ESMA

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Ihr Zeichen, Ihre Nachricht vom	Unser Zeichen, Sacharbeiter	Durchwahl	Datum
	BSBV 64/Dr. Priester/Sc	3132	2 March 2015

Re: **ESMA; MiFID/MiFIR**

The Division Bank and Insurance of the Austrian Federal Economic Chamber, as representative of the entire Austrian banking industry, appreciates the possibility to comment on the ESMA Consultation Paper regarding MiFID/MiFIR and would like to submit the following position:

8.2. Obligation to report transactions

Clarifications on excluded activity

Q215 CP p.566
"In your view, is there any other outcome or activity that should be excluded from the definition of transaction or execution? Please justify."

From our point of view, there are some more activities that should be clearly excluded from the definition of transaction / from the obligation to report:

- account transfers without change in ownership (already exempted);

- account transfers (from/to another investment firm) with change in ownership due to *donation* or *heritage*
(The details of the *counterparty* - client of the other investment firm - usually are *unknown* due to the lack of a contractual relationship and it is therefore not possible to report details of this counterparty);

- Changes in ownership without transfers (e.g. conversion of individual account to joint account and vice versa, inclusion or exclusion of co-owners).

Furthermore these activities are no purchases or sales and are not processed on a trading venue. This is the reason why no price is charged for reporting.

To include all these activities would cause disproportionally high costs - as all of them are technically totally different to buy or sell transactions.

We suggest excluding all these activities as they clearly represent activities without any risk in market abuse.

"Transaction Identifiers" CP p.597

"180. ESMA proposes that the Transaction Reference Number (see field 80 in the table of fields in Annex I of the draft RTS) should be retained and amended to comply with the following requirements:

i. It uniquely identifies every transaction report sent to the CA at the investment firm level;

ii. It is a unique, persistent and consistent code at the level of the investment firm; and

iii. In the particular case of a transaction report pertaining to direct execution on a trading venue, it shall be the same as generated and disseminated by the trading venue to both the buying and the selling parties when confirming the execution."

When adding these requirements to the current Transaction Reference Number (TRN) we would like to bring into consideration, that this would cause a lot of additional expenditure.

Furthermore we would like to seek clarification,
- if only the investment firm that is *trading* directly on a certain venue is obliged to use the venue`s TRN?
- if the order was placed by an investment firm as an agent for another investment firm - who it should use the venue`s TRN to fulfill the reporting obligation? Does every investment firm in a chain of investment firms have to use this TRN – does this mean, each investment firm has to report backwards the TRN of a certain trade in a multi-stage transaction?
- if an investment firm is *aggregating* client orders to one order - how could we use a "unique TRN" for each client's transaction? In this case the TRN of the stock exchange would be the same for each client's transaction.

Q233. Do you agree with the proposed criteria for calibrating the level of accuracy required for the purpose of clock synchronisation? Please elaborate.

The proposal in the current Consultation Paper to generally reduce the maximum allowed divergence time / minimum synchronization requirements from one microsecond (as proposed initially in the previous Discussion Paper) to one millisecond for trading venues operating an electronic system and one second for trading venues operating a voice trading system is highly appreciated. This is in line with the current practices of trading venues, including Network Time Protocol (NTP) which allows for the millisecond accuracy of synchronisation and time stamping. Imposing more strict synchronization requirements could be adequate and desirable in case of trading venues offering access to high frequency trading. These requirements could be then based on the granularity level of the

gateway-to-gateway latency time (as currently proposed by ESMA, if the time is measured at the level of micro- or nanoseconds then one micro- or one nanosecond accuracy could be required, respectively). However, it should be noted that the synchronization at the level more granular than one millisecond is currently not applied even by the biggest European exchanges (London Stock Exchange, Deutsche Börse, etc.).
The business clocks synchronisation requirements for investment firms are elaborated below (Q234).

Q234. Do you foresee any difficulties related to the requirement for members or participants of trading venues to ensure that they synchronise their clocks in a timely manner according to the same time accuracy applied by their trading venue? Please elaborate and suggest alternative criteria to ensure the timely synchronisation of members or participants clocks to the accuracy applied by their trading venue as well as a possible calibration of the requirement for investment firms operating at a high latency.

For an investment firm operating at a high latency, implementing a requirement to synchronize its business clocks according to the same time accuracy as applied by the trading venue (or in case of the connection to multiple trading venues, to synchronize all relevant systems according to the most accurate venue) would be highly burdensome. As noted in the Consultation Paper, most investment firms operate their systems at the accuracy of one hundredth of a second (10 milliseconds). Converting to one millisecond would affect numerous systems, interfaces, IT application, including extending data formats to accommodate more precise time stamps. The one-off implementation and ongoing maintenance costs (both hardware and software) of the requirement are not proportionate to the benefits, especially considering the initial goal of the synchronisation regulation which is detecting market abuse: synchronizing at the frequency of one millisecond in case of investment firms operating at latency higher that one millisecond (not engaging into high frequency trading) would not contribute to achieving of this goal. Tracking / exact determination of the order chronology (which is crucial in detecting instances of market abuse) is already ensured with the synchronization accuracy of 10 milliseconds in case of firms not engaging into high frequency trading.
Thus, whereas it is reasonable for trading venues to synchronize externally (against an external universal time reference) at a (minimum) millisecond level, there should be no hard requirement for the investment firm not engaging into high frequency trading to synchronize at the level of granularity of the most accurate trading venue they are connected to (which in some cases could be even one nanosecond, according to the current ESMA proposal). Furthermore, we consider the current standard level of accuracy applied by investment firms (10 milliseconds) as a proportionate synchronization requirement for firms not engaging into high frequency trading. Nevertheless, we recognise that in case of firms engaging in high frequency trading imposing strict requirements (synchronizing at the accuracy level even of one nanosecond, depending on the gateway-to-gateway latency time of a trading venue, see also Q233) can be adequate and desirable.

We kindly ask you to give our remarks due consideration.

Yours sincerely,

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