[redacted]

From: [redacted]
Sent: 06 November 2012 14:35
To: [redacted]
Subject: RE: Negotiated Trade Waiver

[redacted] thanks – was really good to see you too last night.

Philippe's comments are interesting – and be a result that we had a meeting with the AMF where we were discussing data points from CESR on the RPW – so any figures he is citing is not our data – but in fact CESR's own (see below):

CESR Technical Advice to the European Commission in the Context of the MiFID Review:

http://www.esma.europa.eu/content/CESR-Technical-Advice-European-Commission-Context-MiFID-Review-Equity-Markets

This CESR advice highlights that over 90 percent of trading on organized public markets is pre-trade transparency (as of 2009), with the waivers for negotiated trades and orders that are large in scale are the types of waivers used the most frequently out of the four available (page 7). Regarding the reference price waiver, only four European jurisdictions have granted the waiver and trading under the waiver accounted for 1 of all trading in EEA shares on RMs/ MTFs in 2010.

I am thinking his argument may have been around the fact that abolishing any waiver is needed because its usage is increasing and so therefore it is taking away from the lit markets – data from the US has shown that usage of BCNs (which can roughly equate to RPW usage in the EU) has plateaued at about 12 percent – so we won't see this getting up to levels where it will impact the price formation process in the lit markets (in fact, the reduction in average spreads witnessed over the period in which BCNs and the RPW have evolved / been in use support the fact that the price formation process continues to operate very effectively). In addition, I think the new compromise text inserts a new clause allowing for Member State authorities to revoke a waiver in instances where it is being used inappropriately – think this should be sufficient to address their concerns (by the way only 4 Member States actually use the RPW).

Let me know if this is helpful – happy to discuss further.

[redacted]

From: [redacted]
Sent: Tuesday, November 06, 2012 1:52 PM
To: [redacted]
Subject: Negotiated Trade Waiver

Hi [redacted]

Great to see you last night, hope you enjoyed it the reception.

In the working group yesterday, [redacted] said that he had figures from Goldman Sachs that the use of the negotiated trade waiver on equities was rising dramatically. Do you have some data to this effect?

I may have misunderstood him, but he was using this as an argument to abolish the waiver.

Grateful if you could shed some light on this.

Thanks

[redacted]

From: [redacted]
Sent: 26 October 2012 15:21
To: [redacted]
Subject: MiFID Waivers - Negotiated Trades
Attachments: 201210 BATS Chi-X Europe - EU Regulatory Developments.pdf.pdf

[redacted]

As discussed with [redacted] last week, here is some further detail on why the negotiated trade waiver is important.

The negotiated trade waiver allows firms to bring business under the rules of a regulated market or MTF that would otherwise take place OTC. This has a number of policy advantages:

- The activity is subject to real time, independent market surveillance.
- Through market rules, the published data can be enriched with trade condition codes providing greater clarity over the type of business being transacted.
- Responsibility for reporting can be established through market rules, addressing the issue of double reporting that is currently a problem with OTC business.
- Trades can be sent to a CCP reducing counterparty risk.
- End investors are able to net bilateral and venue traded positions reducing margin and settlement costs.
- Where there is a pre trade obligation anyway, for SIs for example, the negotiated trade waiver cannot be used (MiFID 1) so there is no sense in which pre trade is being avoided.
- Removing the waiver will force more firms to become SIs, leading to more OTC trading - less transparent, unsupervised, not cleared.
- Conversely details of trading reported as NTs is distributed in real time to the broadest possible audience alongside trading venues' other market data.
- If the NTW is not available and bilateral OTC business is unduly restricted, you are likely to see a growth in the use of swaps or other synthetics to avoid damaging customer business.

I have also attached our MiFID/EU position paper. Please let me know if you would like to discuss any of the points raised in this email or the position paper further.

Regards,

[redacted]

[redacted]

[redacted]

From: [redacted]
Sent: 25 October 2012 08:03
To: [redacted]
Subject: mission impossible
Attachments: STP - Summary of Issue for MiFID II (October 2012) - FINAL.pdf

Hi [redacted]

I have a new client. They are admittedly very late to the game but there still is a slight window of opportunity. In previous months they have spoken to people in London so the issue might not be new to you. The client, Citadel, has an important possible addition to MiFID which would reduce risk in the system with regard to post-trade of derivatives and would align EU legislation with US rules. Please see the very short paper that outlines the position.

Could I call you about this issue somewhere this morning?

