

6 March 2024

via Electronic Mail (cp23-32@fca.org.uk)

Ms. Sarah Pritchard – Executive Director, Markets and International
Mr. Sheldon Mills – Executive Director, Consumers and Competition
Mr. Stephen Hanks – Manager, Markets Policy Division

Financial Conduct Authority

12 Endeavour Square, London E20 1JN

Re: Consultation on Improving transparency for bond and derivatives markets (CP23/32)¹

Dear Director Pritchard, Director Mills, and Mr. Hanks,

On behalf of Data Boiler Technologies, I am pleased to provide the U.K. Financial Conduct Authority (FCA) with our comments on the CP23/32 Consultation Paper concerning the proposals to improve the transparency regime for bond and derivatives markets. We understand the need to recalibrate the regime to better reflect the specific nature of bond and derivative markets, and to deal with the issues included in the Wholesale Markets Review (WMR). The FCA proposed new regime comprises of:

- *“Harmonised transparency requirements applicable to trading venues (TVs) and to investment firms (IFs) dealing Over-the-counter (OTC). The asset classes for which we specify these requirements are sovereign bonds, corporate bonds, and certain derivatives subject to the clearing obligation.*
- *Set the standards and criteria that TVs should have regard to when calibrating transparency. Reflect the high standards that apply to Recognised Investment Exchanges (RIEs) in relation to Exchange traded derivatives (ETDs) such as futures and listed options.*
- *Greater emphasis on the quality and timelines of post-trade transparency and propose a simpler and more timely post-trade regime based on shorter deferrals for bonds and OTC derivatives while ensuring that liquidity providers are sufficiently protected against undue risk.*
- *Expand on and proposing guidance in Perimeter Guidance Material (PERG) to help with interpretation of, the definition of a Systematic Internaliser (SI) in UK MiFIR based on qualitative criteria which aim to balance clarity for IFs to decide if they are SIs with the need for the definition to flexibly apply to different markets and business models.”*

It is a huge undertaking. We applaud the FCA for their efforts and their collaboration with the industry² to hash out the calibration details. The experience in the US of various improvement initiatives for market transparency reporting systems at FINRA³ and the CFTC review of its swaps regulatory framework (‘CFTC rewrite’),⁴ are filled with push back and delays.⁵ To quote indirectly from a SIFMA comment letter to FINRA,⁶ [the policy maker should] *“bear in mind when designing any*

¹ <https://www.fca.org.uk/publication/consultation/cp23-32.pdf>

² <https://www.icmagroup.org/assets/documents/Regulatory/MiFID-Review/EU-Consolidated-Tape-for-Bond-Markets-Final-report-for-the-European-Commission-290420v2.pdf> ; https://www.icmagroup.org/assets/ICMA_BMLT_Liquidity-and-resilience-in-the-core-European-sovereign-bond-markets_March-2024.pdf

³ <https://www.finra.org/filing-reporting/market-transparency-reporting/initiatives>

⁴ https://www.cftc.gov/media/9921/Part43_45TechnicalSpecification12132023CLEAN/download ; https://www.cftc.gov/media/8416/Part43_45BlockThresholdsCapSizes0423/download ; <https://www.cftc.gov/sites/default/files/2023/02/2023-03661a.pdf>

⁵ <https://www.risk.net/regulation/7924251/calls-grow-for-cftc-to-delay-rewritten-swaps-reporting-rules> ; <https://www.fia.org/marketvoice/articles/commentary-evolution-cftcs-approach-swap-reporting>

⁶ <https://www.sifma.org/wp-content/uploads/2021/02/SIFMA-Response-to-FINRA-Regulatory-Notice-20-43.pdf>

planned enhancements to [trade] reporting and the schedule and implementation process to support them, ... when considering the technical and operational challenges of making any enhancements for reporting firms, there are substantial differences among [trade] reporters. Different firms may be starting from different levels, depending on existing systems and infrastructure, ... What makes sense for one market is not necessarily achievable for all markets, due to issues such as differences in market structure or timelines for trading.”

