

N05/16

Consultation on amendments to rule guidance in preparation for MiFID II - equity waiver regime - negotiated trades

Introduction

1. London Stock Exchange (“the Exchange”) proposes to amend the guidance to Rule 3040 (Required content of trade reports) of the Rules of the London Stock Exchange in order to clarify and reinforce the use of the reporting condition (“SP”) by member firms on trade reports submitted to the Exchange in respect of their off order book on Exchange trades.

Background

2. MiFID II introduces a broad range of reforms and changes to markets in all types of instruments, and to the obligations of investment firms and trading venues. In particular, MiFIR requires changes to the existing regime for pre-trade transparency waivers for equities.
3. In order to limit the volume of equity transactions that can benefit from the MiFID II pre-trade transparency waivers, MiFID II introduces a Double Volume Cap (“DVC”) of 4% of European trading in an instrument per trading venue (Regulated Markets and MTFs) and 8% of European trading per instrument across all EU trading venues. The DVC will apply to all transactions that make use of the Reference Price (“RP”) waiver and transactions in MiFID liquid securities (as defined on the MiFID database) that make use of the Negotiated Trade (“NT”) waiver, where they are subject to the current market price. NT waiver trades that are subject to conditions other than the current market price are excluded from the DVC calculation.
4. If either cap is breached, competent authorities will suspend the use of the RP waiver and the NT waiver for MiFID liquid securities for a period of six months on the relevant trading venue (in respect of a breach of the 4% cap) or across all trading venues in the EU (in respect of a breach of the 8% cap).

NT and RP waiver trade data collection

5. During the pre-implementation period of MiFID II, the Exchange understands that trading venues will be required to report to ESMA the volumes of relevant trading executed under the RP and NT waivers. From this data collection, ESMA will publish details of the total volume of EU trading in the previous 12 months for each of the equity instruments to which the DVC applies. In addition, ESMA will also publish the percentages of relevant trading conducted under both of the waivers across the EU and on each trading venue in the same 12 month period. Unless otherwise advised by ESMA, the period to be monitored for this purpose

Market Notice

8 August 2016

will begin on 3 January 2017. Trade data captured during 2017 will be used by ESMA to calculate the level of relevant RP and NT waiver trading and the potential triggering of one or both of the caps in relation to any particular equity instrument from 3 January 2018.

Proposed amendments

6. In view of the above, the Exchange proposes to amend the guidance to Rule 3040 in order to align the use of the SP reporting condition in respect of negotiated trades with MiFID II RTS 1 Article 6 (points “a” to “i”)¹ where a negotiated trade is subject to conditions other than the current market price of the financial instrument. As set out in the amended guidance, a member firm must include the SP reporting condition on the trade report for such transactions. In addition, the amended guidance will no longer allow for the SP reporting condition to be used solely to indicate a converted currency trade.
7. Member firms should note that the list of negotiated transactions subject to conditions other than the market price does not include a provision for non-standard/special settlement. ESMA decided not to include such transactions, on the basis that it did not consider there to be sufficient legitimate reasons to consider them as not contributing to the price formation process (see page 22 of ESMA’s Report to the Commission, 28 September 2015). Although the Exchange will continue to allow negotiated trades for non standard settlement, they will not be considered as subject to conditions other than the market price of the share from 3 January 2018 and will therefore count towards the DVC calculation.
8. Member firms should also note that the Exchange has not included point “j”, from MiFID II RTS 1 Article 6, in its amended guidance (point “j” is described in the RTS as “*any other transaction equivalent to one of those described in points (a) to (i) in that it is contingent on technical characteristics which are unrelated to the current market valuation of the financial instrument traded*”). However, if member firms have views as to what trades would be eligible to be covered by the provision, please provide the Exchange with details.
9. The purpose of these amendments is to ensure that the trade data collected from the Exchange by ESMA in the period before MiFID II implementation accurately reflects, as far as possible, those negotiated trades subject to the DVC executed under the Exchange’s rules under the NT waiver. These amendments do not broaden the scope of what business is permitted to be brought on Exchange under Rule 3000. The Exchange will continue to monitor member firms’ use of the reporting condition. A marked up version of the proposed amendments is included as Attachment 1 to this Notice.

¹ Subsequently re-issued by the Commission under reference “C(2016) 4390 final”

Market Notice

8 August 2016

Implementation

10. As ESMA's trade data collection is expected to begin on 3 January 2017, the Exchange anticipates that, pending the outcome of this consultation, it is intended to announce the final rule changes in September 2016 to be effective for 3 January 2017, allowing member firms sufficient time to make any necessary system changes. This timing will be confirmed in a subsequent Notice.

Consultation

11. Member firms and interested parties are invited to comment on the proposed amendments by close of business on Friday 2 September 2016. Responses should be sent by email to: RulesAndCompliance@lseg.com or telephone +44 (0)20 7797 2190 (32190).

Denzil Jenkins
Head of UK Compliance & Group Regulatory Policy

This Stock Exchange Notice will be available on the website at
<http://www.londonstockexchange.com/en-gb/products/membershiptrading/rulesreg/stockexnoticesnew/>

Calls to London Stock Exchange plc may be recorded to enable London Stock Exchange to carry out its regulatory responsibilities