[redacted]

[redacted]

From: [redacted]
Sent: 23 October 2012 16:28
To: [redacted]
Cc:
Subject: MiFID/MiFIR- LSE Group update on key issues (waivers, access, CTP, SMEs)- Presidency Text 19/10/2012
Attachments: LSEG MiFID_R Council Briefing update final 23 10 12.pdf

[redacted]

Haven't spoken to you in a while. If I recall correct, I briefly saw you at the Finance Watch conference 2 weeks ago – but we didn't get the chance to meet. I hope you are doing well.

[redacted] myself and the team wanted to take this opportunity to discuss a few of our views on the latest Presidency Text on MiFID-2. We cover 4 key elements (market structure/quality, open access, consolidated tape and SME Growth Market) in this email. We have also attached a more detailed briefing on these and further issues to this email.

We are also in touch with HMT on the state of negotiations in MiFID, and [redacted] also met [redacted] last week to discuss the more "political issues" including open access.

If there is anything we can do to help – especially on the issues where you are meeting with some opposition in Council – please let us know.

I hope this is helpful ahead of the next discussion at Council Working Group. Naturally, we would be pleased to discuss any of these points in more detail.

Kind regards
[redacted]

1 **Market structure/quality**

- The existing pre-trade transparency waiver regime should be retained for equity instruments, although it can be enhanced to ensure that regulatory concerns around price formation are reflected.
- We support the Presidency Text but suggest the application of the price reference waiver could be enhanced to require firms to give **meaningful price improvement** (one whole tick) for dark orders, ensuring the primacy of lit markets in price formation, but with flexibility for investment firms/MTFs to offer innovation through dark trading. However, we do not think that VWAP is an appropriate reference price for this waiver.
- The **market maker** provisions in Article 17(3) and 17(4), and the exemption for marker makers in relation to commodity derivatives, are important provisions and we support the Presidency Text.

2 **Access- MiFIR- Articles 28 – 30**

In general, we support the Presidency Text, in particular the alignment of MiFIR with EMIR by recognising that:

- (Recital 33) EMIR establishes a precedent that where IPRs relate to derivative contracts, they should be offered on fair, reasonable and non-discrimionatory terms – **Article 30 should be retained for consistency.**

- (Recital 33a, b) EMIR explicitly permits interoperability for transferable securities and MMI, - MiFIR should not prejudice the outcome of ESMA's assessment of interoperability to other classes of financial instruments.

In addition, we make the following comments:

- **Article 29 (3),** first sentence should read: "The trading venue shall provide a written response to the CCP within three months either permitting access, under the condition that the relevant competent authority has ~~not~~ granted access pursuant to paragraph 4, or denying access." In the presidency proposal, the word "not" has been inadvertently retained and should be **deleted**.
- **Article 29 (6) (d)** - in the Presidency Text, insert the words "on the trading venue" as follows: (d) the notion of liquidity fragmentation ***on the trading venue***.
- **Article 30 (3) (b)**- in the presidency proposal, in Article 30 (3) (b), add "the conditions under which access shall be granted, including the fair, reasonable and non-discriminatory terms for any licence, any necessary safeguards of the confidentiality of information provided, ***any period of exclusivity longer than 3 years from the creation or launch of the index, the information to be made available to the relevant competent authority regarding the information on the methodology, index rules and calculation of that benchmark index and the safeguards applied by the person or persons calculating or producing such index to prevent and detect manipulation of the benchmark index*** and any other conditions necessary to ensure the smooth and orderly functioning of the markets."

3 **SMEs MiFID – Recital 91(a), Articles 4 and 35**

We support the Presidency Text on Art 35(3a), which requires a majority of issuers on a SME growth market to be SMEs. For consistency, we suggest that Council must amend Recital 91a to refer to the majority (50%) threshold it proposes in Article 35(3) (a), rather than 75%, as is currently reflected.
We would also urge Council to adopt the Parliament's definition of SMEs in Article 4(12) of MiFID, namely a company with a market cap of less than €200m over the last 3 years.

4 **Consolidated Tape Title V- Articles 61 – 68 MiFID**

In general, we support the Presidency Text of 19.10.12, proposing a multiple CT Provider model.

In addition, we suggest that, when looking at the current structure of the arrangements for collection and distribution of market data, where there are multiple aggregators at different levels (firms, trading venues etc.) and different distributors have varying degrees of national customer coverage, it will not be practical to establish arrangements where any single entity can act as both collector and distributor (at least) of all relevant data.

We suggest that, as the activities of a consolidated tape provider in collecting and distributing data across the EU comprise a number of different functional activities that may be provided most efficiently and effectively by more than one entity, each co-operating together, they should be treated collectively as a CTP for the purposes of the Directive.

