

Minutes

Meeting: MiFID II Implementation – Trade Association Roundtable

Date of Meeting: 25 April 2016

Venue: 25 The North Colonnade, Canary Wharf, London, E14 5HS

Present:

Stephen Hanks - FCA	Catherine Crouch - FCA
Sarah Raisin - FCA	Paul Willis – FCA
Philippe Marie – FCA	Ruby Bhavra - FCA
Paul Atkinson - FCA	ABI
AFB	AFME
AIC	AIMA
APCC	APFA
BVCA	CMCE
EDMA	EFET
Energy UK	FESE
FIA - EPTA	FIA Europe
FIX	GAFTA
IA	ICI Global
ICMA	ILAG
ISDA	MFA
QCA	RBA
SQIB	TISA
UK Platforms	WMA
WMBA	

1 MiFID delay legislation

- 1.1 The FCA said that the Council's position on the delay legislation was due to be signed off later that week. Parliament and Council were agreed that transposition would be required by 3 July 2017 and implementation would take place on 3 January 2018.
- 1.2 A trilogue between the Commission, Council and Parliament was scheduled for the 2 May 2016. Based on the amendments the Council and Parliament had passed, discussion was expected to centre around exempting packaged transactions from pre-trade transparency and amendments to Article 2(1)(d) to ensure that corporates trading foreign exchange do not automatically have to be authorised under MiFID II.
- 1.3 Council amendments included a delay to the application for parts of Article 4 of the Market Abuse Regulation, but did not include a delay to the date of application of the Packaged Retail and Insurance-Based Investment Products Regulation.

2 RTS 2 (non-equity transparency)

- 2.1 The FCA said the Commission is working on finalising the RTS and expected those other than RTS 2, 20 and 21 to be adopted over the next couple of months.
- 2.2 The FCA said that ESMA was working on responses to the letters from the Commission on RTS 2, 20 and 21 and that the responses might be in the public domain in the first week of May.
- 2.3 An attendee asked whether given the Council's suggestion on the delay legislation, there should be RTS to define a liquid package, as RTS 2 would only be adopted once implementing provisions on liquid packages were in place. The FCA said it was unclear how exactly we would get from where we are now on the delay legislation and RTS, but it was clear that the final RTS would have to take full account of the delay legislation.
- 2.4 It was asked by an attendee whether ESMA would provide further detail in its response to the Commission on how the impact of transparency on the functioning of bond and derivatives markets would be judged. The FCA said it did not expect such a methodology to be written into the RTS, or set out in the commentary ESMA provided. An attendee asked whether new RTS would be required yearly if the proposals in the Commission's letter to ESMA were followed. The FCA said that this appeared to be the intention, although it was not immediately obvious how exactly this would work given the need to have an adequate time period over which to collect data, assess the data, consult on changes to the RTS and provide industry with adequate time to implement the changes.
- 2.5 A concern was raised by an attendee that the Commission's proposals on the number of transactions per day for the assessment of whether a bond is liquid under the Instrument by Instrument (IBIA) assessment of liquidity, combined with ESMA's proposals for classifying newly issued bonds as liquid using a Class of Financial Instruments Approach (COFIA) would create a cliff edge effect. Many bonds initially judged to be liquid under COFIA would then be judged to be illiquid once IBIA kicked in. The FCA said ESMA was aware of this issue.

3 RTS 20 (ancillary exemption)

- 3.1 The FCA said that some member states had been surprised at the prescriptiveness of the tests in the Commission's letter. Some attendees questioned whether a net mark to market calculation would be more suitable than capital allocation.
- 3.2 One attendee questioned the assessment period, as in an older letter from the Commission it was mentioned as 3 years, and the more recent letter is more ambiguous. The FCA noted that it understood the intention of the Commission was to consider the effect of the Ancillary Test over 3 years, but not to defer the application of MIFIDII by this period. The Board of Supervisors are likely to consider this question in more detail soon.
- 3.3 It was noted that the Commission have not proposed wording for RTS 20 or RTS 21, however a formal opinion is expected from ESMA who will comment on the Commission requirements and propose changes. The FCA noted that strategic decisions need to be made by ESMA, but these were not expected in April.

