

Minutes

Meeting: MiFID II Implementation – Trade Association Roundtable

Date of Meeting: 6 September 2016

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

Present:

Stephen Hanks - FCA	Catherine Crouch – FCA
Karen Northey - FCA	Jennifer Long – FCA
Paul Atkinson - FCA	Sarah Raisin – FCA
Andrea Ferguson - FCA	Ruby Bhavra – FCA
Iliana Lani – FCA	Sophie Stern – FCA
Paul Willis – FCA	Cosmo Gibson – FCA
Kevin Phelan – FCA	Various Trade Associations

1 Introductions

2 CP 16/19

2.1 The FCA introduced CP 16/19, which is focused on technical transposition issues, and then went through the main topics it covers providing a chance for questions on each topic.

2.2 Complaint handling

- New structured deposit requirements were noted by the presenter, but there were no questions.

2.3 Remuneration

- The FCA noted that requirements on remuneration codify the existing ESMA guidelines, which we played an active role in drawing up based on our own work on remuneration, and their approach is therefore aligned with what we currently expect of firms.

2.4 SYSC (excluding conflicts)

- No specific comments were made on SYSC itself, but the Navigation Guide was discussed and it was asked to what level it is applicable to firms, or to MiFID business, which didn't appear clear to some readers.

2.5 Conflicts of interest

- The FCA highlighted the statement in the CP that that the step from reasonable to appropriate in the high-level conflicts standard represented a higher bar for firms to meet, as does the new emphasis on preventing conflicts of interest (including those caused by the receipt of inducements from third parties or by the firm's own remuneration and other incentive structures). This. There were no questions.

2.6 CASS

- The single rulebook approach was mentioned and no concerns were raised, and no other comments were made.

2.7 Commodity Derivatives

- The only specific point raised on the matters in the CP was about the scope of the position limits regime. The FCA said it did not see a conflict between the general statement in the draft rules that limits apply regardless of where a person is located and the fact that the chapter on commodities mentioned that the Treasury had commented that it did not think the limits applied to two persons with no link to the EU trading an economically equivalent contract.
- Discussion then moved on to EU developments and implementation issues with regard to commodity derivatives. The FCA noted that the Commission had not yet adopted RTS 20 and 21. With a potential three-month scrutiny period for Council and Parliament this meant they might not appear in the Official Journal until early 2017.
- For the ancillary test ESMA put forwards measures for capital tests, but the numerators, denominators and thresholds are still unknown.
- Work is underway on the Level 3 guidance and Q&As which will be published once these matters are settled.
- There is work underway between the FCA and ESMA on position limit thresholds and the receipt and transmission of reports and notifications of exemptions.
- Trades will be reported and flagged as hedging / non hedging (as per the ITS on weekly position reports), exemptions which will be applied for in advance will be applied once any position is calculated.
- Weekly aggregated position reports will have more transparency than position limit reporting, which will be used as a tool to oversee the new position limit regime. They will be split between financial firms and commercial entities, this will not include retail clients. This may be clarified in Q&A that retail is calculated as part of wholesale. There will also be a flag to say where they are hedging or speculative, to note if they are 'risk reducing for commercial purposes'.
- Work is still underway on defining how the notification of an ancillary exemption will be reviewed.
- The FCA is aware of aggregation, legal and controls questions for RTS 21 and these are on our agenda for Level 3 negotiations. The FCA view asset managers as having different pools which may represent a corporate parent or a manager managing funds (where it would be inappropriate to aggregate). The FCA hope to include as many scenarios as possible into the Level 3 work. The Level 1 work attempted to import aspects of the CFTCs work into Europe.

- Attendees raised questions around confidentiality of information about positions which have to be passed up to trading venues for reporting to regulators. The FCA noted that this will need to be addressed by firms on a contractual basis.

2.8 SUP, PRU, Whistleblowing and Fees

- The FCA noted that for SUP there would be transitionals for transaction reporting to avoid any legal loopholes when the old regime dies. We will decide what to do to address any remediation of erroneous transaction reporting in due course.
- For transparency waivers more information on the provisions will be within the Application and Notification guide due to be published by the FCA at the end of 2016.

2.9 Other issues

- The Market Data Processor (MDP) pages have been updated on the FCA website, this will be the Zen replacement. Please see <https://www.fca.org.uk/markets/market-data-regimes/market-data-reporting-mdp> for more information.
- The ESMA data on market size publication has been held up until the political text is approved at which point we will know what to publish and on what timeframes.

3 Authorisation Forms

- 3.1 A draft of the UK's annex to the EU ITS form for firms seeking authorisation as an investment firm had been sent round before the meeting but was not for wider circulation at this stage. The FCA said it was happy to have comments by email.

4 Round up of other developments

- 4.1 The FCA announced it now expected to have to publish a fourth Consultation Paper (CP) towards the end of the year.
- 4.2 The FCA outlined what its third MiFID implementation CP (now published as CP16/29 <https://www.fca.org.uk/publications/consultation-papers/cp16-29-mifid-ii-implementation-would-cover>).
- 4.3 This CP is split into two parts:
- Part I deals with conduct of business issues
 - Part II deals with other matters covering a range of issues not covered in our previous two CPs, including product governance and additional perimeter guidance
- 4.4 Our proposals pick up on several of the themes of our recent work in the UK on retail and wholesale conduct issues. They also reflect areas that we have worked on to promote competition and market integrity.
- 4.5 The Commission now maintain a tracker on their website of progress with the RTS and ITS, please see: http://ec.europa.eu/finance/securities/docs/isd/mifid/its-rts-overview-table_en.pdf
- 4.6 The FCA said Level 3 Q&A is expected after the September ESMA Board of Supervisors (BoS) meeting from the Investor Protection & Intermediaries Standing Committee (IPIISC) and the Secondary Markets Standing Committee (SMSC) on, respectively, a range of conduct issues and the double volume cap. Additionally a discussion paper on the derivatives trading obligation would be published shortly and draft guidelines on product governance and requirements for management boards of market operators and Data Reporting Service providers would also be published at the end of September.

4.7 The FCA also said that ESMA was working on further Q&A for publication in due course. Issues that ESMA was looking at included investment research, the approach to 'traded on a trading venue', the definition of a multilateral system, and the systematic internaliser regime.

5 AOB

5.1 The FCA said that the next meeting would be on the 6 October.