We suggest this requires the following amendments:

MiFID- RECITALS	MiFID- RECITALS
(78) The introduction of a commercial solution for a consolidated tape for equities should contribute to creating a more integrated European market and make it easier for market participants to gain access to a consolidated	(78) The introduction of a commercial solution for a consolidated tape for equities should contribute to creating a more integrated European market and make it easier for market participants to gain access to a consolidated

view of trade transparency information that is available. The envisaged solution is based on an authorisation of providers working along pre-defined and supervised parameters which are in competition with each other in order to achieve technically highly sophisticated and innovative solutions, serving the market to the greatest extent possible.	view of trade transparency information that is available. The envisaged solution is based on an authorisation of providers working along pre-defined and supervised parameters which are in competition with each other in order to achieve technically highly sophisticated and innovative solutions, serving the market to the greatest extent possible. ***The activities of a consolidated tape provider in collecting and distributing data across the EU comprise a number of different functional activities that may be provided most efficiently and effectively by more than one entity, each co-operating together and to be treated collectively as a CTP for the purposes of this Directive.***
Article 61(2) 2. By way of derogation from paragraph 1, Member States shall allow any market operator to operate the data reporting services of an APA, a CTP and an ARM, subject to the prior verification of their compliance with the provisions of this Title. Such a service shall be included in their authorisation.	Article 61(2) 2. By way of derogation from paragraph 1, Member States shall allow any market operator to operate ***or be one of the participating operators of*** the data reporting services of an APA, a CTP and an ARM, subject to the prior verification of their compliance with the provisions of this Title. Such a service shall be included in their authorisation.
Article 65 **Requirements for the management body of a data reporting services provider** 1. Member States shall require that all members of the management body of a data reporting services provider shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties. The management body shall possess adequate collective knowledge, skills and experience to be able to understand the activities of the data reporting services provider. Member States shall ensure that each member of the management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management. Where a market operator seeks authorisation to operate an APA, a CTP or an ARM and the members of the management body of the APA, the CTP or the ARM are the same as the members of the management body of the	*Article 65* **Requirements for the management body of a data reporting services provider** 1. Member States shall require that all members of the management body of a data reporting services provider shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties. The management body shall possess adequate collective knowledge, skills and experience to be able to understand the activities of the data reporting services provider. Member States shall ensure that each member of the management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management. Where a market operator seeks authorisation to operate ***or be one of the participating operators of*** an APA, a CTP or an ARM and the members of the management body of the APA, the CTP or the ARM are the same as the

regulated market, those persons are deemed to comply with the requirement laid down in the first subparagraph.	members of the management body of the regulated market, those persons are deemed to comply with the requirement laid down in the first subparagraph.
Article 67 4. The home Member State shall require the CTP to operate and maintain effective administrative arrangements designed to prevent conflicts of interest. In particular, a market operator or an APA, who also operates a consolidated tape, shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.	Article 67 4. The home Member State shall require the CTP to operate and maintain effective administrative arrangements designed to prevent conflicts of interest. In particular, a market operator or an APA, who ***is*** also ***the*** operates***or or one of the participating operators of*** a consolidated tape, shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.
Article 67 8. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures specifying: (a) the means by which the CTP may comply with the information obligation referred to in paragraphs 1 and 2:	Article 67 8. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures specifying: (a) the means by which the CTP may comply with the information obligation referred to in paragraphs 1 and 2***, including recognition that such obligations comprise a number of different functional activities that may have to be supplied or provided by more than one entity, each co-operating together and to be treated collectively as a CTP*** ;

Justification

Looking at the current structure of the arrangements for collection and distribution of market data, where there are multiple aggregators at different levels (firms, trading venues etc) and different distributors have varying degrees of national customer coverage, it will not be practical to establish arrangements where any single entity can act as both collector and distributor (at least) of all relevant data. We suggest that, as the activities of a consolidated tape provider in collecting and distributing data across the EU comprise a number of different functional activities that may be provided most efficiently and effectively by more than one entity, each co-operating together, they should be treated collectively as a CTP for the purposes of the Directive. These amendments allow for such a collaborative approach, in relation to the CTP, ARM and APA reporting activities.

[redacted]

[redacted]

From: [redacted]
Sent: 22 October 2012 13:55
To: [redacted]

Subject: MiFIR - access
Attachments: MIFIR Arts 2829 proposal 22Oct12 (2).docx

We would like to draw the attention of delegations to this file which the Council is discussing at the moment. In particular we would refer to Articles 28-29 of the draft MiFIR.

