Market Watch

Markets Division: Newsletter on Market Conduct and Transaction Reporting Issues

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Ex-dividend dates and the Market Abuse Regime

Recently we have identified a number of occasions when derivative traders have traded shortly before Regulated Information Service announcements concerning forthcoming ex-dividend dates of FTSE 100 companies. We have established that on some such occasions the issuer's Investor Relations Department may have agreed to requests from traders to be informed of the proposed ex-dividend date before the announcement, and wish to bring our concerns to the attention of authorised firms.

We note the Q & A concerning disclosure by issuers of information relating to dividends published by ESMA on 9 January 2012, ESMA/2012/9.[1]

Why are we concerned about this?

The timing of an issue being marked ex-dividend relative to a derivative's expiry date can be a major determinant of that derivative's value; of particular significance is whether the ex-dividend date falls before or after an expiry. Although dividend timing may not be inside information relating to the underlying equity (where that instrument is a qualifying investment admitted to trading on a prescribed market[2]), it may in some cases be inside information in relation to single stock and equity index futures and options (where these derivative instruments are related investments[3]) for the purposes of market abuse regime provisions in the Financial Services and Markets Act 2000 ('FSMA').

It is possible that some issuers are not considering whether information about ex-dividend dates is inside information in relation to a related investment and have therefore been willing to give out such information on an ad hoc basis before releasing it to the market via an RIS, without considering the market abuse regime provisions in FSMA.

Authorised firms, traders and analysts need to bear in mind the market abuse provisions in Part 8 of FSMA (including section 118 which sets out abusive behaviours and section 123 relating to encouraging market abuse) when deciding whether to seek information about ex-dividend dates or when in possession of such information. Firms are also reminded of the provisions relating to suspicious transaction reports in SUP 15.10.

1 http://recmgmt.is.fsa.gov.uk/livelink/livelink/fetch/2383281/4239893/ESMA_ex%2Ddividend_guidance_Jan_2012.pdf?nodeid=6026123&vernum=-2
2 See sections 118(1) and 131A(1) of FSMA
3 See sections 118 and 130A(3) of FSMA

Finalised guidance on strategy trades

This guidance applies to exchange traded strategy trades whereby two or more legs that are dependent on each other are executed simultaneously. This guidance applies to transaction reports submitted to the FSA. Other competent authorities may have different requirements. This guidance became effective from 15 August 2012.

All transactions that include the combined execution of multiple legs should be reported with each reportable leg as an individual transaction to the FSA.

The individual legs of the strategy trades should be reported with the correctly populated venue identification field for that individual leg. This may be a different venue from where the strategy trade order was placed. For example, a firm may enter into a strategy trade on a derivatives exchange, whereby the cash equity leg is executed on a cash equity exchange (see example 1).

One exception to this approach is for strategy trades involving derivative and cash equity legs entered into on the Alternative Instrument Identifier (Aii) exchanges[4] where both legs are executed on the same Aii exchange. The FSA will not accept ISIN-based cash equity transactions from Aii exchanges. In this instance firms should report the ISIN cash equity leg with the venue 'XOFF' (see example 2).

Firms who rely on the NYSE Liffe (London market) feed to the FSA to report their transactions should note that they will need to report any ISIN-based legs to the FSA separately as the feed only includes Aii transactions.

Example 1

A strategy trade entered into on NYSE Liffe (Amsterdam market), an Aii exchange, that combines a transaction in an equity option and a transaction in the underlying cash equity. For example a strategy trade that includes an ING Groep N.V. equity option transaction executed on the Aii exchange and a ING Groep N.V. cash equities transaction executed on NYSE Euronext Amsterdam, an ISIN exchange. The strategy trade is therefore executed on 2 separate exchanges:

- NYSE Liffe (Amsterdam market) is an Aii exchange; and
- NYSE Euronext Amsterdam is an ISIN exchange.

The two legs should therefore be reported as follows[5]:

1 The ING Groep N.V. equity option leg is reported using:

- instrument code: NYSE Liffe (Amsterdam market) Exchange Product Code for the relevant ING Groep N.V. option; and
- venue: 'XEUE'.

2 The ING Groep N.V. cash equity leg is reported using:

- instrument code: ISIN for the ING Groep N.V. cash equity; and
- venue: 'XAMS'.

4 The list of designated Aii exchanges is available on the ESMA website: http://mifiddatabase.esma.europa.eu/Index.aspx?sectionlinks_id=23&language=0&pageName=REGULATED_MARKETS_Display

5 All other relevant fields will need to be reported in accordance with the guidance set out in the Transaction Reporting User Pack (TRUP).

Example 2

A strategy trade on NYSE Liffe (London market) that combines a transaction in an equity option on BP plc and a transaction in BP plc cash equities. NYSE Liffe (London market) is an Aii exchange, but the BP cash equity is an ISIN-based instrument. The two legs should therefore be reported as follows[6]:

1 The BP plc equity option leg is reported using:

- instrument code: NYSE Liffe (London market) Exchange Product Code for the relevant BP plc option; and
- venue: 'XLIF'.

2 The BP plc cash equity leg is reported using:

- instrument code: ISIN for the BP plc cash equity; and
- venue: 'XOFF'.

6 All other relevant fields will need to be reported in accordance with the guidance set out in the Transaction Reporting User Pack (TRUP).