To level set the expectation, consensus will be hard to reach amid many differences among stakeholders. Hence, do NOT celebrate early. It is understandable that people want to “check the box” to get a post-trade Bond Consolidated Tape (CT) up-and-running ASAP. It does NOT necessarily translate into market structure improvement.⁷ Be mindful about ‘majoring in the minors’ where this proposal prescribed technical details on data handling by a CT Provider (CTP), while we wished for a priority focus on the following topics:

- *“The architecture of OTC markets and the inability to value one’s holding and the inability to sell structured securities (e.g. credit derivatives, commercial paper, municipal bonds) at times of market disturbances.”⁸*
- *“OTC markets that rely on the balance sheet intermediation capacity of a few dealers, versus the feasibility and cost-benefit of centralising bond trading on exchange-based central limit order books”⁹*
- *“Liquidity in Corporate Bonds Markets under Stressed Conditions”¹⁰ and “where can increased transparency further financial stability?”¹¹*

Nevertheless, 3.34 on page 19 of this proposal states *“the information to be disclosed include the execution time of a trade, details of the instrument being traded, price and size. They must be made available as close to real time as possible and in any case within 5 minutes of execution.”* FINRA proposed to reduce TRACE reporting time frame to 1 minute for all TRACE-Eligible Securities, including U.S. Treasury Securities, with exceptions for member firms with de-minimis reporting activity and for manual trades, in the US.¹² Amid a trade association – SIFMA have stated that *“the proposed 1 minute reporting rule [if] adopted [would] expose the broker-dealer community to significant liability and creating risk to the function of some fixed income markets... FINRA ... should ... examine impacts to liquidity, depth, concentration, and transparency ...”¹³* The FCA should observe if this FINRA proposal may or may not be approved in determining appropriate harmonization of regime with other jurisdictions.

Chapter 4: Scope of the new regime

We agree CTP should consolidate trade reports for all bonds, other than ETCs/ ETNs, that are admitted to trading or Trading on Trading Venues (ToTV) in the UK. For derivatives, it is understandable that the FCA wanted the proposed scope of OTC derivatives transparency to be based on predefined characteristics, including those derivatives which are under the scope of the clearing obligation, rather than derivatives based on admission to trading (ToTV). Clearing obligations responsible by the Bank of England (BoE) do cover most of the liquid derivatives that the FCA wants to ensure appropriate market integrity.

We agree with including iTraxx Europe Main and iTraxx Europe Crossover as Category 1 instruments. They are some of the most liquid instruments available for trading globally in the 5-year tenor category used by bulge brackets for optimizing

⁷ <https://www.linkedin.com/pulse/up-and-running-consolidated-tape-versus-market-structure-kelvin-to-itlac/>

⁸ <https://www.imf.org/external/pubs/ft/fandd/basics/pdf/dodd-markets.pdf>

⁹ https://www.world-exchanges.org/storage/app/media/Centralizing%20Bond%20Trading_8%20December%202022%20binded3.pdf

¹⁰ <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD634.pdf>

¹¹ www.financialresearch.gov/frac/files/OFR_FRAC-meeting_where_can_increased_transparency_further_financial_stability.pdf

¹² <https://www.sec.gov/files/rules/sro/finra/2024/34-99404.pdf> ; <https://www.sec.gov/files/rules/sro/finra/2024/34-99640.pdf>

¹³ <https://www.sifma.org/wp-content/uploads/2024/02/SIFMA-Comment-Letter-Trade-Reporting-SEC-FINAL.pdf>

risk exposures. We agree with the proposal to include spot and forward starting swaps within the same tenor bucket, amid ION Clarus Financial Technology has *“75% of liquidity in Spot starting products, 15% in Forwards and the remainder evenly distributed between IMM and MAC products.”*¹⁴

We have no objection to prioritize BoE clear obligation for OTC derivatives as a Day 1 target for the CT. We however see opportunities for the UK as a global financial centre to also include non-BoE cleared items in the long-term. It is worth reconsidering whether to exclude or not to exclude, for example, the Tokyo Average Overnight Rate (TONA) overnight index swaps (OIS) based on Japanese Yen from the list of Category 1 instruments. Amid Japan has lost its status as the world’s third-largest economy to Germany after slipping into a technical recession recently.¹⁵ Japan’s renewed efforts to push shift from savings to investments is encouraging.¹⁶

