Summary of feedback received

May 2012

Consultation title	Proposed guidance on transaction reporting of strategy trades
Date of consultation	25/01/12 – 22/02/12

Summary of feedback received

We received responses from seven respondents:

(i) Three firms;

(ii) Two trade associations;

(iii) One Approved Reporting Mechanisms (ARM); and

(iv) One Exchange.

(i) Firms

One firm noted that it is currently unable to view strategy trades on the screen provided by its Exchange and technological changes may be required to facilitate its transaction reporting in line with the proposed guidance. A second firm questioned whether the guidance would affect its Authorised Reporting Mechanism (ARM).

We note that the requirement to report these transactions is not new. However, to allow firms reasonable time to introduce any changes we have set an effective date of 15 August 2012.

(ii) Trade associations

The FOA and the BBA submitted a joint response to the consultation, raising a number of issues, including some unrelated to this consultation. We have summarised below the issues relevant to this consultation, together with our response.

	FOA/BBA point	FSA response
1	The guidance will require technology or process change that is disproportionate to the likely benefits.	MiFID requires that the transactions in financial instruments admitted to trading on a regulated market must be reported. The requirement to report these trades is not new. We consider that the proposed guidance requires the least change

		out of all the options envisaged that comply with MiFID.
2	Stock contingent trades are low volume, the likelihood of market abuse occurring is low.	(i) The volume of trading and the likelihood of market abuse are not criteria considered by MiFID in defining the obligations to transaction report. (ii) All information on trading in reportable instruments is useful for monitoring the market for abuse as it establishes trading patterns used by participants that assist in automated alerting. (iii) Market abuse is not the only objective of transaction reporting. The reports received may also assist firm supervisors identifying breaches of Conduct of Business rules, FSA monitoring of wider market developments and other regulatory bodies.
3	Strategy trades are designed to be delta neutral, making market abuse difficult.	The likelihood of market abuse is not a consideration in MiFID, see answer 2(i) above.
4	MiFIR justifies the exclusion of transaction reporting in circumstances where it is very difficult for market abuse to occur.	(i) The final text of MiFIR is still going through the EU legislative process and is still very uncertain. MIFIR is also unlikely to be implemented for a number of years. (ii) The current draft of MiFIR states in recital (27) that 'to avoid an unnecessary administrative burden on investment firms, financial instruments not traded in an organised way and that are not susceptible to market abuse should be excluded from the reporting obligation'. Given that strategy trades are traded in an organised way and they are not devoid of potential market abuse, the above would not justify the exclusion of transaction reports for these strategies

		under the current text of MiFIR, were it implemented in its current format.
5	NYSE Liffe could provide the stock leg of strategy trades but FSA systems constraints prevent this.	(i) Agreements between regulators and the industry in 2007 established shared standards between all European competent authorities that exchanges are designated ISIN or Aii, and ISIN transactions can only be reported on ISIN exchanges. (ii) Firms need to be able to identify the venues of each leg for strategy trades traded on exchanges other than NYSE Liffe (London), so the FSA guidance needs to address the wider market infrastructure.
6	Use of the phrase 'trades such as Stock Contingent Trades whereby two or more legs that are dependent on each other are executed simultaneously' (a) implies the guidance applies to activity that is not explicitly referenced and (b) uses a term specific to NYSE Liffe.	We have changed the language to remove all references to 'stock contingent trades'.

(iii) ARM

The ARM that responded does not report Aii transactions and therefore is not impacted by this guidance.

(iv) Exchange

An Aii exchange responded by commenting that the guidance should state that the reporting of the ISIN leg as 'XOFF' is an interim measure and that it does not indicate that the leg was executed off-Exchange.

The FSA notes that this guidance is not intended as interim, and firms should plan to make any necessary changes by the effective date. The use of 'XOFF' is necessary, not because we regard the cash equity leg as off exchange, but because there is inconsistency between the exchange designation (Aii) and the instrument's identification code (ISIN), and the guidance is designed to remain effective should this change.

Response to feedback received

See above

Changes made to the guidance as a result of feedback received	As a result of feedback we received, changes have been made to pages/paragraphs: 1.1, 1.4 and 1.6: The use of the term 'Stock Contingent Trade' has been replaced by 'strategy trades' 1.1: The addition of the words 'exchange traded' to emphasise the scope of the guidance. 1.6: Rephrasing (but retaining the same meaning) of the example provided to improve clarity and offer better distinction between the two exchanges used in the example as they have similar names.

You can access the full text of the guidance consulted on here