Jonathan Hill 15 December, 2015
Commissioner for
Financial Stability, Financial Services & Capital Markets Union
European Commission
Rue de la Loi/Wetstraat 200
B-1048 Bruxelles/Brussel

Dear Mr. Hill,

We the undersigned support the main policy objectives of MiFID II / MiFIR. Once implemented, the combined Level 1 and Level 2 requirements will further enhance market transparency to the overall benefit of investors and end users in European capital markets.

The Commission is now in the late stages of deciding whether to adopt all or some of ESMA's final draft Regulatory Technical Standards (RTSs). We urge that consideration be given to our concern that the mandatory use[1] of International Standards Organisation (ISO) 6166 International Securities Identification Numbers (ISIN), as the sole option for identification of financial instruments (including derivatives),[2] is unworkable as currently proposed. It is essential that before any final decision is taken to mandate the use of ISIN as the sole financial instrument identification standard in MiFID II, the following two issues be addressed:

- The applicability of ISIN to OTC derivatives.
- The competitive issues which will be created by the mandated adoption of ISINs.

We discuss each of these issues in turn.

The applicability of ISIN to OTC derivatives

Under RTS 23 ESMA proposes to mandate ISO 6166 (ISIN) as the identification standard for all instruments falling within the scope of MiFID II / MiFIR. However, ISIN coverage for OTC

[1] RTS 23 *Article 3* (Identification of financial instruments and legal entities) Paragraph 1: "Prior to the commencement of trading in a financial instrument in a trading venue or systematic internaliser, the trading venue or systematic internaliser concerned shall obtain the ISO 6166 International Securities Identifying Number (ISIN) code for the financial instrument."
We understand from discussions with ESMA that the use of a non-ISIN (OTHR) in RTS 2 is limited to exceptional circumstances where an ISIN is not yet available for technical reasons.

[2] RTS 1, 2, 22, and 23, among others

derivatives is currently limited to very few products e.g. MAC swaps[3]. ISO has acknowledged the set of concerns raised by the industry with regards to the applicability of ISIN for OTC derivatives. Addressing these concerns will require changes to ISO 6166, or the creation of another ISO standard for OTC derivatives product identification.

Furthermore, following implementation of the Systematic Internaliser (SI) regime and trading venue obligations under MiFID II, many OTC derivatives will migrate to venue-trading and therefore require an identifier as mandated by the regulation. Under certain scenarios involving the pre-issuance of product identifiers, millions of identifiers might be required daily in order to support the product scope subject to the MiFID II mandate. Currently less than 13 million[4] ISINs are issued globally. Through detailed analysis we have come to the conclusion that to properly manage the MiFID II obligations we will need a hierarchy with different levels of identifiers including a level to facilitate the computation of MiFID II liquid thresholds by market participants, a level to support the transparency obligations across regulatory obligations (beyond MiFID II), and a level to support economic equivalence business use cases. The current ISO 6166 standard does not support such a hierarchy of symbols.

Competitive issues

ISIN (unlike ISO 17442 – the ISO standard for Legal Entity Identifiers) is allocated by a network of national numbering agencies that are exclusive providers in their local markets. Most of these organisations are commercial entities and have sole rights within their local market to issue ISIN numbers. The current ISIN-only approach risks locking in exclusivity for the issuance of what will be a considerable number of new identifiers on an ongoing basis. The EC endorsement of the MiFID II RTS in its current form would reduce competition in contrast to the objectives of MiFID II, and increase costs for all market participants. It is therefore vital that an open and competitive business model is available before any single instrument identifier is mandated for MiFID II. A broad call for possible solution providers is likely necessary to ensure the best approach for identifier issuance is selected.

In light of the above issues, we strongly encourage the European Commission to consider asking ESMA to amend the relevant MiFID II RTSs[5], to remove the mandatory requirement to use ISIN as the sole instrument identifier, and instead allow use of an equivalent ISO standard. Such an approach would enable the forthcoming work of CPMI and IOSCO on product identifiers to be incorporated into the Level 2 standards, together with current industry work, and would ensure that market participants can comply with the MiFID II requirements on a more workable and fair basis. We do note, as a final point, that the ultimate impact is broader than MIFID II. ESMA has mandated, or is considering mandating, the use of ISINs in technical standards for MAR, EMIR and SFTR. The issues related to the current suitability of ISIN for identification of derivatives which are outlined in this letter will similarly arise in implementation of those regimes.

[3] The Market Agreed Coupon (MAC) swap is an interest rate contract with pre-defined market-agreed terms. Currently the MAC contracts are set quarterly for six currencies and 12 tenors. CUSIP and ISIN numbers are assigned for each MAC swap contract for both LCH and CME clearing houses.
[4] http://www.anna-web.org/wp-content/uploads/2015/10/ANNA_Annual_Report_2014_final.pdf
[5] RTSs 1, 2, 3, 6, 22, 23, 24 and 27

Given the time sensitive nature of this issue, we would welcome the opportunity to discuss the issue further at your earliest convenience.

Respectfully,

Scott O'Malia
Chief Executive Officer,
The International Swaps and Derivatives Association, Inc.

James Kemp
Managing Director
Global Foreign Exchange Division, GFMA

cc: Olivier Guersent, Director-General, DG FISMA, European Commission

Martin Merlin, Director, DG FISMA, European Commission

Tilman Lueder Head of Unit, DG FISMA, European Commission

Lee Foulger, Cabinet of Commissioner Hill

Steven Maijoor, Chairman ESMA

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Marcus Ferber, MEP