Single-name Credit Default Swaps (CDSs) are not subject to the clearing obligation in the UK. Also, for uncleared OTC Swaps that do not have a Swap Execution Facility (SEF) or Derivatives Clearing Organization (DCO) to assign the Unique Trade Identifier (UTI), the CFTC rewrite does require reporting by third-party reporting vendors. Part 45 of CFTC rewrite – *“Swap Data Recordkeeping and Reporting Requirements”* only requires reporting to data repositories and regulators, not the public. One who is doing things fairly and squarely should not be subjected to regulatory scrutiny and related regulatory reporting cost burdens. The dysfunctional security-based swap market¹⁷ and/or the OTC markets¹⁸ may cause a liquidity crunch to the broader financial system. Therefore, regardless of clear obligations at BOE or not, data elements about counterparties or collateral management are useful for market monitoring purposes.

This proposal treats FX derivatives, Forward Rate Agreements (FRAs), fixed-to-floating Interest Rate SWAPS (IRs) (other than those based on EURIBOR) as relatively less crucial data elements than those instruments defined in Category 1. Yet, these instruments could be used to: (i) drive firms’ liquidity needs under market stress; (ii) be used as actions in response to those liquidity needs, and the liquidity available to them; and/or (iii) additional actions to deleverage, reduce risk exposures, or rebalance portfolios. Reference to a 2023 speech by Professor Randall Kroszner (ex- Governor of the Federal Reserve),¹⁹ we wonder if anything falls within the ‘3 transmission channels’ that the System-Wide Exploratory Scenario (SWES)²⁰ will investigate may require reporting to regulators, not the public (i.e. Part 45, but not Part 43 of CFTC rewrite).



Source: Bank of England

¹⁴ <https://www.clarusft.com/liquidity-in-usd-swaps/>
¹⁵ <https://www.bloomberg.com/news/articles/2024-02-16/how-did-japan-enter-into-recession-and-can-it-recover>
¹⁶ <https://www.japantimes.co.jp/news/2023/04/25/business/economy-business/savings-to-investments-japan/>
¹⁷ <https://www.sec.gov/swaps-chart/swaps-chart.pdf>
¹⁸ <https://www.imf.org/external/pubs/ft/fandd/basics/pdf/dodd-markets.pdf>
¹⁹ <https://www.bankofengland.co.uk/speech/2023/november/randall-kroszner-keynote-speech-at-the-reserve-bank-of-clevelands-2023-fs-conference>
²⁰ <https://www.bankofengland.co.uk/financial-stability/boe-system-wide-exploratory-scenario-exercise>

We think adequacy of transparency in OTC markets is a question about the divergence of private rights and social costs.²¹ Practically, do government agencies have sufficient resources (both financially and compassionately) to administer appropriate enforcements²² in a cost-effective manner to achieve all regulatory goals? Do regulators only care when there is an outsized loss of a big firm²³ causing systemic risks in the market?

Advancement of electronic credit trading can defy volatility and stay surprisingly sticky, amid *“incidents in March 2023 where Silicon Valley Bank was closed by US Federal regulators and \$17 billion worth of Credit Suisse Additional Tier One (AT1) bonds were written to zero, sending contagion to the roughly \$250 billion worth of AT1 bonds outstanding, primarily from European Banks.”*²⁴ How policy makers would answer the questions in the above paragraph may vary subjectively and depending on where one likes to position its transparency regime globally compared to other jurisdictions.