4 RTS 21 (position limits)

- 4.1 On RTS 21 attendees noted the existence of a large discrepancy between open interest and deliverable supply. Attendees questioned the level of granularity in position limits required to resolve this.
- 4.2 The FCA noted that care needed to be taken with explicit definitions due to different translations which could create conflicts between national legislators.
- 4.3 The methodology for the baseline was questioned and attendees were concerned that it could result in different calculations for the same contract. The FCA agreed to take this point forwards to the Commission.
- 4.4 Concern by attendees was expressed around a lack of definition of what Economically Equivalent Over The Counter (EEOTC) was from a legal certainty perspective. It was noted by FCA that any definition could be very narrow or broad, both of which would have differing significant impacts.
- 4.5 Questions were raised around definitions and certainty which the Commission is keen to provide. Agricultural products were mentioned but not specific ones, and concerns were raised around product nuances such as the price volatility on agriculturals being lower than equities, and bonds.
- 4.6 It was asked what the scope of tests for third countries would be; the FCA confirmed that this was not yet known.
- 4.7 A question was asked around where the regular review was defined within the letters. The FCA said that the ESMA 12 month review period of the limits was included in the Level 1.
- 4.8 It was asked when the market size and data would emerge. The FCA noted that ESMA intends to publish as soon as possible after the period ends in July 2016, which could mean potentially August.
- 4.9 Concerns were raised around aggregation requirements for parents who may not aggregate. The FCA noted that the intent of the co-legislators was to apply position limits at a group level.

5 Level 3 update

- 5.1 The FCA said that the Commodity Derivatives Task Force (CDTF) was yet to switch their attentions fully to Level 3 (L3) given work on RTS 20 and 21. The Secondary Markets Standing Committee (SMSC) is working on L3 material which will include, as well as Q&A

on a variety of topics, guidelines on aspects of the rules for management boards of market operators. SMSC was also looking at the implementation of the trading obligation for derivatives which it will consult on in the course of this year. The Investor Protection and Intermediaries Standing Committee (IPISC) has decided to turn its draft L3 material on product governance into guidelines which will be consulted on in due course. The Market Data Standing Committee (MDSC) is working on the responses it has received to its draft guidelines. These will not be finalised until the RTS have been adopted and the scrutiny process is complete.

- 5.2 A question was raised around position reporting, given there is no mandatory requirement and all that attendees had was the Level 2 (L2) templates. The FCA confirmed that the bulk of the work will be done at L3 and questions were currently being collated.

6 Delegated Directive – Client Assets and Inducements

- 6.1 For client assets the changes represent adoption or adaption of the existing domestic regime so the requirement will not be too onerous. Client assets will feature in the July Consultation Paper around the CASS instrument.
- 6.2 A question was raised around liens on omnibus accounts and the impact of drafting which some feared could prevent the use of omnibus accounts. The FCA said they could discuss this bilaterally with anyone concerned and that they would consult on changes to the UK rules in the July CP.
- 6.3 The FCA noted that on the general inducements provisions not all of the concerns raised by the Parliament last year had been picked up. In particular, the Parliament might want to return to the issue of whether payments which helped a firm to sustain a wide branch network were capable of enhancing the quality of service to the client.
- 6.4 For research the FCA said that it expects that ESMA will provide guidelines or Q&A. We were only likely to provide guidance in areas not covered by ESMA guidance. The FCA's transposition of the investment research rules will be included in the September 2016 MiFID II consultation paper.
- 6.5 An attendee asked about different competent authorities who have conflicting views on Commission Sharing Agreements (CSAs). The FCA said it would discuss the interpretation of the final text with other competent authorities as part of discussions in ESMA. But firms need to focus on the arrangements required to comply with the totality of the MiFID II rules on investment research. These rules are clearly different to and more stringent than current FCA rules and many firms will therefore need to change their current arrangements.

7 AOB

- 7.1 A question was raised around RTS 28 and whether the reference period for data would be 2017 or 2018. This is an issue on which ESMA may provide further clarification through Q&A.
- 7.2 The FCA said that, as has been widely reported in the trade press, Sopra Steria, have been selected to deliver its market data processing platform.
- 7.3 The MiFID II delegated regulation was expected to be published later on 25 April and the MiFIR delegated regulation in a week or so thereafter.
- 7.4 The next roundtables are scheduled for:
- 25 May 2016 at 2pm
 - 6 July 2016 at 9.30am