

## Minutes

Meeting:	MiFID II Implementation – Trade Association Roundtable	
Date of Meeting:	6 October 2016	
Venue:	25 The North Colonnade, Canary Wharf, London, E14 5HS	
Present:	Stephen Hanks - FCA	Catherine Crouch – FCA
	Fabio Braga - FCA	Sarah Raisin – FCA
	Paul Atkinson - FCA	Various trade associations and firms

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### 1 Introductions

### 2 ESMA DP on the trading obligation and Q&A on the double volume cap

#### a) Trading obligation

2.2 On the 20 September 2016 ESMA published a discussion paper on the trading obligation for derivatives.<sup>1</sup> It includes 35 questions and has a 2 months consultation period with response date of the 21 November 2016.

2.3 The FCA summarised some of the key aspects of the DP, which include

- a) the clearing obligation as the trigger for the trading obligation
- b) how ESMA is minded to assess liquidity
- c) the level of granularity at which the liquidity assessment should be performed
- d) the interlinkages between the trading obligation and the use of pre-trade transparency waivers
- e) packages
- f) phasing in of the obligation by class of market participant

2.4 The DP will be followed by a CP before ESMA sends draft regulatory technical standards to the European Commission.

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<sup>1</sup> <https://www.esma.europa.eu/press-news/esma-news/esma-consults-trading-obligation-derivatives>

- 2.5 An attendee asked whether there was any flexibility around 3 January 2018 for the trading obligation to go live. The FCA noted that the EU had already missed by several years the date set out in the G20 conclusions on reforming OTC derivatives markets.
- 2.6 In response to a question about consistency with the approach taken in other G20 jurisdictions, the FCA said ESMA had taken account of approaches outside of the EU to the extent this was possible in light of some differences in legislative frameworks.
- 2.7 A question was asked about ESMA's use of trade repository data and whether it was possible to cleanse the data to provide an accurate picture of activity in different instruments. The FCA acknowledged that the use of data from trade repositories poses challenges but said ESMA had done its best to take account of this.
- a) Double volume cap
- 2.8 On 3 October 2016 ESMA published Q&A on the implementation of the double volume cap (DVC).<sup>2</sup> The DVC enters into force from the 3 January 2018 and requires a look back over a one year horizon for the calculations from. Given the waivers under the existing directive differ from those that will apply under MiFID II, the Q&A provide information on how this should be taken into account. It is also clarified that transactions executed on the basis of two orders benefitting from the large in scale waiver will not count towards the volumes of dark trading under the reference price and the negotiated trade waiver
- 2.9 It was asked whether ESMA would issue Q&A around the MTF / OTF boundary; the FCA said ESMA was looking at this. Future Q&A on secondary markets topics were also likely to cover further aspects of the transparency regime, including in relation to systematic internalisers, and other aspects of market structure and microstructural issues
- 2.10 An attendee asked whether ESMA would be providing Q&A on the Article 2(1)d exemption for dealing on own account. The FCA said there was a possibility that there would be Q&A on aspects of this exemption but ESMA was not currently focusing on the changes to the exemption introduced as part of the 'quick fix' legislation, such as how hedging should be interpreted.

### **3 MiFID II Implementation – Consultation Paper III - CP 16/29**

- 3.1 On the 29 September, the FCA published their third MIFID II CP.<sup>3</sup> The FCA reiterated that, as with the two previous CPs, this CP focused on transposition providing, outside of PERG, only limited guidance on interpretation. This reflects the fact that the FCA is doing most of its work on interpretation through ESMA to ensure consistency across the EU.
- 3.2 The FCA said that it appreciated that the Handbook drafting was complex, a problem exacerbated by the different timetables on MiFID II and the Insurance Distribution Directive. It said it would particularly welcome comments from respondents on the technical details as well as on broader policy points and was interested in hearing whether respondents felt it would be useful to have a Handbook Guide on COBS and MiFID II akin to those for MAR and REC, and SYSC in the previous two CPs.
- 3.3 An attendee asked whether the FCA would be providing details on what parts of the MiFID II regulation had and had not been copied out into the Handbook. The FCA said it would consider whether or not to do this.
- 3.4 Questions were asked about the interpretative views that the FCA had provided on the rules on inducements and research. The FCA said it was working with colleagues in ESMA to produce Q&A on the main interpretative issues on these rules. It wanted a common

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<sup>2</sup> <https://www.esma.europa.eu/press-news/esma-news/esma-issues-qas-implementation-double-volume-cap-under-mifid-ii>

<sup>3</sup> <https://www.fca.org.uk/publications/consultation-papers/cp16-29-mifid-ii-implementation>

approach to EU across the EU. The FCA was not able to be specific about the timing of further ESMA Q&A on this topic. In response to a question about imposing the rules on collective portfolio managers the FCA said they were subject to the existing use of dealing commission rules and it thought it made sense to continue to have a single research regime.

- 3.5 Attendees were interested in the analogous regime for taping, and whether this would be addressed through the Policy Statement or ESMA Q&A. The FCA said it expected Member States to be left to interpret 'analogous requirements'. On taping the FCA said it was open, as highlighted in the CP, to considering ideas from respondents that could help to achieve the objective of enhancing investor protection. It was also engaging bilaterally with firms and trade associations on this issue.
- 3.6 An attendee asked whether the timing of the reforms to the client categorisation regime for local authorities could be aligned to changes to the management of local authority pension schemes happening in the spring of 2018. The FCA noted that the deadline in MiFID II is fairly inflexible.

#### **4 Round up of other developments**

- 4.1 The FCA announced it now expected to publish a fourth Consultation Paper (CP) towards the end of the year. This will cover a diverse range of material that, for various reasons, it has not been possible to include in the previous CPs. It said it understood that the PRA was likely to publish a policy statement shortly<sup>4</sup> and the Treasury would do so in the next few months.
- 4.2 The FCA said it expected ESMA Q&As on investor protection to be issued shortly covering, amongst other issues, appropriateness, suitability, best execution, taping and inducements<sup>5</sup>.

#### **5 AOB**

- 5.1 The FCA said that events were planned for firms and trade associations to discuss CP 16/29 as followed (details of the sign up process would be sent to trade associations in due course):
  - a) 'Wholesale' aspects of CP 16/29 on the 22 November, topics covered will be inducements and research, client categorisation, dealing and managing, underwriting and placing, investment research, taping (except Article 3 firms), perimeter guidance
  - b) 'Retail' aspects of CP 16/29 on the 6 December, this will cover inducements including adviser charging, disclosure requirements, independence, suitability, appropriateness, client agreements, product governance, knowledge and competence requirements and taping, best execution and research and inducements for Article 3 firms'

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<sup>4</sup> This was published on 27 October:

<http://www.bankofengland.co.uk/pr/Pages/publications/ps/2016/ps2916.aspx>

<sup>5</sup> They were published on 10 October: <https://www.esma.europa.eu/press-news/esma-news/esma-publishes-new-qa-investor-protection-under-mifid-ii>