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Sent by email to: tmu@fsa.gov.uk

Dear Phil

BBA and FOA response to FSA proposed guidance on transaction reporting strategy trades

The British Bankers' Association (BBA) is the leading trade association for the UK for the UK banking and financial services sector. We represent over 200 banking members, which are headquartered in 50 countries and have operations in 180 countries worldwide. These member banks collectively provide the full range of banking and financial services and make up the world's largest international banking sector.

The Futures and Options Association (FOA) is an industry association for more than 160 firms and institutions which engage in derivatives business, particularly in relation to exchange-traded transactions, and whose membership includes banks, brokerage houses and other financial institutions, commodity trade houses, power and energy companies, exchanges and clearing houses, as well as a number of firms and organisations supplying services into the futures and options sector.

Background

As FSA knows, our members recognise the importance of an effective reporting regime which supports the FSA in meeting its statutory objectives, in particular the prevention / detection of financial crime. We are keen to continue to work closely with FSA in the pursuance of this objective, and both the BBA and FOA therefore welcome the opportunity to respond to the FSA's guidance consultation on transaction reporting strategy trades (the consultation).

While members are willing, as always, to assist FSA meet its objectives, the overarching concern arising from the consultation is that the proposed guidance will require additional technology change and/or business process change - which when applied across the industry are considered disproportionate to the likely benefit to be yielded by FSA. We consider that FSA should view this guidance in the context of relatively low volume in stock contingent trades, and the very low likelihood of market abuse occurring where such strategies are used.

Impact and proportionality

Following conversations with our members, it seems that relatively few stock contingent trades are being executed. This data is clearly commercially sensitive, but in general the few large 'universal' banks that seem to execute these trades execute only a handful per month, while some of the specialist institutional brokers execute only one or two of these trades per month. We understand that only one or two firms average five to six transactions per day.

Further, our members consider that the risk of market abuse being committed through the use of such strategies is small. These strategy transactions are from the outset designed to be delta neutral and the product structure makes it very difficult for market abuse to occur, which we note under MiFIR is a justification for exclusion from reporting.

While manual work-around solutions can be developed by firms to accommodate the guidance, you will understand that it is always preferable - not least from a systems and controls perspective - to automate transaction reporting. System linkages at firms vary considerably and as such it is difficult to provide a clear sense of the challenges the proposed guidance will have, in particular to override the venue used on the cash equity leg if it is not linked to the corresponding derivative transaction leg in downstream systems. It had occurred to us that NYSE LIFFE might be able to provide FSA with the stock leg of such transactions, but we understand that due to FSA systems constraints, any inclusion of this leg in the feed would result in them being rejected in any event. As such, system changes will be required by firms, and we question the appropriateness of this given the benefits it is likely to yield FSA.

It is apparent that there is the risk to firms of a sequence of similar such guidance on the horizon, the result in large part of constraints in FSA systems. A point in case is the recent flex derivatives guidance. As a result of FSA systems being unable to accept Eurex flex reference data, special provision were put in place. Firms had accepted the associated costs involved and were planning to comply with these provisions. FSA subsequently notified the industry that a solution had been identified. Not only do situations such as this add to the significant sums that firms invest in transaction reporting, but they also increase uncertainty and impact on the ability of firms to plan for and manage change.

Certainty

In addition to the above, the consultation notes the guidance will apply to *'trades such as Stock Contingent Trades whereby two or more legs that are dependent on each other are executed simultaneously'*[1]. Our members are concerned with two aspects of this: (a) that the use of 'such as' implies that this guidance applies to activity that is not explicitly referenced, which causes uncertainty; and (b) that FSA's reference to 'Stock Contingent Trades' is really a term specific to NYSE LIFFE, and that it would perhaps be more appropriate for FSA to use more generic language.

Conclusions

Notwithstanding the view that the current approach adopted by firms should be considered acceptable at this time, we should like to re-iterate that member firms are very supportive of FSA's transaction reporting efforts and would like to assist as much as possible. So that firms are able to target their development efforts in a risk-based and proportionate way, and in doing so appropriately assist FSA meet its statutory objectives, we emphasise that it would be beneficial if FSA gave further thought as to the proportionality of this and further such guidance.

[1] Page 1, paragraph 1.1 of the consultation paper.

If useful, we would be happy to discuss any of these comments further.

Yours sincerely,

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