We are very concerned about the potential negative impact of the Commission draft on systemic risk, on efficient price formation and on the competitiveness of the exchange-traded derivatives markets in the EU. We note that this issue was a delicate topic in the EMIR negotiation. Therefore as a solution that minimises risk to the financial system, we propose building on the already agreed position in EMIR, which provides for access for securities and money market instruments but not for exchange-traded derivatives. This solution:

1. will avoid fragmentation;
2. restricts systemic risk;
3. avoids interoperability for derivatives; and
4. is consistent with the EMIR compromise.

The final legislation on EMIR requires ESMA to produce a report on interoperability for derivatives by 30 September 2014. The solution we propose is consistent with this agreement.

We respectfully submit the attached text for your consideration.

Yours sincerely

[redacted]

ICE Futures Europe/ICE Clear Europe
Registered Office: 5th Floor | Milton Gate| 60 Chiswell Street | London | EC1Y 4SA| United Kingdom

[redacted]

From: [redacted]
Sent: 16 October 2012 16:55
To: [redacted]
Cc:
Subject: NLX Market Summary
Attachments: NLX Market Summary vFINAL.pdf; NLX - Launch Press Release .pdf

[redacted]

Good to meet you both today and thanks for your time. As discussed, please find attached an overview on NLX as well as the original press announcement. I have included the margin offset analysis that we did with the banks to show the potential margin percentage savings by combining clearing at one CCP.

Any questions, please let me know.

Best regards

[redacted]

[redacted]
Sent: Tuesday, October 16, 2012 05:50 PM
[redacted]
Subject: NLX Market Summary

[redacted]

From: [redacted]
Sent: 11 October 2012 18:19
To: [redacted]
Subject: RE: Position Limits
Attachments: 8-pr with att-cftc position limits filing[1].pdf.pdf.pdf; 201111positionlimitspositionmanagement[1].pdf.pdf.pdf

[redacted] some documents on what we discussed on Tuesday.

Also re our discussion on discretion within the MTF – if you create an HFT-free MTF, then this violates the open access / multilateral nature of MTFs – so is this a trade off people are willing to consider? Just some food for thought for tomorrow. Good luck!

[redacted]

From [redacted]
Sent: Wednesday, October 10, 2012 12:23 PM
To: [redacted]
Subject: Position Limits

[redacted] good to see you yesterday – further to our conversation:

CFTC basically has 2 options: 1) address the issues in the suit (i.e. do an analysis to meet the "necessary and as appropriate" statute of the legislation – eg that position limit rules are necessary to reduce or prevent excessive speculation or 2) appeal the District Court decision.

It is actually unclear at this point what the CFTC intends to do – Gensler has made public statements to the effect that he is considering ways to proceed. I am still trying to get clarity on how long the appeals process could take but as discussed yesterday, I think it could take some time if that is what they decide to do.

An important point which I forgot to mention to you yesterday - historic US position limits on agricultural commodities have only applied to futures. If the EU wants to rely on this precedent, then they need to understand the interaction with the OTC market and the concept of netting exposures between the markets. I am not sure if this point has been made in Council, but to the extent you get pushback on the need for consistency with the US, you might want to mention this point.

Will come back with more shortly.

[redacted]

[redacted]

[redacted]

From: [redacted]
Sent: 11 October 2012 11:00
To: [redacted]
Cc:
Subject: Follow up to meeting with RGM & HRT - HFT & algo definition issues

Dear [redacted]

Thank you again for taking the time to meet [redacted] and [redacted] the week before last when they were in Brussels.

As promised, we have put some of our thoughts on the definition issues when it comes to algorithmic trading / HFT .

- **The definition of "algorithmic trading" should be broadened to ensure appropriate risk management coverage.** The most important use of this definition is to determine who is subject to the risk management requirements in 17.1. Presently, to differing degrees, the European Parliament and the Council texts exclude certain agency execution and routing algorithms from the definition. However, the risks to the marketplace associated with the use of algorithms are essentially the same whether used by a principal or by an agent. In fact, several of the largest and highest profile U.S. market disruptions have been (reportedly) centered around agency algorithms, including the "Flash Crash", the recent Knight episode and the dramatic losses suffered by UBS during the Facebook IPO. From a risk perspective, agency algorithms should obviously be within scope of the risk management requirements.

  It is however **important to keep in mind of the concerns of users of brokers' algorithms – such as asset managers**. Clearly, the responsibilities and obligations for risk controls should fall on the brokers providing algorithms rather than on the end-users. In fact, **ensuring that algorithmic brokers have proper risk controls is potentially important for customer protection.**

- **The definition of "high-frequency trading" is important in determining which firms, which would not otherwise be required to be authorized, must become authorized by a competent authority.** We believe that by focusing on technology and message rates, the current broad definition of the Council text is appropriate. This definition is similar in many ways to the definition that was recently recommended by a United States CFTC advisory sub-committee. In considering potential definitions, the CFTC group decided that many firms who would typically be considered "HFTs" would likely be excluded under a definition that hinged upon features such as holding times, turnover rates, cancel rates or order-to-trade ratios. Moreover, restricting the definition to firms that trade only on their own account could allow firms to structure around inclusion in the definition.