Chapter 4: Bucket Swaps by Tenors

Reference to a 2022 press interview with International Financial Law Review (IFLR),²⁵ I have said *“the CFTC rewrite ... may be overly prescriptive rather than using principles-based rule. I can see why the regulators may be tightening scrutiny, especially after the Archegos and other events... US and European SWAPs rules ought to be synchronized.”* We agree with paragraph 18 of this proposal about the inefficiency in the current regime in UK, *“To determine liquidity, the current regime relies upon a complex set of calculations to classify financial instruments as either liquid or illiquid with illiquid ones being exempt from pre-trade and real-time post-trade transparency. To support the calculations, we established a system (the Financial Instruments Transparency System (FITRS)) requiring around 120 firms (APAs, RIEs, firms operating an MTF or OTF and SIs) to submit daily files. This is costly for us as well as for firms, particularly smaller ones and new entrants, for which the fixed costs are large relative to the size of business.”*

The challenge to determine what is liquid versus illiquid is analogous to the HM Treasury department trying to gauge the appropriate balance between savings and investment in determining the right monetary policy to foster economic activities. How the interest rate, money supply, and currency exchange may affect the velocity of debt cycle; dynamic in repos and swap markets; the relative size of Muni versus Corporate Bonds, as well as on-the run versus off-the-run treasury securities, replenishment of debt securities inventory by buyers amid global disintermediation (e.g. China reduce buying of US and other countries' Treasury products) ... the list can go on-and-on.

The FCA's Financial Instruments Transparency System (FITRS) hosts all the results of the MiFID transparency calculations for the UK relating to equities, ETFs, equity-like instruments and bonds. It currently does not perform calculations in any derivatives. We agree with paragraphs 3.30 and 3.31 of this proposal *“the nature and depth of liquidity is fundamentally different for fixed income and derivative instruments compared to equities... liquidity designations based on historic trading data are not an effective predictor of future trading in that instrument.”* We do like the FCA's approach, where 4.3 of this proposal said *“For ‘Category 2’ bonds and derivatives, trading venues will be expected to provide adequate pre- and post-trade transparency in relation to all transactions executed under their systems... will allow them to calibrate the level of transparency that is appropriate for their markets.”*

How to improve the capabilities of FITRS and conduct a qualitative and quantitative assessment to decide the liquid classes of financial instruments is a moot point. Learn from the FINRA's TRACE recalibration²⁶ in the US to formulate a

²¹ https://maisliberdade.pt/site/assets/files/1371/the_myth_of_social_cost.pdf

²² <https://sites.law.duke.edu/thefinregblog/2021/02/10/regulatory-enforcement-in-otc-markets/>

²³ <https://www.hedgeweek.com/2021/05/05/299729/archegos-collapse-shows-what-can-happen-when-leverage-misapplied>

²⁴ www.tradeweb.com/newsroom/media-center/insights/blog/electronic-credit-trading-defiesvolatility-stay-surprisingly-sticky/

²⁵ <https://www.iflr.com/article/b1wl4w7g775jrq/industry-relieved-by-6-month-cftc-rewrite-delay>

²⁶ <https://www.sec.gov/spotlight/fix-income-advisory-committee/transparency-panel-venkataraman-may-2020.pdf>

strategy to suit the issuers and the investors' appetites. Synchronizing Swap regimes internationally will yield fruitful results in the furtherance of market electrification to benefit the investment and trading communities. From the perspective of institutional block trading, cap values in relative to the block thresholds can be indicative for sizing block trades with large counterparties. Instead of customizing parameters by countries, it would be ideal if the UK, EU and other developed markets' block threshold, cap sizes, and the notional amounts by difference tenors can be in synchronized, or at least use similar terms, as the CFTC Part 43 – “Real-Time Public Reporting.”²⁷

Chapter 5: Framework for waivers and deferrals

Trading Venue Perimeter in the US and EU are between a rock and a hard place.²⁸ Simplifying the requirements applicable to trading venues in relation to transactions negotiated bilaterally and reported onto trading venues in the UK are welcome in general. We agree with paragraph 5.14 that proposed a simpler framework to deferrals where:

- only large trades are eligible (but we also propose short “technical” deferrals for packages);
- post-trade information is not aggregated, neither temporarily nor permanently, but always published on a trade-by-trade basis;
- early publication of price information is prioritised while information on the size of trades can be deferred for an extended period;
- the largest trades benefit from either an extended deferral or permanently where capped.

