BUSINESSEUROPE

POSITION PAPER

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MiFID Review

COMMISSION CONSULTATION

Introduction

BUSINESSEUROPE is in favour of smart regulation for financial services in response to the regulatory failures that led to the financial crisis and to address the risk of similar events occurring in the future. Reforms should combine financial stability and growth and be mindful of companies' need to access finance and manage risk. Market liquidity is essential to access to finance and reforms should take due account of companies' needs to access market funding. It is also important that non-financial companies are not discouraged from using customised contracts to hedge specific risks. Several proposals for review of the Markets in Financial Instruments Directive (MiFID) would reduce both market liquidity and the ability of corporations to manage and hedge some of their financial risks, ultimately damaging financial stability and growth.

Pre- and post-trade transparency

In Europe, companies depend highly on bank lending to access finance. New capital rules for banks (Basel III) will affect the ability of banks to lend to businesses and liquidity requirements will lead to a bias towards government debt as opposed to equity which is considered more risky. A similar effect is caused by the implementation of Solvency II rules which discourage investments in long-term bonds of below AAA-rating. As demand for capital intensifies, companies will thus find it increasingly difficult to obtain the finance they need for investment. It is crucial that reforms to MiFID do not harm market liquidity and make it more difficult for businesses to access debt and equity funding through financial markets.

Exemptions to the equities transparency regime for investors who are executing transactions which are large or in illiquid stocks support liquidity and should thus be maintained. These exemptions are necessary as they allow brokers to manage their positions whilst minimising impacts on the market price. Without these exemptions, transaction costs and the cost of capital would increase especially for firms whose stocks are less liquid such as smaller firms. Similarly, changes to the rules which allow firms to delay post-trade reports up to three days where transactions exceed certain thresholds would also harm market liquidity and increase costs. Reducing permitted delays to the end of the day may also affect fund investors considering that fund values are calculated based on end of day market prices which would be influenced by the market impact of large transactions.

Extending the MiFID transparency regime to non-equity products such as bonds or structured products admitted to trading on a regulated market, derivatives eligible for clearing, and all derivatives reported to trade repositories, would also damage market liquidity as sell-side firms will find it more difficult to cover their positions. Bonds and other non-equity products are varied and usually insufficiently liquid to warrant increased transparency. Additional measures to enhance transparency of non-financial companies would only increase transaction costs without providing any additional benefits for the corporate end user.

Greater standardisation, clearing and trading of OTC Derivatives
The advantage of 'over-the-counter' derivatives is that they are bilaterally negotiated contracts and that the terms of these contracts can vary considerably according to the needs of each party. The principal benefit of these contracts is that they can be customised to match particular risk exposures and provide specific risk mitigation. Standardisation would reduce the opportunity for end users to obtain the risk management protection which they seek. This would reduce the ability of corporations to manage and hedge some of their financial risks and ultimately reduce the effectiveness of their risk management procedures.

BUSINESSEUROPE thus firmly believes that non-financial companies should not be forced to use highly standardised contracts, especially when these have to be traded on platforms that require central counterparty clearing. These companies do not pose or contribute to systemic risk as their share of derivative volumes traded in the financial markets has been estimated at less than 10%. It is crucial that they retain product flexibility. Restricting choice for these businesses will only increase costs and reduce their ability to manage risk.

In view of the above, we do not believe that it is appropriate to require all OTC derivatives that are eligible for clearing to be traded on exchanges or other venues. Certain types of derivatives may meet criteria for clearing eligibility but are not standardised in a way that allows them to be traded on exchange. The assessment of whether a derivative should be exchange traded should be taken independently of whether the derivative at stake should be cleared.

It should also be ensured that exemptions available to non-financial companies in respect of clearing OTC derivatives should equally apply to requirements to trade them on exchange.

Commodity derivative markets
Regarding the proposals related to commodity derivative trading, BUSINESSEUROPE would like to underline that companies are important end-users of commodities for which the use of derivatives is crucial. The introduction of controls designed to manage prices could easily result in distortions that could harm the functioning of important markets. Furthermore, the provision of information regarding the reasons for transactions is commercially sensitive and would expose business strategies. It is also important that double reporting is avoided so that companies will not be required to report information under MiFID and other Community legislation. Similarly, definitions of 'hedging' should also be consistent and not be limited to accounting standards.