European Securities and Markets Authority

Date: 2 October 2018
ESMA70-156-478

OPINION

On ancillary activity – market size calculation

1 Legal basis

1. ESMA's competence to deliver an opinion to competent authorities is based on Article 29(1)(a) of Regulation (EC) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)[1](ESMA Regulation).

2. Pursuant to Article 29(1)(a) of the ESMA Regulation, ESMA shall provide opinions to competent authorities for the purpose of building a common Union supervisory culture and consistent supervisory practices, as well as ensuring uniform procedures and consistent approaches throughout the Union.

2 Background

3. Article 2 of Directive 2014/65/EU[2] ("MiFID II") lays down the exemptions from its scope of application. According to point (j) of Article 2(1), MiFID II does not apply to persons dealing on own account or providing investment services in specific cases, including where their activity is an ancillary activity to their main business provided that certain conditions are met.

4. Commission Delegated Regulation (EU) 2017/592 (the "Delegated Regulation")[3] further specifies the criteria for establishing when an activity is to be considered as ancillary to the main business at a group level pursuant to paragraph 4 of Article 2 of MiFID II.

5. In particular, Article 2(3) of the Delegated Regulation lays down the rules for calculating the overall market trading activity. The calculation of the overall market trading activity is necessary for the establishment of the size of trading activity per market participant which ultimately determines whether an activity is ancillary, and hence, whether a market participant falls within the scope of MiFID II.

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[1] OJ L 331, 15.12.2010, p. 48.

[2] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) (OJ L 174, 1.7.2011, p.1).

[3] Commission delegated regulation (EU) 2017/592 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business.

6. However, it is challenging for national competent authorities and market participants to determine the market size figures since there is no centralised recording of on-venue and off-venue transactions for commodity derivatives and emission allowances which is publicly available.

7. As a result, national competent authorities and market participants have asked ESMA to provide guidance for the determination of the market size figures to ensure the correct application of Article 2(3) of the Delegated Regulation.

8. ESMA has considered that such guidance will contribute positively to the consistency of supervisory practices and will ensure a uniform approach throughout the Union, as a result of which, ESMA has decided to issue this Opinion.

3 Opinion

9. The guidance of ESMA is based on the methodology for the assembling of data described below. ESMA is aware that the data used for the guidance may bear some inherent limitations, including in respect of its accuracy and completeness. Therefore, competent authorities may consider any alternative data which market participants may provide for the purpose of application of Article 2(3) of the Delegated Regulation.

General methodology

10. The data for the calculation of the on-venue market size was collected from the trading venues located in the EEA and is provided for the total of 2015, the second half of 2016, and for the total of 2017.

11. The data for the calculation of the OTC market size is based on reports submitted to the Trade Repositories (TRs) under Regulation (EU) No 648/2012[4]. The computations have used the methodology specified in the consultation paper on the public data methodology review[5]. Minor adjustments have been made when the availability of data required such adjustments. These data were calculated and annualised based on the second half of 2016 and for a 3-month period during 2017.

12. Given the partial availability of data, ESMA understands that the approximation of the total market size for 2016 and 2017 could be achieved by annualising the figures, and for the year 2015, assuming a similar proportion for OTC and on-venue activity during all years.

[4] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L201, 27.7.2012, p.1).

[5] https://www.esma.europa.eu/sites/default/files/library/2016-1661_consultation_paper_on_tr_public_data_under_emir.pdf.

13. Since the OTC figures for the year 2017 were estimated based on a 3-month period and included summer months which may be characterised by less volume traded, the data should be taken with precaution.

14. The total market size for both on-venue and OTC markets, i.e. gross notional value traded was calculated on a dual-sided basis, that is both buyers' and sellers' notional values of each transaction was added to establish a gross notional value traded. This ensures comparability with the approach undertaken by market participants when calculating the size of their own commodity derivatives activity.

15. For the calculation of the notional amount of ETD option contracts the following formula was used:

$$Notional\ amount\ of\ ETD\ option\ contracts = \frac{lot\ size}{multiplier^{6}} * quantity^{7} * strike\ price$$

The same formula should be used for the calculation of the numerator by market participants performing the ancillary activity test.

Data quality measures

16. For TR data the following reconciliation procedure was applied. Each trade was classified into (I) single-sided (one reporting counterparty in the EEA) or double-sided (two reporting counterparties in the EEA) reports. The double-sided reports were (II) reconciled by selecting one of the two reports when possible (due to data issues this was not always the case), for the (III) unreconciled double-sided reports the notional was halved (i.e. the assumption was made that counterparties reported their transactions but did not use the same trade identifier). Then the single-sided market size was calculated, i.e. aggregation of the notional of the (I) single-sided reports and (II/III) double-sided reports. In the second step, this single-sided market size was doubled in order to provide the total volume traded.

17. With the aim of ensuring that the data provided by TRs is of sufficient quality, outliers have been identified and removed from the aggregation. Outlier thresholds were calculated according to several characteristics (e.g. instrument type) of the derivative reported. For this calculation ESMA considered any observation as an outlier that had a larger notional amount than the mean plus 3 times the standard deviation (log-normalized). The previous published note included a higher threshold which was adjusted reflecting the more granular selection of the outlier defining columns which now include commodity base and commodity details.