For Request for Quotation (RFQ) or Voice Trading systems, this article²⁹ provides context of the opaque MiFID II requirements that resulted in *“lots of public pre-trade price information including depth ... requirement is waived for ... Actionable indications of interest in RFQ or Voice that are above a Size Specific to that financial instrument, which would expose liquidity providers to undue risk... a Sovereign Bond with Issue size of €1billion or more will be Liquid, while a Corporate Bond with Issue size of €500million or more will be Liquid...”*

Per this European Commission delegated act,³⁰ *“RTS 2 stipulates the size of orders/transactions which are large in scale (LIS) and the size-specific to the instrument (SSTI) thresholds. The SSTI can be either: A fixed threshold (e.g., EUR 200,000 or EUR 300,000, depending on the type of bond). The amount above the 30th percentile of the actual daily notional amount traded (whichever is higher). Currently, 9% of sovereign bonds and 5% of other types of bonds are traded under a pre-trade SSTI waiver.”* We do not necessarily agree with *“post-trade transparency has been significantly more helpful than pre-trade transparency in supporting price formation in bond and derivative markets”* in paragraph 3.24 of this proposal. We do acknowledge that by adopting paragraph 3.23 in *“removing the SSTI deferral and allowing comprehensive volume-masking,”* it will encourage timely price formation. Whether it will limit market risk for institutional block trading is a question mark depending on the size of the trade. Thus, the waiver for LIS orders ought to be reviewed periodically.

We have no objection to paragraphs 4.6, 5.3, and 5.4 of this proposal about *“not forcing those systems to operate above a certain size nor to publish composite indicative prices when dealing above that size. Execution through those systems under a waiver from pre-trade transparency would be permissible if it is at a better price than those advertised through the systems of the trading venue to which the trade is being reported... removing the existing detailed pre-trade requirements for voice and RFQ systems as those requirements are predicated on the assumption that they can operate under a similar level of transparency as other trading protocols... deleting the waivers for RFQ and voice systems operating above certain transaction sizes (the ‘SSTI’ waiver) and the waiver for instruments for which there is not a liquid market.”*

²⁷ <https://www.CFTC.gov/media/5016/ DMO Part 43 2020BlockThresholdsandCapSizes101320/download>

²⁸ <https://www.thetradenews.com/blog/trading-venue-perimeter-us-vs-eu-differences-but-equally-unpopular>

²⁹ <https://www.clarusft.com/mifid-ii-and-transparency-for-bonds-what-you-need-to-know/>

³⁰ <https://ec.europa.eu/transparency/documents-register/api/files/C%282020%298824?ersIds=de00000000038684>

Chapter 6: Real-time transparency and calibration of deferrals

Harmonisation of MiFID II deferral regime across the EU and UK is a challenge.³¹ Fragmentation seems inevitable when the UK and EU are taking divergent paths in favour of a friendly competition. In paragraph 6.29 of this proposal, the FCA is *“prioritising the benefits of immediacy of price publication over full disclosure of traded volume.”*

The proposed Model 2 allows trades between the thresholds both price and size to be published at End-of-Day (EOD) rather than after 15 minutes and 3 days, respectively. *“Model 1 is based on two LIS thresholds for each instrument group, resulting in 3 classes of transparency: (a) real-time price and size transparency for smaller trades, (b) volume masking for medium sized trades, and (c) full deferral of price and size for the largest trades.”* We found it amusing to compare the difference between the two models in paragraph 6.30 of this proposal.

Preference for Model 1 versus Model 2 and vice versa largely depended on one’s trading nature – large or small trades. We think all prices should be published by EOD. For size of trades larger than the upper threshold, it is okay to publish it within 6 to 8 weeks. We like Model 2 for its alignment with the US regime. Learning from the CFTC rewrite is the starting point (see footnote 4). We support the soonest implementation and followed by review and potential revision later.