It is, of course, important to ensure that the definition would not require investors such as asset managers to become authorized because they are using a broker algorithm. In those cases, the trading activity would be appropriately covered because the brokers providing the algorithms are themselves required to be authorized.

- Finally the question of the **scope of application on the continuous liquidity provision obligation (art 17.3) still remains very unclear**. The latest version of 17.3 in the Council text applies to an investment firm that uses algorithmic trading to engage in a market making strategy or "acts in a similar manner". The proposed definition of "engaging in a market making strategy" itself is vague, highly confusing and open to many possible interpretations. We urge greater legal certainty and clarity around what is meant . Firms need to know with certainty whether this rule will apply to them or not, as the consequences for guessing wrong on either side of the line could be grave. To have this certainty, it seems necessary in particular to remove the current language about "act[ing] in a similar manner."

We hope you find this is useful and would of course be delighted to discuss this further or elaboratore further on any of the above points.

Best regards,

[redacted]

[redacted]

From: [redacted]
Sent: 02 October 2012 16:46
To: [redacted]
Subject: FW: [UNCLASSIFIED] RE: JPM data on MiFID
Attachments: 9-28 opinion granting ISDA's motion for summary judgment.pdf; Document70.pdf; Position Limits Opinion SullCrom.pdf

Hi [redacted]

I just hit "send" to quickly on the below email to your HMT colleagues [redacted] because I had meant to copy you in as well. Apologies for forgetting to do so.

I thought the below might be of interest to you as well, just a bit of background on recent US developments in the area of position limits.

How are things anyway? Are you as happy as I am that football started back up again? Bayern is doing pretty well so from that perspective, I really can't complain. What's your UK team again?

All best,

[redacted]

[redacted]
Sent: 02 October 2012 16:41
To: [redacted]
Subject: RE: [UNCLASSIFIED] RE: JPM data on MiFID

Dear [redacted]

I hope you are well, despite a rather hectic autumn and even more to come...

Unfortunately I haven't yet managed to meet you personally, but I think you had in the meantime met with my colleagues [redacted] in recent BBA and AFME meetings at your offices. So in order to not completely drop of the radar, I thought I would send you a quick email [redacted] On a more serious note, though, I thought you might be interested in a quick update on US developments on position limits – which I am sure you have heard about already:

On Friday, [redacted]dge Robert Wilkins of the District of Columbia District Court ruled that the CFTC erred in adopting its final position limit rule (District Court's are the trial courts of the U.S. federal court system and have jurisdiction to hear nearly all categories of federal cases, including both civil and criminal matters). Judge Wilkins struck the rule and required the CFTC to start over. As a result, the first phase of position limits on OTC derivatives will not begin on October 12th and is postponed indefinitely.

Judge Wilkins based his ruling on his conclusion that the CFTC "fundamentally misunderstood and failed to recognize the ambiguities in the [Dodd-Frank] statute." In particular, the CFTC argued that Congress required it to impose position limits, but Judge Wilkins could not find such a requirement in his analysis of the statute. The statute requires the CFTC to determine that position limits are necessary, which the Judge determined the CFTC did not do: "*The agency failed to bring its expertise and experience to bear when interpreting the statute and offered no explanation for how its interpretation comported with the policy objectives of the [Dodd-Frank] Act.*"

Some have suggested that his analysis might apply to circumstances in other rules that the CFTC has put forth, including the cross border guidance. Judge Wilkins invalidated the position limits rule without having to address the cost-benefit analysis issue, which some have suggested may be a weakness in some CFTC rulemakings. It is worth noting also that Judge Wilkins was appointed by President Obama.

In terms of next steps, it is unclear whether the CFTC will appeal this decision. It is likely that, as a first step, the CFTC will revisit position limits by establishing a process to determine that they are necessary, as required under the statute.

Please find attached the opinion and related court order. You might also be interested in the attached law firm memo.

I hope this helps, and it may be helpful for current deliberations on the subject matter in Europe – but I do of course realize that discussions are already rather advanced. Should you have further questions, please do not hesitate to reach out.

Best regards,

[redacted]

From: [redacted]
Sent: 13 July 2012 17:14
To: [redacted]
Subject: [UNCLASSIFIED] RE: JPM data on MiFID

[redacted]

I think I was at that meeting. Please don't hesitate to contact me if you have any issues.

