SIG
SUSQUEHANNA
Susquehanna International Securities Limited
International Centre, Memorial Road, IFSC, Dublin 1, Ireland
+353 1 802 8000 phone +353 1 802 8100 fax
www.sig.com

21 September, 2016

MiFID 2 – Public Consultation
Financial Services Division
Department of Finance

Vie email: *MiFID@finance.gov.ie*

Re: Susquehanna International Securities Limited Response to Public Consultation on national discretions in the Markets in Financial Instruments Directive ("MiFID II")

Dear Sir or Madam,

Please find the response of Susquehanna International Securities Limited (SIS) to the above consultation. You will find our comments in relation to questions 4, 5b and 6. We have no comments in relation to the other queries.

Should you require any further input in relation to the transposition of MiFID II please do not hesitate to contact us.

Question 4: Client Order Handling Rules

Regulation 108 of S.I. 60 of 2007 provides that the obligation to facilitate the earliest possible execution of a client limit order by making the order public without delay is satisfied if the firm transmits the order to a regulated market or an MTF. Under Article 28(2) of MiFID 2 firms are required *"to take measures to facilitate the earliest possible execution of that order by making public immediately that client limit order in a manner which is easily accessible to other market participants"*. SIS is firmly supportive of the Minister's proposal to continue to follow the approach under Regulation 108 by allowing that firms can comply with the obligation under Article 28(2) by transmitting the client limit order to a trading venue. This method assures best execution as it is the most transparent means of making the order public and allows for the greatest accessibility to other market participants. SIS does not believe, for example, that allowing publication of unexecuted client limit orders through a data reporting services or through an investment firm's website would as effectively facilitate best execution.

Question 5b: Third Country Firms and Branches

Regulation 5(1)(r) of the current MiFID Regulations provides that the regulations do not apply to "branches of non-EEA firms established in the State". This enabled third country financial firms to establish branch operations in Ireland without the requirement to be authorised as a MiFID firm and without being subject to MiFID rules. The question now presented is whether branches of third country firms should now be brought within the scope of the MiFID 2 regulations.

The objective of MiFID II is to create an integrated financial market in which investors are effectively protected and the efficiency and integrity of the Union financial system are safeguarded. In accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union

this is achieved at Union level only where the efficient operation of this system cannot be sufficiently achieved at the Member State level.[1]

SIS takes the view that the current regulations as regards branches of non-EEA firms established in the State should continue to apply except in cases where these branches cannot be appropriately regulated at a Member State level. This would only be the case where there is a cross-border element within the Union to the provision of investment services or the performance of investment activities which requires the establishment of common regulatory requirements, where services are being provided to European clients and a degree of harmonisation is required to guarantee a high level of investor protection or where there is otherwise a direct nexus with European markets. Therefore, branches of third country firms established in the Ireland should only be brought within the scope of the MiFID 2 regulations where such establishments:

(i) intend to benefit from the "European passport" to provide financial services and/or activities throughout the EU;

(ii) are executing client orders, holding client assets or offering products to clients; or

(iii) are members of or participants in a regulated market or MTF or are making markets on such venues.

The establishment of branches in Ireland contributes positively to the Irish economy. Third country firms have established branches in Ireland in order to leverage a young, educated, English-speaking workforce. Irish branches of financial firms may be established here for the purposes of providing investment activities, such as dealing on own account, on U.S., Asian or other non-European markets. In such cases the relevant activities should be regulated where the relevant market is established. It would be disproportionate (and SIS believes beyond the intent of MiFID 2) to apply the MiFID 2 regulations to such firms that have no nexus with the Union financial system or with customers in the Union. As an alternative to not regulating firms which fall into this category, Ireland could apply a more proportionate regulatory regime than MiFID 2 such as the licencing regime under the Central Bank Act, 1989 that had previously been provided for firms established in the IFSC.

SIS also takes this opportunity to note that MiFID 2 would also apply to firms with registered offices in Ireland that also do not have a nexus with the Union financial system solely based on the fact that the firm may be a registered Irish company. SIS believes this to be an unintended consequence which is inconsistent with both the principle of subsidiarity and the principle of proportionality as set out in the Treaty.

The application of the MiFID 2 regulations to branches and firms established in Ireland that do not participate in Union markets or deal with customers in the Union will only prove a disincentive to foreign direct investment in Ireland by such firms that intend Ireland only as a base for their activities in non-European markets. This effect could be further aggravated post-Brexit to the extent that UK venues may no longer be considered "trading venues" for the purposes of MiFID 2.

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[1] *See* Recital 164, Directive 2014/65/EU.

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SIS therefore urges the Minister to exercise whatever discretion Ireland has to only impose the MiFID 2 regulations where a firm has any of the above-listed nexus with the Union financial system. This discretion could be exercised in the first instance by allowing such third-country firms to provide investment services or perform investment activities to eligible counterparties and per se professional clients in accordance with a national regime in the absence of an equivalence decision or where such decision is no longer in effect in accordance with Article 46(4) of MiFIR. SIS also believes that there should only be a requirement for a third country firm to establish a branch in accordance with MiFID 2 where the relevant nexus to the Union financial system is established. Again, as pointed out above, as an alternative to not regulating firms which fall into this category, Ireland could apply a more proportionate regulatory regime than MiFID 2 such as the licencing regime under the Central Bank Act, 1989 that had previously been provided for firms established in the IFSC.

Q6. Higher Fees Applying to Cancelled Orders

Article 48(9) provides that:

"Member States may allow a regulated market to impose a higher fee for placing an order that is subsequently cancelled than an order which is executed and to impose a higher fee on participants placing a high ratio of cancelled orders to executed orders and on those operating a high-frequency algorithmic trading technique in order to reflect the additional burden on system capacity."

SIS does not agree that the Minister should exercise this discretion by extending to regulated markets the flexibility to impose higher fees for cancelled orders as such higher fees would amount to a tax on liquidity and may cause market makers/liquidity providers to leave the market.

Market makers are required to continuously post bids and offers. This is an integral part of providing liquidity and results in price improvements for investors. As orders / quotes are executed the market maker has to respond to supply and demand by adjusting its pricing. The cancellation of orders is simply a part of this market making process. If, for example, a market maker's buy order has been executed and it wants to move the quote back down, it cancels its sell order and posts new buy and sell orders /quotes.

A higher fee for cancellations will either disincentivise market makers from providing liquidity in certain instruments (likely those most in need of increased liquidity) or will cause market makers to increase their spreads which would also decrease liquidity.

Yours faithfully,

John Keogh
Director