europex
association of european energy exchanges

- Position Paper -

MiFIR/MAR: AII as an alternative to ISIN and the need to align the timing of the application of the ISIN obligation under MiFIR and MAR

Brussels, 4 March 2016 | ESMA's current draft of the Regulatory Technical Standard (RTS) 23[1], *inter alia* specifying Article 3(1) of the Market in Financial Instrument Regulation (MiFIR), puts forward **the obligation that each trading venue shall obtain an International Standards Organisation (ISO) 6166 International Securities Identification Number (ISIN) for each financial instrument.** Europex does not agree with this obligation and calls for the reintroduction of Alternative Instrument Identifiers (AIIs) as a better adepted solution. In addition, **Europex urges a postponement of the obligation to provide financial instrument reference data under MAR (Article 4) along with the corresponding requirement under MiFIR (Article 27) until 3 January 2018**, in line with the more general delay of the application of MiFID II/MiFIR.

The present paper outlines the reasons for the two claims:

1. *Allowing for AII as an alternative to ISIN*

Firstly, and in line with the positions of the Futures and Interest Association (FIA) and the Federation of European Securities Exchanges (FESE), Europex would like to highlight that the use of ISINs as the sole option for identifying Exchange Traded Derivatives (ETDs) will not only lead to **significantly higher costs for trading venues** but it will also result in **operational difficulties** while **hampering the comprehensive application of the given MiFID II / MiFIR and MAR reporting requirements.**

Contrary to the ISINs, the widely used Alternative Instrument Identifiers (AIIs) can be generated in real time, independently and at lower cost. AIIs contain valuable information, e.g. about the underlying, in relation to the concerned derivative instruments. The information contained in the AIIs makes identifying and searching for similar or other relevant instruments easier, and allows related derivative instruments to be grouped together. This can help to detect market abuse and

[1] https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-esma-1464_annex_i_-_draft_rts_and_its_on_mifid_ii_and_mifir.pdf

other irregularities. **The ISIN system, however, produces randomly generated codes that contain zero information about the products and the market(s) they are traded in**. Importantly, the ISIN standard does not provide any identification of the underlying product of an exchange traded derivative (ETD), which would be a prerequisite for analysing and understanding derivative data.

Secondly, **Europex deems it highly inappropriate to apply the ISIN obligation to the instrument level instead of the product level as far as energy derivatives are concerned**. This is due to the considerable amount of new financial instruments that are being issued on a daily basis. With regard to electricity trading, for instance, new maturities are created for each day, week, weekend, month, quarter and year. In addition, all of the instruments exist for both base and peak load. This means that for one single product, e.g. German Phelix Futures, 970 new instruments are created per year. Depending on the price of an ISIN, this translates into significant additional costs, a high operational burden and the loss of independence for energy trading venues.

We therefore **urge the relevant stakeholders, notably the Commission and ESMA, to reintroduce the possibility to use AIIs for ETDs in the final RTS**. **An alternative option would be to apply the obligation at product instead of instrument level**, allowing trading venues to obtain an ISIN for each product and add identifying information for each instrument in a similar way as for the AII.

2. *Aligning the timing of the application of the ISIN obligation under MiFIR and MAR*

Europex' second concern relates to the inconsistency between the start of the application of the ISIN obligation under MAR and the start of the obligation under MiFIR. Whereas MiFIR will most likely only apply as of 3 January 2018, MAR requires trading venues to notify their national competent authority of any new financial instrument already as of 3 July 2016. In addition, none of the RTS have been adopted yet and the trading venues, as well as the concerned competent authorities, will need time to prepare for implementing the new rules. **We therefore call for a postponement of the start of the application of the obligation under MAR (Article 4) in alignment with the start of the obligation under MiFIR (Article 27), meaning that the application of both should take place at the same time, e.g. as of 3 January 2018**.

Any initiative from the Commission and/or ESMA to reassure the trading venues that no action will be taken to enforce the obligation under MAR as long as MiFIR does not apply yet, would be welcome. **Such an initiative could**, for instance, **take the form of a non-action letter by ESMA.**

About:

Europex is a not-for-profit association of European energy exchanges with currently 26 members. It represents the interests of exchange-based wholesale electricity, gas and environmental markets, focuses on developments of the European regulatory framework for wholesale energy trading and provides a discussion platform at European level.

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