Regards,

[redacted]

From: [redacted]
Sent: 13 July 2012 14:09
To: [redacted]
Cc: [redacted]
Subject: RE: [UNCLASSIFIED] RE: JPM data on MiFID

Thank you [redacted]

[redacted] welcome to the MiFID world. Please do not hesitate to reach out with any questions you may have on the deck, or if we can be helpful in any way with more data, analyses, explanations, etc. We stand ready to make our business experts available to you at any time. We have come in to see [redacted] and [redacted] in May, but if you think it would make sense to meet up and run you through our key issues as negotiations progress, please do let us know.

[redacted] thanks for your tip on how to look at the own capital issues. We will discuss and see what can be done to confront the challenge.

Good luck in your new role.

Best regards,
[redacted]

From: [redacted]
Sent: 13 July 2012 10:36
To: [redacted]
Cc: [redacted]
Subject: [redacted] RE: JPM data on MiFID

[redacted]

Thanks very much for this interesting slidepack. It's a really good explanation of why non-equity markets are different from equity markets.

I have moved role and am no longer covering MiFID. However I am copying in [redacted] who are, and they will know where negotiations have reached.

On the own capital point, my personal thought FWIW is whether it would be helpful to spell out in detail the mechanism by which the M2 proposals are expected to threaten dealer capital. This is to confront the challenge that the market will be able to adapt to market-making over 3rd party platforms – on which there is no ban on dealing as principal.

Regards
[redacted]

From: [redacted]
Sent: 13 July 2012 09:42
To: [redacted]
Subject: [redacted]

Dear [redacted]

I hope things are going well, and that you will soon get a bit of well-deserved rest from the ongoing MiFID debate. Many thanks for your hard work on the file!

With this email, we wanted

- to send across the attached slides (which you already know), but with now some additional data on liquidity variance (page 6)
- provide some more JPM internal data, to support our arguments on the need to go beyond the (narrow) "matched principle trading" exemption from the use of own capital – as currently in the Council compromise wording
- Ask for your advice how we can best help, or support your work, on that subject matter

We know that you are aware of our arguments (and those of others) on the prop cap issue, stating that it is imperative that clients have the option to interact with all forms of liquidity within an OTF. And that we believe the European Commission's proposed own capital ban overlooks the essential role that investment firms' house capital plays in

facilitating client business, by curtailing the ability of market makers to take on principal risk, which is critical in particular to the effective functioning of those markets featuring a low "participant to instrument" ratio, such as bond markets (see also data from our deck). This ability enables market makers to offer investors "immediacy" of execution in markets otherwise lacking a natural continuous two-way flow of buy and sell interest.

And you may also have seen FSA estimates that 95% of dealer-to-client trades in the European interest rate swaps market are against the dealer's own capital.

However, following this line of thought, we felt it would make sense to underline our arguments and – more importantly – support yours in ongoing Council negotiations with a closer look at proprietary data from our fixed income business:

- For European Government Bonds in 2011, of all the tens of thousands of client trades we did, both electronically and via voice, only 14.3% were multiple trades in the same bond on the same day. This theoretical match rate ignores time ("does a buyer want to buy at the same time a seller wants to sell?") and size ("does a buyer want to buy exactly as much as a seller wants to sell?").

- In reality the matched rate will be much lower than 14.3% as time of day and size will eliminate most of these theoretical matches: Capital commitment is required to facilitate client trading where one client wants to buy in the morning and another sell in the afternoon or one client wants to buy in €1 million and another client sell in €10 million. Re-running the figures taking into consideration size including a 10% tolerance (i.e. assuming a client's willingness to deal either 10% of the notional more, or 10% of the notional less than what he/she "really" wanted to trade) and the match rate goes down to only 0.75%.

- If we also took into account time, the figure would be even lower. So the conclusion, based on these facts, is: matched principal trading alone does not provide any adequate support for client trading needs in fixed income.

- The same (or "worse") holds true for the corporate bond market, given that the number of possibly traded instruments (in relation to participants trading them) is even greater.

You can see why we believe the proposals on prohibiting use of own capital would interfere with the way the markets have naturally developed over time to assist that need for liquidity (by firms using their own capital to take the risk on a short term basis). So even with possible changes towards "matched principal trading" exemptions, this would mean a significant withdrawal of liquidity in such markets, and in turn entail a risk that commercial counterparties would find it more difficult to hedge their risks at the right time or at the right price due to the reduced liquidity in the markets. Reduced liquidity would in turn also make it more expensive to hedge risks, as you know.

