

Minutes

Meeting: MiFID II Implementation Roundtable
Date of Meeting: 22 October 2015
Venue: 25 The North Colonnade, Canary Wharf, London E14 5HS

Present:

Nick Bayley - FCA	Stephen Hanks - FCA
Catherine Crouch -FCA	Paul Atkinson - FCA
Sarah Raisin - FCA	Louise Rodger - FCA
ABI	AFME
AIC	AIMA
APFA	APCC
BBA	EFET
FIA Europe	FIX
FOA	IA
ICI Global	ISDA
MFA	NFY
TISA	UK Platforms
WMA	WMBA

1 MiFID II Implementing Measures

1.1 The FCA provided an update on the MiFID II implementing measures.

Technical Standards

- The MiFID II Regulatory and Implementing Technical Standards presented to the ESMA Board of Supervisors (BoS) on 24 September have now been published.
- The Parliament and Council are having meetings to discuss the technical standards. So far most external commentary on the standards has focused on non-equity transparency, position limits, the ancillary exemption for commercial firms trading commodity derivatives, position limits and best execution issues.

Delegated Acts

- Based on remarks made by a senior commission official at a recent conference, it now appears likely that the Delegated Acts will be adopted towards the end of this year. They will then enter a period of scrutiny by the Parliament and Council during the first quarter of 2016 before being published in the Official Journal.
- The FCA was asked if it had any view on what will be in a regulation versus what will be in a directive. It noted that at the Expert Group of the European Securities Committee (EGESC) in May several Member States had argued for use of a directive for some of the implementing measures, particularly those dealing with client assets and conduct provisions covered by Article 24 of the level 1 where in both cases there are provisions allowing Member States to go beyond the provisions in MiFID II.

Transposition workshops

- The FCA confirmed that a transposition workshop (which takes place in a meeting of the EGESC) for Member States had been scheduled for 22nd September but due to the volume of questions posed had been postponed. It is expected that the rescheduled discussion will take place before the end of the year.
- On the matter of Article 2(1)(d) – do third country firms with DEA access to EU markets need to be authorised as investment firms – the Commission had said it was considering the issue when the last transposition discussion was held earlier this year. It is necessary to wait and see whether this will be addressed at the next transposition workshop.
- The FCA was asked whether it would provide clarity on the interpretation of article 2(1)(d) and said that its consultation on MiFID II implementation would need to address geographical scope in a broad sense. On the specific issue, the FCA will need to see and digest what the Commission has to say before making a decision on what, if any, guidance it provides.
- A TA asked whether the questions and answers discussed in the transposition workshops are likely to be published. The FCA said that the Commission had had its own Q&A database for the original MiFID but was unsure of the Commission's plans on this occasion. The FCA noted that the Commission publishes high-level minutes of EGESC meetings.

2 FCA communication with industry.

2.1 The FCA circulated a paper on communications with industry over MiFID II to roundtable attendees in advance of the meeting. The paper develops points made at previous roundtables in relation to how and when to communicate with firms and trade associations.

- The FCA said that it is looking to firm up its plan for communications with industry over the coming 3 – 6 month period. The FCA explained that uncertainty on the implementing measures makes communications more difficult in the short term. The FCA asked attendees what their most important issues are and sought views on the content on the paper.
- A TA asked what the FCA will provide to help participants who might fall outside the ancillary exemption for commodities firms. The FCA said the authorisation work that is underway will address commodities and HFT firms. It recognised the challenge of ensuring it reaches out to those currently unregulated firms who will be affected.
- The FCA was asked about its plans for communications with retail firms. The FCA said work on this is underway and will be delivered later in the process. Because the Delegated Acts are not out, this impacts what the FCA can say at this point.

- The FCA sign-posted attendees towards the new content being updated on the FCA's website in the next few weeks. This includes the main keynote speeches (which have already published) from the MiFID II conference that took place on Monday 19 October. The remaining content; recordings of speeches and breakout sessions and accompanying slide packs, will be published next week.
- There was some concern amongst attendees at a lack of retail content at the wholesale conference and questions were posed about whether the FCA was going to hold a retail conference.
- The FCA said that it did not think that a large-scale conference was necessarily the best way of reaching firms with an interest in retail issues but it was open to discuss which the most effective channels are for this. The FCA reiterated that it is happy to provide staff and subject matter experts from the FCA to attend TA events and committee meetings to discuss specific issues and areas in greater details, subject to adequate advanced notice, and available resource.
- The FCA asked for feedback on the optimum timing for its communications and, specifically, at what point trade associations and their firms were particularly keen on engaging? Those present suggested that this is entirely dependent on the timing and content of the delegated acts, and should be linked that.
- The meeting briefly discussed whether MiFID II communications was better done using a subject-based approach or an industry sector-based approach.
- On the issue of authorisations and the planning to ensure that firms are authorised for the deadline, the FCA repeated what it had set out at its MiFID II conference; that it will begin to accept draft applications from firms seeking authorisation from April 2016. FCA noted that there would need to be different arrangements for specialist commodity derivatives firms. Ahead of MiFID I coming into force, the FSA had produced a permissions and notifications document. The FCA is looking at doing something similar ahead of April 2016.
- A TA asked whether a permissions and notifications document would cover notifications by firms benefitting from the ancillary exemption. The FCA said it would, although decisions have yet to be taken on how the notifications will work in practice.
- A TA said that on position limits there needs to be clarity on the process for commercial firms applying for hedging exemptions. What is the FCA proposing? The FCA said it is digesting what the draft RTS say about the hedging exemption and will come back to industry with more details in due course about the application procedure.
- On research, a TA queried whether the FCA will provide interpretation on the meaning and application or whether this would be left to firms to interpret. The FCA said it would have to see what the final legislation says. The European Parliament did stress recently that the outcome on research needed to be clear. There is also the possibility of ESMA providing guidance on this. The FCA said it was very keen to ensure firms understand their obligations in this area.
- The FCA recently circulated its monthly regulatory round up featuring an article on the status of MiFID II. This has generated several enquiries from IFAs asking what MiFID II meant for them. This is a space where significant uncertainty remains because our implementation of MiFID II will need to take account of the conclusions of the Financial Advice Market Review. The FCA will consider how best to communicate with IFAs.
- The FCA asked if trade association members would welcome information in the form of webinars and web based content. TAs said that if the FCA could break content down into specific individual areas that could be very helpful, including in allowing people

