with financial instrument reference data in respect of financial instruments traded on their systems that are not also either admitted to trading on a regulated market or traded on a MTF or OTF. This suggests that the FCA does not contemplate non-equity financial instrument reference data being supplied once the proposed changes to the SI regime take effect, removing another residual rationale for retaining the ability for investment firms to opt in as SIs for derivatives and other non-equity products.

For the avoidance of doubt, the Associations agree with these proposed changes to the FCA Handbook.

However, as there remains an element of ambiguity, our members would be grateful for confirmation from the FCA that the policy intent is that it will no longer be possible for investment firms to opt in as SIs for derivatives, bonds, structured finance products and emission allowances.

While seemingly a minor point, this is in fact disproportionately impactful, as if any possibility remains that its counterparty is an SI, then an investment firm will need to determine whether that is the case for the purposes of populating its MiFIR Article 26 and EMIR Article 9 reporting.

Assuming that is indeed the policy intent that it should not be possible to opt in as an SI for non-equity instruments, and noting that the amendments to the Glossary proposed in CP25/20 include a definition of "*equity transparency instrument*", the Associations suggest a slight amendment to the rules in the Glossary as laid down in PS24/14 and which will come into effect on 1 December 2025, and that specify what constitutes "dealing on an 'organised, frequent, systematic and substantial' basis". We propose this change:

> For these purposes:
>
> (A) Dealing takes place on an 'organised, frequent, systematic and substantial' basis where it is:
>
> i. carried on in accordance with rules and procedures in an automated technical system, such as an electronic execution system, which is assigned to that purpose;
>
> ii. available to counterparties on a continuous or regular basis; and
>
> iii. held out as being carried on by way of business, in a manner consistent with Article 3(2)(a) of the *Business Order* in respect of the relevant *equity transparency* ~~*financial*~~ *instrument*.

We consider that this change, together with the amendments to MAR 6.4.1R and SUP 17A.2.1AG and clarification from the FCA of the policy intent, will make it sufficiently clear to market participants that it will no longer be possible for investment firms to opt in as SIs for derivatives, bonds, structured finance products and emission allowances.

Our proposed change to the Glossary would also remove all doubt that the qualitative test of SI status should only be carried out in respect of trading in equity instruments, which would in turn would remove another ambiguity with potentially disproportionate impact.

The Associations note that where a financial instrument is suspended or removed from trading by an MTF or OTF or by a regulated market under MiFID Articles 32 and 52 respectively, systematic internalisers are also required to suspend or remove that financial instrument from trading. Feedback from our members indicates that such suspensions from trading of non-equity instruments are extremely rare in the UK.

Despite their rarity, these suspension obligations raise the possibility that investment firms may feel obliged to carry out a qualitative assessment of their non-equity trading activity to determine if they are notionally an SI, purely to ensure they can comply with MiFID Articles 32 and 52 in the highly unlikely event that this obligation is triggered by the suspension from trading of a non-equity instrument by a regulated market, MTF or OTF.

The Associations believe that this cannot be the policy intent, and recommends that FCA removes this possibility by adopting our proposed amendment to what constitutes "dealing on an 'organised, frequent, systematic and substantial' basis" in the Glossary, as detailed above.

We note the FCA's stated intention in paragraph 1.3 of CP25/20 that changes to the SI regime resulting from this consultation should be coordinated with the new transparency requirements for derivatives and bonds resulting from PS24/14 coming into force on 1 December 2025, and agree strongly that this should be the case. Failure for these changes to be aligned would create significant uncertainty and add to the compliance burden of firms for the period of misalignment.

Finally, as a matter of data hygiene, the Associations recommend that as of 1 December 2025, all entries in the SI Register relating to non-equity SIs should be removed. This would ensure that no investment firms would inadvertently retain any residual obligations, and would have the additional benefit of emphasising that the policy intent is that the SI regime no longer applies to derivatives and other non-equity instruments. It would also remove any remaining ambiguity regarding what should be reported as the venue of execution for non-equity trades executed away from trading venues for the purposes of post-trade transparency under MiFIR Article 21, MiFIR Article 26 reporting and EMIR Article 9 reporting, making it clear that the value reported in such cases should be XOFF.

Question 2: Do you agree with our proposal to remove the prohibition on an SI operating an OTF?

The Associations understand that the original focus of this provision in UK MiFIR was concerned with conflicts that could arise from an SI operating an OTF in the same product(s). If the FCA does indeed remove all references to SIs in in respect of bonds, structured finance products, emission allowances or derivatives from its rules, then it follows that as an OTF can only ever operate in bonds, structured finance products, emission allowances or derivatives (UK MiFIR Article 2(1)(15A)(b)), a firm could not be an SI in these products and also operate an OTF.

This could give rise to a situation in which the operator of an OTF is an equity SI, but because the product scopes must, by construction, not overlap, this would not give rise to any of the potential conflicts with which UK MiFIR was originally concerned.

Therefore, consistent with its support for the removal of the SI regime for these bonds, structured finance products, emission allowances or derivatives, the Associations agree with the proposal to remove the prohibition on an SI operating an OTF.

Question 3: Do you agree with our proposed amendment to MAR 5.3.1AR(4) to remove the ban on matched principal trading by MTF operators?

In principle, the Associations agree with the removal on the prohibition of matched principal trading by MTF operators. However, we are not aware of any intention from MTF operators to use a matched principal trading protocol for OTC derivatives should this ban be removed, and therefore our response to this question is somewhat theoretical.

