

Minutes

Meeting: MiFID II Implementation – Trade Association Roundtable

Date of Meeting: 3 August 2016

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

Present:	Stephen Hanks - FCA	Karen Northey - FCA
	Jennifer Long – FCA	Paul Atkinson - FCA
	ABI	AFB
	AFME	AIC
	AIMA	APFA
	APCC	BVCA
	CMCE	EDMA
	EFET	FESE
	Energy UK	FIA
	FIX	GAFTA
	IA	ILAG
	ISDA	MFA
	NFU	WMA
	WMBA	

1 Introductions

- 1.1 The FCA said that Marc Teasdale, the FCA's Director of Market Oversight, had taken over from David Lawton as the sponsor of its MiFID II implementation project and that Jennifer Long had taken up the role as accountable executive for the project.

2 MiFID II implementing measures

- 2.1 The FCA said that of the Regulatory Technical Standards (RTS) only those on indirect clearing, position limits and the ancillary exemption for commercial firms trading commodity derivatives had yet to be adopted by the Commission. There are also some Implementing Technical Standards (ITS) that have yet to be adopted. It seemed likely that the final adoption of all the RTS and ITS would now only be achieved at some point after the summer break. A table on the Commission's MiFID II webpage provides an overview of progress on the implementing measures.¹
- 2.2 The FCA also highlighted that several of the RTS that had been adopted are being treated as involving changes to the original ESMA drafts. This means they are subject to a 3 month scrutiny period so that, for example, the scrutiny period for the RTS on non-equity transparency extends into the middle of October. Extended scrutiny periods are also likely to apply to the two RTS on commodities once they are adopted. It is likely therefore that it will only be towards the end of the year at the earliest when all the implementing legislation will have been published in the Official Journal.
- 2.3 A question was asked about the state of play on the RTS on package transactions. The FCA said that work is underway on this and that the deadline set for ESMA to provide a draft is the end of February 2017.

3 ESMA Level 3

- 3.1 The FCA said that work is ongoing across investor protection, secondary markets, commodity derivatives and market data on interpretative Level 3 material. It was likely that this work would continue through to the legislation taking effect and although ESMA has amassed a wide range of possible questions to address, it was still open for stakeholders to suggest possible areas where guidance would be helpful and to indicate areas they thought ought to be a particular priority for Level 3 work. There would not be formal consultation on Q&A but ESMA would be discussing particular issues with its consultative working groups.
- 3.2 On investor protection significant progress has been made on draft guidelines on product governance and an initial 26 Q&A covering best execution, suitability and appropriateness, tapering and independent investment advice. Publication would be at some point after the summer.
- 3.3 On secondary markets significant progress has been made on a discussion paper on the derivatives trading obligation and guidelines on trading halts and management bodies of regulated markets. Work was underway on Q&A on a wide range of other topics including the definition of a multilateral system, the differences between MTFs and OTFs, the interpretation of Article 2(1)(d), the double volume cap, the meaning of 'traded on a trading venue', the scope of transparency obligations, the quoting obligation for non-equity systematic internalisers, tick sizes, organisational requirements for investment firms and trading venues in respect of algorithmic trading, data disaggregation SME growth markets, and access to market infrastructure and benchmarks. Publication of Q&A on secondary market issues would start at some point after the summer.
- 3.4 Associations queried how ESMA was prioritising amongst the possible issues for Q&A. The FCA said that ESMA and the competent authorities are listening to points made by industry about their main concerns. For example, ESMA was working hard on the interpretation of 'traded on a trading venue' and this work was seeking to take into account this has implications for several different provisions.
- 3.5 A question was asked about the territorial scope of MiFID II as regards shares which trade in Europe but which are most liquid on a market outside of Europe. The FCA said that ESMA was considering various different aspects of this issue including the scope of trade reporting and the way in which the trading obligation for shares works.

¹ http://ec.europa.eu/finance/securities/isd/mifid2/index_en.htm

- 3.6 On commodity derivatives the implementing measures need to be completed before ESMA can make real progress on interpretative issues. A large number of possible interpretative and practical issues have been identified and there is engagement with market participants, such as discussions on measuring deliverable supply with trading venues.
- 3.7 A question was asked about the practicalities of position limits being applied to inflation swaps. The FCA said that ESMA was well aware of the concerns that market participants had on this issue and was considering what could be done to mitigate them.
- 3.8 On market data the guidelines published at the end of last year can only be finalised once the RTS have been through scrutiny. RTS 22 on transaction reporting had only just been adopted and it was possible that this would be subject to three months scrutiny by the Council and Commission.

4 UK implementation

- 4.1 The FCA was continuing with policy work to transpose MiFID II. Last week's Consultation Paper, CP 16/19, would be followed by a third CP on conduct of business issues and with further perimeter guidance. The FCA was thinking about publishing this at the end of September but had yet to take the final decision on the date of publication. There would be one policy statement across the various FCA consultations on MiFID II and the FCA was hoping to publish this a few months in advance of the 3 July 2017 transposition deadline. Treasury and the PRA continue to work on their implementation and all three organisations are in close contact to co-ordinate their efforts.
- 4.2 A question was asked about when the FCA would open the gateway for applications for authorisation or variation of permission. The FCA said that, in line with previous discussions, it wants to open the gateway in January 2017. However, the opening of the gateway is dependent upon the passage of legislation and therefore we cannot be definitive at this point. The FCA also noted that to help deal with the associated work early applications by firms would be appreciated. A question was asked about when industry might get to see revised authorisation forms. The FCA said it hoped to be able to present these at the next roundtable meeting and that it would also be circulating the forms to trade associations for comment at about the same time.
- 4.3 Alongside work on policy the FCA was also continuing with the practical arrangements that it needs to have in place for MiFID II. Work is ongoing on the development of the market data processor that will be used to receive and store transaction reports, commodity position reports and data for transparency calculations. Preparatory work is being undertaken relating to the setting of position limits.
- 4.4 Concern was expressed by several associations about the fact that the implementation dates for MiFID II and PRIIPs are not aligned. The FCA said that the deadline for the date of application in PRIIPs is set in Level 1 and that firms need to continue to work towards this deadline for implementation.

5 AOB

- 5.1 The FCA said that the next meeting on 6 September would discuss the substance of CP 16/19.