We realize that you are fully aware of these arguments, but just to reiterate that allowing the use of house capital in an OTF - subject to client awareness / opt-in as we would propose - would maximise client choice and preserve liquidity, minimise costs, allow innovation. We believe that conflicts of interest that may arise are best prevented by specific controls and anti-trust rules rather than an outright ban.

And with that, the quick question on what you think we should do to support our arguments (and yours even more). Is it worth reaching out to any particular Member States, in your opinion? Is more data needed? How can we best help?

Best,

[redacted]

[redacted]

From: [redacted]
Sent: 02 October 2012 22:14
To: [redacted]
Cc:
Subject: Re: MiFID: Follow-up to our meeting with Tradeweb

Dear [redacted]

Further to our previous email, you will find outlined below the features of the institutional fixed income/derivatives markets that differ significantly from the equities markets along several key parameters. In addition, we have noted below some issues being addressed in MiFID II/MiFIR where we believe such differences between these markets would require differing regulatory approaches.

We hope you find the below info useful.
Regards,
[redacted]

Issue	Institutional Fixed Income/Derivatives	Equities
Number of Instruments	Many	Few
Number of Participants	Few	Many
Frequency of Trades	Low	High
Average Trade Size	High	Low
Trading Relationships	Disclosed (Parties reveal identities before transaction)	Anonymous
Trading Methods	Request for Quote (RFQ) Click to Trade (Streaming Prices)	Central Limit Order Book

Selected Relevant Issues in MiFID II/MiFIR

Pre/Post-Trade Transparency. As noted by many market participants, pre/post-trade transparency obligations need to be tailored to the features of the institutional fixed income/derivatives markets to avoid adverse consequences for liquidity.

Required Indicative Pricing. Trading venues in the fixed income/derivatives markets such as Tradeweb publish indicative prices for a wide range of instruments based on pricing furnished by market makers. However, given the enormous number of bonds and derivatives (as compared to equities), it is not realistic to expect liquidity providers to continuously furnish pricing for **all** such instruments. As a result, it is not possible for venues, in turn, to provide indicative pricing for **all**such instruments, as currently contemplated in the Council version of MiFIR. (See MiFIR Article 7(3)).

Required Incentives for Market Makers to Provide Competitive Firm Prices. Whereas there may be circumstances under which trading venues hosting anonymous trading should be required to incentivise market makers to provide competitive firm prices, this is not the case for venues with disclosed trading modes (where the counterparties are aware of each other's identities on a pre-trade basis). These types of "disclosed" trading models already have a built-in incentive for market makers to provide competitive firm prices: if market makers do not provide such prices, then their

buy-side clients will stop asking them for quotes and will instead seek liquidity from other entities. (See MiFID II Article 51(a)).

System Monitoring/Compliance. Various provisions in MiFID II requiring systems monitoring/compliance may make sense for equities markets but are not appropriate for the institutional fixed income/derivatives markets. These include systems to (1) reject orders that exceed pre-determined price thresholds, (2) halt trading following significant price movements, including on other markets, (3) limit the ratio of unexecuted order to transactions entered into the system and (4) limit minimum tick sizes. (See MiFID II, Article 51).

[redacted]

Dear [redacted]

Many thanks again for being available to meet with us yesterday. It is much appreciated.

Further to our meeting, please see below the list of Tradeweb concerns as regards the Council compromise texts of 14 September.

Do not hesitate to let us know if you have any questions and we hope that you could take these concerns into account in the Council discussions going forward.

Kind regards,

[redacted]

Tradeweb concerns on MiFID II-MiFIR

Derivatives Trading Mandate

We disagree with the proposed new requirement (Article 26(2)(b)) that for a derivative instrument to be subject to the trading mandate, such instrument must have "sufficient continuous third party buying and selling interest" (in addition to being "sufficiently liquid" as previously proposed). Unlike equities instruments, derivatives (such as interest rate swaps and credit default swaps) are primarily traded outside of exchanges and do not trade "continuously" (or even frequently), yet they are liquid and can be and are readily traded electronically. Notwithstanding the periodic nature of derivatives trading activity, various electronic trading venues have developed efficient solutions for market participants to trade such instruments, including through the "request-for-quote" trading model. While it is unclear exactly what is meant or intended by "sufficient continuous third party buying and selling interest, we are concerned that interpreted literally, this "continuous trading requirement" could exclude virtually all off-exchange derivatives being subject to the trading mandate.