Question 12: Should this type of scenario be treated as a form of RFMD for trade reporting purposes?

Question 13: What percentage of all transfers of economic interest in shares do you estimate occur through the scenarios described? Do you believe these scenarios result in a material understatement of addressable liquidity?

Question 14: If reporting rules were updated to reflect these transfers, how should this be implemented to best capture addressable liquidity?

The Associations' remits do not extend to cash equities. However, the changes contemplated by paragraphs 4.22-4.28 of CP25/20 and the associated questions 12-14 affect equity swaps, and are therefore of interest to our members. We have consulted with equity experts in other trade associations on the cash equity market specific aspects of this response. We respond to questions 12-14 collectively.

We would make two general observations in respect of the assertions made in the FIA EPTA paper referred to in this section of the consultation paper.

Firstly, the Associations would argue that it is incorrect that the trading of shares that underpin an equity swap is unreported. Where an equity broker internalises part of an order against its own inventory, the trades that initially placed those shares into its inventory would have been reported, at the correct market price.

Secondly, we note the assertion in the FIA EPTA paper that "only minor adjustments to the post-trade transparency would be required" to make these synthetic trades transparent, and that only a "simple amendment to [UK] RTS 1" would need to be made. We would strongly dispute this assertion.

It seems clear that either the newly revised non-equity transparency framework established by policy statement PS24/14 would need to be revisited and further amended, or that the equity transparency framework would need to be significantly revised to capture equity swaps.

Either of these approaches would also require significant technical development by market participants, to generate equity-style trade reports from their non-equity technology plant.

The Associations further consider that there are several reasons why the general premise contemplated in paragraphs 4.22-4.28 of the consultation paper is deeply flawed.

Firstly, we refute entirely the argument that reporting the activity resulting from the scenarios in paragraphs 4.23 and 4.25 would provide a truer picture of market depth. On the contrary, it would give a false impression of market depth and likely lead to investor concern that reported trading activity is being boosted. This could create precisely the opposite effect to that intended, by adversely impacting investor confidence.

In respect of the price that would be reported, it should be noted that the price of an equity swap is the spread, not the reference price of the underlying. The spread depends on other factors, not least the credit quality of the counterparty to the specific swap, and so would be of no benefit to potential investors in the underlying shares.

The Associations also consider that no actual transaction in the underlying shares occurs in the scenarios given, and notes that the FCA would appear to concur, from the statement in paragraph 4.27 that "FIA EPTA… suggest that firms should publish a trade report **as if a transaction in the underlying instrument had occurred**".

What may happen are internal transfers from one or more books to one or more other books, to represent the swap as hedged and the delta exposure. However, it should be noted that similar activities may well also be taking place concurrently for multiple other reasons, which would need to be excluded from any manufactured reporting. This would add complexity and additional cost to any implementation.

The Associations also note the FCA's comment in paragraph 4.28 that "implementing such a change would require clear definitions of what constitutes a transfer of economic interest, and which instruments are equivalent to cash positions", and cautions that this will be considerably more complex than it may initially appear.

For example, should an equity option trade require the reporting of the underlying shares? If so, should exceptions be made for listed options, which have already been made transparent?

Further, how would index and basket swaps be treated when some portion of them is internalised or matched against another order? And if a "transfer of economic interest" should happen automatically by virtue of the terms of an existing position as opposed to a newly transacted swap, would that be captured?

These non-exhaustive examples show that what ostensibly may appear a simple proposal would in fact be one that is extremely complex for which to develop a framework, and consequently, extremely complex to implement.

The Associations also note that as no transaction in the underlying shares has occurred, there will be no reporting obligation under UK MIFIR Article 26, leading to the inconsistency that this entire segment of "trades" will not be transaction reported.

However, the main argument against reporting this activity, as stated above, is that it would add little to price formation or to investors' understanding of market depth and addressable liquidity. On the contrary, it could distort the true picture of available liquidity.

Question 17: Which classes of instrument should be included in the equity SI regime? Are the current methods for determining liquidity still appropriate? If not, how should liquid instruments be identified?

The Associations would not typically respond to this question, as cash equities are outside of their remits.

However, given the suggestion that equity swaps might be pulled into the cash equity transparency framework, we feel that for the avoidance of doubt, it is necessary to state that equity derivatives should **not** be included in the equity SI regime.

Thank you for the opportunity to comment. We remain at your disposal for further engagement.

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About 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 76 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 X, LinkedIn and YouTube.

About the GFXD

The Global Foreign Exchange Division (GFXD) of the Global Financial Markets Association (GFMA) was formed in co-operation with the Association for Financial Markets in Europe (AFME), the Securities Industry and Financial Markets Association (SIFMA) and the Asia Securities Industry and Financial Markets Association (ASIFMA). Its members comprise 25[1] global foreign exchange (FX) market participants, collectively representing the majority of the FX inter-dealer market[2]. Both the GFXD and its members are committed to ensuring a robust, open and fair marketplace and welcome the opportunity for continued dialogue with global regulators.

[1] Bank of America, Bank of New York Mellon, Barclays, BBVA, BNP Paribas, Citi, Credit Agricole, Deutsche Bank, Goldman Sachs, HSBC, ING, JP Morgan, Lloyds, Mizuho, Morgan Stanley, MUFG, NatWest Markets, Nomura, Northern Trust, RBC, Standard Chartered Bank, State Street, UBS, US Bank and Wells Fargo

[2] According to Euromoney survey