We are perturbed by the proposed maturity groups of ‘< 5 years’, ‘5-15 years’, and ‘> 15 years.’ There are investment mandates that investment firms need to comply with for portfolio allocation in short, intermediate, and/or long terms. We recognize that Vanguard used Spliced Bloomberg US 5-10 Year Government/Credit Float Adjusted Index in their intermediate term bonds analysis.³² We observed that Morningstar picked, for example, ‘iShares 1-3 Year Treasury Bond ETF SHY’, ‘iShares 3-7 Year Treasury Bond ETF IEI’, and ‘iShares 7-10 Year Treasury Bond ETF IEF’ for their intermediate bonds category.³³ How ‘intermediate term’ may be defined as 1-10 years, 3-10 years, or 5-10 years are debatable. However, the proposed ‘5-15 years’ for intermediate and ‘>15 years’ for long are like pulling numbers out of the air to make Models 1 and 2 to look similar. It is totally user unfriendly because it defies the common standard of over 10 years (a decade) being “long term.” We are against the proposed maturity group.

Chapter 7: Exemptions from post-trade reporting

We understand the need to update Article 12 of Regulatory Technical Standards (RTS). We are good with *“maintaining the exemption under point a) which cross-refers to transactions that are not subject to the transactions reporting regime for the purposes of monitoring against market abuse.”*

We realize that the Commission Delegated Regulation (EU) 2023/944 aims to address inconsistencies in the application of provisions related to Non-Price Forming Transaction (NPFT).³⁴ Per paragraph 8.58 of this proposal, the FCA *“consider the ‘NPFT’ flag redundant. All types of transactions listed under Article 12 of this Regulation are not within scope of post-trade transparency requirements. They do not contribute to the price formation.”* The FCA is interested in addressing deficiencies where Undertakings for Collective Investment in Transferable Securities (UCITS) and Alternative Investment Fund (AIF) managers are currently NOT subject to trade reporting under UK MiFIR. The amendment to *“point b) transactions executed by a management company as defined in section 237(2) of FSMA a UK AIFM as defined in the AIFM Regulations ... an investment firm when providing the investment service of portfolio management which ... other than for the sole purpose of providing arrangements for the execution of such non-price forming transactions”* gives relief to firms that are subject to transparency obligations under UK MiFIR. It is a departure from the EU regime for inter-funds transfers.

³¹ https://www.allenoverly.com/global/-/media/allenoverly/2_documents/news_and_insights/publications/2023/08/mifid_ii_mifir_divergence_emergence.pdf

³² <https://advisors.vanguard.com/insights/article/why-intermediate-term-bonds-are-still-relevant-for-your-clients>

³³ <https://www.morningstar.com/portfolios/with-yields-climbing-above-46-intermediate-bonds-have-passed-tipping-point>

³⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023R0944>

Regarding amendment to point c), it is a controversy that give-ups/give-ins in the context of a Request for Market Data (RFMD) should be treated in the same way as other benchmark trades. We think the industry will benefit if the FCA can provide guidance to further clarify which types of give-ups/give-ins can or cannot be included in the list of trades exempted from post-trade transparency.

We think it is okay deleting point d) – *“Transfers of financial instruments that arise in the context of investment firms complying with margin or collateral requirements or that are part of the default management of a CCP,”* so long as the regime can effectively prevent duplication or omission of information about transmission of orders between IFs.

We have reservation with the new intra-group transactions exemption under point e). Amid execute transactions between entities within the same group that are not carried out at arm’s length but that arise exclusively for risk management purposes *“do not represent liquidity anyone can interact with, nor do they carry relevant information for the pricing of financial instruments”* per paragraph 7.22 of this proposal, these data elements can be useful for market monitoring purposes, see footnote 19. Do not undermine the usefulness of useless knowledge,³⁵ this intra-group transactions information could be a ‘Value-Added Service’ that many would love to have the insights.

