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Accommodating large-in-scale derivatives transactions under MiFID2/MiFIR

Summary: We encourage the European Council to ensure that ESMA has the power to exclude large-in-scale derivatives transactions from the derivatives trading obligation where they deem it necessary and appropriate.

The MiFID2/MiFIR framework recognises the important distinction between transactions that are 'large-in-scale' and those that are not, both for equity and non-equity instruments. Given that large-in-scale transactions are more likely to 'move the market', i.e. have a material impact on prices by revealing participants' trading interests (to the detriment of any end user initiating a transaction), MiFIR includes:

- A waiver from MiFIR Article 7 transparency requirements for trading venues for transactions that are large-in-scale.
- The possibility for deferred post-trade reporting of trades (or volume omission) according to the "size and type" of transactions (MiFIR Article 10).

Large-in-scale transactions are an integral feature of derivatives markets, given the significant role that OTC derivatives play in terms of wholesale risk transfer between professional market participants[1]. Provisions ensuring appropriate levels of pre- and post-trade transparency for large-in-scale trades will help ensure that OTC derivatives continue to play their vital risk transfer role, serving the interests of end users in these markets.

However, in the current European Council text, there is, **no explicit recognition in the derivatives trading obligation (MiFIR Article 24) of large-in-scale OTC derivatives transactions.**

This would imply that cleared, liquid derivatives would be required to trade on one of the MiFID categories of trading venue, even if the transaction is large-in-scale.

In other words, the approach to the trading obligation is not consistent with the approach to pre- and post-trade transparency under MiFIR, undermining the coherence of the MiFID2/MiFIR framework, and introducing a risk of divergence between the European approach and the approach being taken towards large-in-scale derivatives transactions in other jurisdictions.

The European Parliament has addressed this problem through an amendment to Article 26 of MiFIR (the trading obligation procedure), requiring ESMA to take account of the fact that derivatives transactions might "only [be] sufficiently liquid in transactions below a certain size" in deciding which contracts are liquid enough to trade on a venue.

We encourage the European Council to adopt an equivalent amendment to the MiFIR text in order to achieve clarity regarding the treatment of large-in-scale derivatives transactions.

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[1] The average size of exchange traded derivatives is \$100,000 and the average size of an OTC derivative transaction is \$126m (Source: BIS, WFE, FIA, ICAP/TriOptima)