

05th May 2016

European Securities and Markets Authority
103 Rue de Grenelle
75007 Paris
France

Attention: Olga Petrenko, ESMA

Dear Olga,

Follow up Letter to ESMA CP 2015/1909 on Operators of Venues to Transaction Report Client Details

This letter adds to comments made by WMBA¹ in our response to the Consultation Paper 2015/1909 on Guidelines on transaction reporting, reference data, order record keeping & clock synchronisation. WMBA would like to emphasise our concerns that ESMA takes into consideration the issues raised around that consultation involving cases where the transaction reporting obligation falls upon the organised venue rather than the counterparties to the trade.

The Level 1 text places the obligation on venues to report transactions on behalf of users or participants if these users or participants are not themselves directly regulated under MIFID II. Since places a new and significant obligation on venues on making these reports, we would encourage the perimeter to be clear and the process to be straight forward. Furthermore, we would urge ESMA to coordinate these details with the parallel obligations under similar third country obligations (i.e. specifically Dodd Frank) where the venues and platforms span global liquidity pools and global counterparty participation such as the non-equity MiFIR scope.

In this regard we highlight perceived complications such as:

- *The Collection of CONCAT*
 - *Designation to identify natural person using CONCAT*
 - *Details of the identity of the client and details of the decision maker for buyer and seller*
 - *Identification of person or computer algorithm responsible for the investment decision*
1. Specifically, information from the passport or equivalent identification [*first name, surname date of birth and nationality*] supplied by either the executing firm or from the operator of a venue itself using information obtained from the counterparty would place undue burden in obtaining such information in the form and timeframe required.
 2. For instance, this will entail the executing intermediary firm or venue operator to obtain client personal details prior to execution of the transaction. Although the direct counterparty firm will be onboarded as part of the due diligence and the 'know your client,' process, details of the individual

¹ The Wholesale Markets Brokers' Association (WMBA) and the London Energy Brokers' Association (LEBA) (jointly referred to in this document as the 'WMBA') are the European industry associations for the wholesale intermediation of platform and Over-the-Counter (OTC) markets in financial, energy, commodity and emission markets and their traded derivatives. Our members act solely as intermediaries in wholesale financial markets and do not undertake any proprietary trading. As a result, they are classified as Limited Activity and Limited Licence Firms in respect of the current Financial Conduct Authority classification.

traders within the counterparty or within their client chain will not be, particularly where the counterparties and clients may be non-MiFID firms in the EU or firms located outside the EU.

3. There are also significant obstacles and difficulties that would be presented in maintaining natural persons' identity static data records through time, as the counterparty may cease to trade with the executing firm as a client, and there is no obligation on that client, either inside or outside the EU, to inform the executing firm of moving or ceasing to trade with them.
4. There are also further specific issues in particular where the counterparty and/or the executing firm is based outside the EU and in particular if based in jurisdiction where personal client records may contravene data protection and privacy laws in a number of jurisdictions
5. WMBA also underscore that the creation of a sensitive database of personally identifiable information (PII) will present a security risk which will further increase the burden to firms not proportionate to their business risks or objectives. Nor would these requirements contribute in any way to the CMU objectives of creating a competitive infrastructure for global markets where the operation of venues outside the EU perimeter under IOSCO standards do not require such details.

We support the view that effective data is crucial to detecting market abuse and to monitor the functioning of the markets and investment firm's activities. However, the collection of client details as proposed is not plausible if organised venues are to remain open and competitive under MiFID2.

Short Selling Flag

We request ESMA to consider that similar to the short selling flag, there should be a possibility for venues to use "not available" indicator for the client details as discussed above where this has practically been impossible to get.

Please do not hesitate to get in touch with us if you would like to take forward a dialogue regarding MiFIR venue transaction reporting responsibilities.

Regards,



Alex McDonald

CEO, WMBA.

cc.

Rodrigo Buenaventura, ESMA, Head of Markets Department
David Lawton, Chair, Market Data Standing Committee; c/o Ana Fernandes, FCA