outside of Europe to get involved in understanding the implications of MiFID II. It was also suggested by the roundtable attendees that this could help in areas where there is a lack of detail in the legislation, for example when considering the impact and requirements that a line of text means on a logistical and operational level for firms, in terms of detailed systems specifications and systems build. There was also support for web based material for IFAs and smaller firms to assist them with understanding the process.

- A TA said some questions about how the legislation works will be incredibly granular, particularly where the level 1 and 2 text is ambiguous, and queried how the FCA propose to answer the very complex, detailed points. The FCA said it would be seeking to communicate with firms across a broad front to assist them with implementation but they would also need to exercise their own judgement. Guidance from ESMA and the FCA could not be expected to answer all the detailed questions firms would have.
- A TA asked about the status of ESMA level 3 guidance. The FCA confirmed that level 3 guidance does not have the same status as rules but provides important information about NCAs' supervisory expectations. The FCA said it had been collecting issues which might be contenders for inclusion in ESMA guidelines and Q&A and would be happy for industry to send it lists of issues they thought ought to be considered.
- A TA mentioned that the FSA had a process for approving industry guidance. It queried whether this still exists and whether it could help with MiFID II implementation. The FCA said that it had moved away from endorsing industry guidance. The process tended to be time consuming for both sides. The FCA is happy to help and review material produced by trade associations, but it is easier to manage without having to go through formal lengthy endorsement.
- The FCA said it would continue to engage with associations on communication issues and welcomed continuing feedback.

3 Update on FCA consultation plans

3.1 As discussed at the previous Roundtable, the FCA said that it plans to publish consultation papers in December and probably next March on MiFID II implementation.

- The first consultation will cover mainly markets issues whilst the second consultation will cover, amongst other things, conduct issues, client assets, systems and controls, enforcement, commodities and the definition of a financial instrument. It is not appropriate to consult on matters covered by the delegated acts until they have been adopted by the Commission.
- The FCA is planning to include a Handbook Guide to MiFID II. This reflects the fact that a significant amount of MiFID II takes the form of directly applicable regulations most of which will be referenced in the Handbook but not copied out. The guide will attempt to explain in the course of a few pages how the various parts of the UK's implementation of MiFID II fit together. A draft would be included in the December Consultation Paper.
- A TA asked if there is to be a consultation in March next year whether that is not too late to meet the transposition deadline. The FCA acknowledged it is tight. A decision has yet to be taken on length of the consultation on the second consultation paper; it might be shortened in order to meet the 3 July 2016 deadline.

4 Feedback on the FCA MiFID Conference

4.1 The FCA reported that it FCA had collected approximately 100 feedback forms from delegates attending the MiFID conference. Work is underway on analysing the comments made, but the FCA's perception so far, is that the event went well. The FCA asked if any one who had attended the event had any observations or could suggest any areas where it could have could be improved.

- The following suggestions were made: some of the breakout sessions ran in parallel and attendees would have liked to attend the sessions they had to miss, others had selected their breakout sessions prior to the RTS being published. It was asked if the FCA could share a sense of what it had taken away from discussions that took place at the conference. For example did the FCA agree with the points made in relation to ISINs? The FCA made clear that it supported the ESMA draft technical standards. The FCA will shortly publish the Q&A's from the day along with the speeches, presentations and other relevant material on the FCA website.
- There is demand for more discussion of the detail in the technical standards and it was suggested that future meetings or events on transaction reporting would be extremely welcome.
- There was some appetite for another conference. The FCA said it wouldn't rule any future conferences out and remain open minded if they work for the industry.

5 AOB

5.1 The FCA updated attendees on the progress of the Cost Benefit Analysis (CBA) which is underway. The FCA asked trade associations to urge their firms to respond. The deadline has been extended by two weeks. It understands that firms are struggling with the CBA due to the degree of uncertainty, and asked TAs to encourage firms to provide the best information they can or to speak to the FCA named contacts if they require further assistance.

6 Next meeting.

6.1 2pm, Monday 30th November.