The revised draft indicates (in a side comment to Article 26(2)(b)) that such change has been proposed to the trading mandate to conform to the new language in Article 2(7a) regarding "liquid markets", which is a concept relevant for pre-trade transparency obligations in MiFIR. However, this does not make sense. The criteria for determining whether a derivatives transaction should be subject to the trading mandate needs to be considered separately from the criteria for determining whether such trade should be subject to pre-trade transparency obligations. For example, some derivative transactions that may not be appropriate for pre-trade transparency (e.g., infrequent 50-year interest rate swaps) are conducive to electronic trading.

Indicative Pricing for Fixed Income/Derivatives Instruments

The proposed obligation that trading venues must publish indicative prices close to advertised quotes for **all** fixed income/derivatives instruments subject to the relevant pre-trade transparency waivers is not practicable (Article 7(3)). Trading venues such as Tradeweb in the fixed income/derivatives markets publish indicative prices for a wide range of instruments based on pricing furnished by sell-side liquidity providers. However, given the enormous number of bonds and derivatives (as compared to equities), it is not realistic to expect liquidity providers to continuously furnish pricing for **all** such instruments, which would allow trading venues, in turn, to provide indicative pricing for **all** such instruments.

Equal Playing Fields Across Venue

- Pre-Trade Transparency. Further consideration is required regarding how pre-trade transparency obligations may be met and monitored in a voice trading or discretionary trading environment to ensure a level playing field with trading venues where real-time dissemination of pre-trade data may be more feasible from a technological perspective.

- Regulatory Obligations. In order to ensure a level playing field amongst trading venues and avoid the opportunity for regulatory arbitrage, it is important that OTFs are subject to the same regulatory obligations that are imposed upon MTFs and regulated markets where their activities are equivalent. This principle is not reflected consistently throughout MiFIR/MiFID II – for example see the MTF obligation in Article 19(4) to comply with the conditions of Article 51 as compared with the OTFs corresponding obligation in Article 20(8) to comply with Article 51 which only relates to algorithmic trading activities.

Derivatives Clearing Obligation—Timing

Article 25 (extending the scope of the clearing mandate to exchange-traded derivatives) should be effective immediately upon enactment. CCPs should be able to implement this provision immediately without the need for the [18][24]-month phase-in period that market participants may require to implement other MiFIR provisions.

Incentives for Provision of Liquidity

The revised draft requires trading venues to provide incentives to market participants to furnish firm quotes at competitive prices, unless such requirement is not appropriate to the nature and scale of the market. We urge the Council to specify that venues characterised by trading modes where the counterparties are aware of each other's identities on a pre-trade basis (which is typical in the off-exchange fixed income/derivatives markets unlike the anonymous trading commonly found on exchanges) do not need to provide such incentives. These types of "disclosed" trading models already have a built-in incentive for market participants to provide competitive firm prices. If they do not do so, then their buy-side clients will stop asking them for quotes and will instead seek liquidity from other entities.

Sponsored Access/Direct Market Access

In the fixed income/derivatives markets, buy-side clients may be provided with access to electronic venues through investment firms that are participants on these venues. Under these circumstances, the counterparties to a trade will know the identity of both the buy-side entity and the individual trader accessing the venue through the investment firm. This arrangement allows buy-side clients to access liquidity on the venues and may be particularly helpful when the client does not trade frequently enough to justify expending the resources to become a direct participant on the platform. These fully transparent arrangements do not trigger the HFT or potential market abuse concerns that are the apparent considerations behind the proposals to prohibit sponsored access/direct market access and so consequently should be carved out from any such prohibitions.

[redacted]

Sent: 27 September 2012 19:34

Cc: [redacted]

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[redacted]

From: [redacted]
Sent: 20 September 2012 07:57
To: [redacted]
Subject: NYSE Euronext Input on MiFID/R: Transparency
Attachments: NYSE Euronext Comments on Transparency for Trading Venues - CWG 20 September.pdf

[redacted]

I hope you are well. I realise that this email is arriving late for the Council Working Group meeting today, but I thought nonetheless that you might like to see our thoughts on price transparency, which are set out in the attached note.

In summary:

- NYSE Euronext strongly disagrees with the Presidency's proposal to introduce a **"reference price" waiver** from pre-trade transparency in the equity space. The risk of market impact (large orders) should be the only reason justifying the waiving of pre-trade transparency requirements. We believe that only LIS child orders should benefit from a pre-trade transparency waiver in the equity space.

- **On non-equities,** we welcome the inclusion of a **waiver to cover indications of interest** in MiFIR Article 8, but consider that this approach should cover both firm and non-firm quotes. If not, current market models which employ firm quotes will not be able to operate under the regime and the paradoxical outcome may well be that there is a shift towards completely non-firm quotes.

Best regards,

[redacted]

[redacted]

www.nyse.com

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