
Minutes

Minutes of the meeting of the
MIFID II IMPLEMENTATION ROUNDTABLE

Held on 8 June 2015 - 3pm

At FCA, 25 the North Colonnade

Present:

- Nick Bayley - FCA
- Stephen Hanks - FCA
- Louise Rodger - FCA
- Sarah Raisin - FCA
- Thomas Ward - FCA
- AFME
- AIC
- AIMA
- APFA
- BBA
- BVCA
- EFET
- FESE
- FIA-Europe
- GAFTA
- ICI-Global
- ICMA
- Investment Association
- ISDA
- MFA
- TISA
- WMA
- WMBA

MiFID II Implementing Measures

1. After introductions, the FCA provided a brief update on the MiFID II implementing measures.
2. The European Commission (EC) continues to work towards the adoption of the delegated acts which is likely to happen in July or September. The European Parliament and the Council of the EU will then have at least three months to scrutinise the delegated acts. If they do not oppose the delegated acts, the EC hopes they will be published in the Official Journal of the EU in early 2016.
3. As set out in public correspondence between the European Securities and Markets Authority (ESMA) and the EC, the bulk of the draft technical standards (TS) will be forwarded to the EC in late September. The June 2015 ESMA Board of Supervisors (BoS) meeting will agree the main policy lines and then over the summer comments from the EC legal services will be incorporated before the final versions of the draft TS are approved at the September ESMA BoS. They will then be published and sent to the EC. The EC will then have up to 3 months to endorse the draft TS.

Endorsement will then start the period of at least three months for the European Parliament and Council of the EU to scrutinise the TS. If they do not oppose the TS the EC hopes they will be published in the Official Journal of the EU in the first part of 2016.

FCA implementation work

4. The FCA set out how it is organised to make the changes it needs to make to implement MiFID II. The work is being run by a programme board chaired by David Lawton, the FCA's Director of Markets Policy & International. There are five work-streams, each with its own accountable executive, sitting under the programme board: authorisations and supervision; transaction reporting; position reporting; transparency calculations, and policy. Part of the work of the programme will include developing a strategy for communication with those affected by MiFID II.
5. Noting that the deadline for the recent Discussion Paper on MiFID-related conduct issues on which we have discretion recently closed (there have been over 100 responses), the FCA said this would be the last policy document published before a Consultation Paper (CP) is published on all the necessary changes to the FCA Handbook in December of this year. To ease navigability, the intention is to split the CP into two documents, one covering mainly conduct issues (both retail and wholesale) and the other mainly markets issues. Because of the time of policy staff taken up by work on the implementing measures, the FCA said that it would be challenging for it to get a CP out by December.
6. In terms of Handbook drafting, the FCA said that it would not be taking a single approach to how it handles rules contained in directly applicable EU regulations. Whether there are links to the relevant text or it is copied out would depend on the specific context, for example the extent of the relationship between the material in the regulation and material in the revised directive that has to be transposed. The FCA said that it would be particularly challenging for conduct matters where the FCA would want the same rules to apply to non-MiFID firms.
7. In the subsequent discussion, one trade association (TA) expressed concern about the timetable. It prefers FCA consultations to be as green as possible to allow for proper discussion and consideration but it appeared that there would be very little time for the FCA to take account of responses to the CP. The FCA said that the publication of the DP on issues on which we have discretion was intended to expose already some of the issues to help us gain extensive industry feedback at an early stage of the process before significant decisions had been taken. The intention is, given timing constraints, for feedback on responses to the DP to be covered in the December CP.
8. This led on to a discussion about areas on which firms are keenest to have clarity. Amongst those mentioned were: transaction reporting, understanding where information on which instruments are traded on venues will come from and the overlap between MiFID and RDR. It was agreed that TAs would speak to their members and come back to the FCA with the key issues on which firms want greater clarity. This was on the clear understanding that there was a diversity of interests around the table, and that on some of the issues it is probable that information will not be available until after the implementing measures are finalised, or even later in some cases.

FCA external communications strategy

9. As noted above, external communications will be a key component of the FCA's implementation work. The FCA said it was keen to hear views on what TAs thought it

could do to best get messages across to their members, and how the TAs might be able to assist the FCA in reaching firms.

10. One TA said that the willingness of the FCA to engage through going to TA working groups, appearing at conferences and the like was much appreciated and it would be important for the FCA to keep this up. Others mentioned several of the things we have done with other pieces of EU legislation: dedicated website pages, newsletter updates and an inbox for queries. Some of this is already partly in place but needs developing and the FCA noted that given the large number of firms affected careful thought was necessary before offering an in-box for queries because of the likely volume of emails it would receive. There was also support for the possibility of FAQs on key topics. There was also a request that in communicating with firms that the FCA should be as clear as possible about what within the legislation is finalised and what is not.
11. One TA said that it thought interactive sessions worked best in helping firms understand their obligations. It enables firms to pose questions and for there to be back and forth to generate a shared understanding. Another TA was concerned that for some firms there is a need to get across high-level messages fairly quickly to help cut across some ill-founded rumours that are circulating. There was an appreciation that information is incomplete but it was suggested it can often be helpful to set out what is not currently known as well as what is.
12. A TA said that some firms will be brought into authorisation for the first time by MiFID. There was a request to think about putting on workshops for such firms, particularly commodity firms, to help them through the authorisation process. One TA welcomed the possibility of an 'authorisation workshop' and another was interested in how the appropriateness test can be practically implemented recognising the post MiFID II shift in requirements for product providers as other possible topics.
13. A question was posed about the interaction between what the FCA is doing on implementation and the legislative changes on which the Treasury is consulting. The FCA confirmed that it had liaised with the Treasury over the Treasury's CP before it was published but that obviously decisions about changes to legislation are a matter for the Treasury alone to make.
14. One TA asked whether the FCA intended to issue any consumer-facing material, so that consumers do not labour under the misapprehension that seismic market changes are afoot. The FCA said that one main channel for this is FCA senior management speeches. Another TA thought there was a need for a more targeted approach to the materials and communications sent out by the FCA suggesting 1) retail and consumer focused issues and 2) communications relevant to the markets and wholesale firms.
15. A few TA members raised the issue of the FCA's ability to continue to issue guidance. The FCA observed that the MiFID legislation particularly sets out that Member States should issue interpretative guidance.

FCA October 2015 MiFID II Conference

16. The FCA said that another MiFID Conference was being planned for 19 October, and that the agenda (still being planned) is likely to cover off mostly markets-related and wholesale conduct material.

Future meetings and any other business

17. The TAs agreed to revert to their members asking for their top five MiFID II implementation concerns. The TA's would then feed these back at the next TA/FCA meeting. MiFID co-ordination staff in the EU are happy to take queries in the meantime as and when they arise (by email), but it was agreed that the FCA would consider how best to triage future MiFID II enquiries.
18. It was agreed that these meetings were helpful and should occur monthly. The FCA will set a series of monthly meetings up. It was also suggested that additional targeted sessions on very specific issues would be welcome once the level of detail becomes clearer in the TSs. There was also interest in hearing in future meetings what other Member States are doing to prepare for MiFID II