[6] Multiplier: number of underlying instruments to be delivered for one contract
[7] Quantity: number of contracts traded

18. In terms of outlier detection in the data reported by trading venues, large values were affirmed for a second time with the reporting entities.

Asset classes specifications

19. In accordance with Article 2(1) of the Delegated Regulation, the market sizes are provided for the following asset classes: agricultural products, metals, oil and oil products, coal, gas, power, emission allowances and derivatives thereof and other commodities.

20. For OTC data[8] retrieved from TRs, the relevant classes of commodity derivatives were defined as follows:

    a. Agricultural products: ”commodity base” reported as ‘AG’ and “commodity details” reported as ‘GO’ (grains oilseeds), ‘DA’ (dairy), ‘LI’ (livestock), ‘FO’ (forestry) or ‘SO’ (softs)

    b. Metals: “commodity base” reported as ‘ME’ and “commodity details” reported as ‘PR’ (precious) or ‘NP’ (non-precious)

    c. Oil and oil products: “commodity base” reported as ‘EN’ (energy) and “commodity details” reported as OI (oil)

    d. Coal: “commodity base” reported as EN (energy) and “commodity details” reported as CO (coal)

    e. Gas: “commodity base” reported as EN (energy) and “commodity details” reported as NG (natural gas)

    f. Power: “commodity base” reported as EN (energy) and “commodity details” reported as EL (electricity) or IE (inter-energy)

    g. Emission allowances and derivatives on emission allowances: “commodity base” reported as EV (environment) and “commodity details” reported as EM (emissions)

    h. Other commodities: “commodity base” reported as FR (freights), IN (index) or EX (exotic) as well as “commodity base” reported as EV (environment) and “commodity details” reported as WE (weather).

21. Commodity ETD data was determined on the basis of the data collected from trading venues. Such data was defined as follows[9]:

[8] Reference period 01 July 2016 – 31 December 2016 and 01 May 2017 – 31 July 2017.

[9] The selected value considered refer only to the fields that were populated with data.

a. Agricultural products: class reported as “commodity derivatives” and “underlying type” reported as ‘AGRI’

b. Metals: class reported as “commodity derivatives” and “underlying type” reported as ‘METL’

c. Oil and oil products: class reported as “commodity derivatives”, “underlying type” reported as ‘NRGY’ (energy) and field “energy type” populated with ‘OILP’ (oil), ‘OtherBioFuels’

d. Coal: class reported as “commodity derivatives”, “underlying type” reported as ‘NRGY’ (energy) and field “energy type” populated with ‘COAL’

e. Gas: class reported as “commodity derivatives”, “underlying type” reported as ‘NRGY’ (energy) and field “energy type” populated with ‘NGAS’ (natural gas)

f. Power: class reported as “commodity derivatives”, “underlying type” reported as ‘NRGY’ (energy) and field “energy type” populated with ‘ELEC’ (electricity)

g. Emission allowances and derivatives on emission allowances: class reported as “emission allowances” and “derivatives emission allowances”

h. Other commodities: class reported as “C10 derivatives”.

4 Estimates

Values in million EUR, double-sided, annualised

2017 estimates

- source: 12 months ETD data collected from the trading venues and annualised OTC totals based on 3 months (Jul'17-Sep'17) from EMIR reporting

Class	ETD	OTC	TOTAL
Metals	24,871,559	6,574,209	31,445,768
Oil	41,719,988	2,933,111	44,653,099
Coal	228,777	15,995	244,772
Gas	666,315	112,793	779,108
Power	292,466	63,753	356,219
Agriculture	918,714	1,591,087	2,509,801
Other C(10)	17,966	1,772,815	1,790,781
Emission allowances and derivatives thereof	86,915	2,703	89,618

2016 estimates

- source: annualised 6 months (Jul'16-Dec'16) ETD data collected from the trading venues and annualised OTC totals based on 6 months (Jul'16-Dec'16) from EMIR reporting

Class	ETD	OTC	TOTAL
Metals	18,457,668	5,933,598	24,391,266
Oil	34,031,034	4,896,606	38,927,640
Coal	285,336	173,524	458,860
Gas	533,666	598,940	1,132,606
Power	359,720	519,390	879,110
Agriculture	1,111,462	1,730,626	2,842,088
Other C(10)	17,980	920,276	938,256
Emission allowances and derivatives thereof	60,760	4,978	65,738

2015 estimates

- source: 12 months data collected from trading venues, OTC figures are unavailable for this period

Class	ETD
Metals	21,601,715
Oil	33,732,345
Coal	183,756
Gas	743,103
Power	267,384
Agriculture	1,019,671
Other C(10)	26,420
Emission allowances and derivatives thereof	92,817

Disclaimer

The analysis displayed in this opinion incorporates data related to European Economic Area (EEA) / European Free Trade Association (EFTA) States based on the notifications received by ESMA, the publication of which does not affect the status of incorporation of relevant EU law into the EEA Agreement and any related legal consequences. Reported data under EMIR may be subject to future revisions, reflecting possible data quality issues and reporting completeness.