Chapter 8: content of post trade information – fields and flags

The CFTC replaced the unique swap identifier (USI) with the unique transaction identifier (UTI) that governed by the ISO 23897 standard³⁶ in the US to be in harmony with other swap market regulators. In February 2023, the CFTC issued an order designating a Unique Product Identifier (UPI) that governed by the ISO 4914:2001³⁷ and a product classification system for use in swap recordkeeping and reporting.³⁸ The FCA rightly pointed out in paragraph 8.21, *“UPI is being adopted ... in the USA and jurisdictions in Asia. In the EU, UPI was mandated under EMIR Refit.”* We fully support the harmonization of UPI in the UK.

Whereas the fields and flags other than the UPI, we think there will be no end to users’ demand or preferences for ever more fields and flags (so long as they are FREE). People are accustomed to structured data format, whilst unstructured data is also machine readable with the advancement of natural language processing and NoSQL databases. We recommend the FCA to leave the minor details to be determined by the CTP.

Chapter 9: Definition of Systematic Internaliser (SIs)

The FCA in paragraph 9.9 acknowledged that *“in neither the WMR nor the explanatory notes accompanying the introduction of the Financial Services and Market Bill, the policy intent is to broaden or narrow down the definition of SI expressed.”* We thank the FCA for making clear that *“firms will not be carrying on SI activity purely because of some degree of automation in the execution of orders,”* amid the proposed glossary definition listed the following criteria to define dealing as organised, frequent, systemic, and substantial when:

- *“Carried on in line with rules and procedures in an automated technical system, such as an electronic execution system, which is assigned to that purpose.*
- *Available to counterparties on a regular or continuous basis.*
- *Held out as being carried on by way of business, in a manner consistent with Article 3 of the Business Order in respect of the relevant financial instrument. On this point, firms may refer to our new proposed guidance in [Perimeter Guidance Material] PERG 13.2 Q10a for guidance on meaning.”*

³⁵ <https://www.ias.edu/sites/default/files/library/UsefulnessHarpers.pdf>

³⁶ <https://committee.iso.org/sites/tc68/home/news/content-left-area/news-and-updates/iso-238972020-unique-transaction.html>

³⁷ <https://www.iso.org/standard/80506.html>

³⁸ <https://www.cftc.gov/PressRoom/PressReleases/8659-23>

New designated reported regime delivered in PS23/4 will come into force in April 2024, where *“designation as an SI will have no relevance for the purposes of the determination of which IF reports transactions post-trade to the public. It will remain relevant for some pre-trade obligations in equities.”* To create guidance about the definition of an SI that can be flexibly applied across asset classes and across different arrangements and business models is no easy task. Some IFs, who are SIs, may seek further clarifications or changes to limit or reduce their impact on the application of transparency requirements.

Conclusions and Other Remarks

Overall, we think there are thoughtful proposed improvements to the transparency for bond and derivatives markets. The FCA should earn a round of applause for their efforts. The industry’s push back and possible delays should be anticipated. Again, harmonisation of MiFID II deferral regime across the EU and UK is a challenge.³¹ Fragmentation seems inevitable when the UK and EU are taking divergent paths in favour of a friendly competition. We like Model 2 for its alignment with the US ‘CFTC rewrite’⁴ regime. Adopting UPI is a step in the right direction. We also recommend learning from both the good lessons²⁶ and other experiences¹³ of the US FINRA TRACE system.⁶

Keep an open mind about centralising bond trading on exchange-based central limit order books, amid the oligopolistic structure of the current OTC markets that rely on the balance sheet intermediation capacity of a few dealers.⁹ For sake of financial stability,¹¹ improve market liquidity under stressed conditions¹⁰ rather than just “checking the box” to get a post-trade CT up-and-running ASAP. Improving the OTC markets’ architecture rests on one’s abilities to value securities inventory and sell structured products at times of market disturbances.⁸

Adequacy of transparency in OTC markets is boiled down to the divergence of private rights and social costs.²¹ It is a long and curvy road to implement change. Be encouraged and feel free to contact us with any questions. Please keep us posted where our expertise might be helpful.

Sincerely,

Kelvin To

Founder and President

Data Boiler Technologies, LLC

This letter is also available at: https://www.DataBoiler.com/index_htm_files/DataBoiler%20FCA%2020240306%20CP2332.pdf