

Minutes

Meeting: MiFID II Implementation Roundtable
Date of Meeting: 30 November 2015
Venue: 25 The North Colonnade, Canary Wharf, London E14 5HS

Present:

Stephen Hanks - FCA	Paul Atkinson - FCA
Thomas Ward - FCA	Sarah Raisin - FCA
Caroline Michel - FCA	
AFB	AFME
AIC	AIMA
APCC	APFA
BBA	BVCA
EFET	Energy UK
FIA-Europe	Fix
GAFTA	IA
ICI-Global	ICMA
ISDA	MFA
NFU	QCA
TISA	UK Platforms
WMA	WMBA

1 Timetable

- 1.1 Following on from remarks by the European Commission on 10th November, the FCA noted that the European Parliament had written to the Commission saying that it is willing to

consider a delay of a year to the overall date of application to MiFID II. The Commission now needs to decide whether to make a formal legislative proposal to put back the date of application of MiFID II to 3 January 2018.

- 1.2 In response to questioning the FCA said: it was not yet clear what would happen to the MiFID II transposition date and other dates in the legislation, such as that for a consolidated tape for non-equities, if the Commission proposed a later date of application; it did not appear any change to the date of application would be linked to the completion of the Level 2; the application date for MAR was unlikely to change; and if a delay occurred it would be necessary to use the additional time to consider what could be done to smooth the implementation of several provisions linked to data on the overall size of the EU market. The FCA also noted that the legislative process for agreeing legislation to formalise a delay could take several months after any proposal from the Commission.

2 Implementing measures

- 2.1 The FCA noted that the European Parliament's letter to the Commission on the overall timetable had mentioned the need to proceed as quickly as possible to complete the implementing measures. The precise time at which the delegated acts and the technical standards will be adopted remains uncertain but it seems likely to be in the next two months. The European Parliament has expressed concerns about the RTS on position limits, the ancillary exemption, and non-equity transparency - which suggests those are areas in which the RTS might change compared to the drafts provided by ESMA.

3 FCA Consultation Paper

- 3.1 The FCA said it intends to publish a first consultation paper on MiFID II implementation in the middle of December 2015. In light of the possible change to the date of application and the fact that the delegated acts have not yet been adopted, the FCA noted it would need to consider (i) whether it would be possible or make sense to publish its second consultation paper in March 2016 and (ii) exactly when it would seek to finalise the changes to the Handbook.
- 3.2 The FCA explained that the first consultation paper would cover mainly markets issues. These would include changes to the Handbook to take account of: the framework for the operation of regulated markets, MTFs and OTFs; the expanded Systematic Internaliser regime; the new regime for Data Reporting Service providers; new provisions on algorithmic trading; and revisions to the passporting regime. Additionally, there will be discussion on the application of our Principles for Businesses to dealings with eligible counterparties, transaction reporting by firms other than those subject to MiFID II, and perimeter guidance on aspects of MiFID II, including the meaning of a 'multilateral system'.
- 3.3 The FCA confirmed that the consultation would run for three months. The second consultation paper will pick up on the issues discussed in DP 15/3 and changes to COBS, SYSC, CASS and ENF amongst other Handbook changes. The FCA repeated its need to consider certain conduct aspects in the Financial Advice Market Review context. The FCA said that as and when there is greater certainty on a possible delay it will consider updating the statements it made at its MiFID II conference about the timing of the authorisation process for MiFID II.

4 Level 3 work

- 4.1 The FCA said that ESMA is working on level 3 material but progress is varied across the different workstreams. The Market Data Standing Committee, covering transaction reporting, clock synchronisation and order book data, is most advanced in its work. The Investor Protection and Intermediaries Standing committee has started working up potential level 3 material across issues including best execution, independent investment advice, suitability/appropriateness, product governance and taping. The Secondary

Markets Standing Committee and Commodity Derivatives Task Force have been collecting issues to consider for possible level 3 work.

- 4.2 Most of ESMA's Level 3 work will not be published until after the completion of the approval processes for the implementing measures. ESMA and its members recognise the importance of issuing material as soon as possible to assist industry with their MiFID II implementation.
- 4.3 Discussions between the Commission and Member States on transposition issues have been in abeyance since earlier in the year but are likely to resume soon. The FCA said it was unaware whether the Commission intends to operate its own Q&A database on MiFID II.

5 Third country issues

- 5.1 The FCA noted that there are several areas in MiFID which require an assessment of whether or not the regimes in countries outside the EU are equivalent to the regulatory regime in MiFID II. The Commission is unlikely to provide any mandates to ESMA for technical advice on equivalence until the MiFID II implementing measures are finalised. The FCA also noted that the Commission had just published (on 30 November) a proposal for a regulation to replace the Prospectus Directive (PD). There are cross references between MiFID II and the PD for the purposes of equivalence under the appropriateness test and the trading obligation for shares. The proposed regulation does not retain the equivalence test in the PD but suggests it can still be used for MiFID II purposes.
- 5.2 The issue of the application of the authorisation requirement in MiFID II to entities based outside the EU was raised in discussion. The FCA noted that this had been raised in a transposition workshop earlier in the year but that the Commission had yet to provide a view to Member States.

6 AOB

- 6.1 The FCA said it would be holding a special roundtable in February 2016 to discuss product governance and costs and charges disclosure. Further details would be provided shortly.