

Minutes

Meeting:	MiFID II Implementation – Trade Association Roundtable on 'retail' aspects of CP 16/29	
Date of Meeting:	6 December 2016	
Venue:	25 The North Colonnade, Canary Wharf, London, E14 5HS	
Present:	Stephen Hanks - FCA	Catherine Crouch – FCA
	Jason Pope - FCA	Steven McWhirter – FCA
	Kevin Phelan - FCA	Fazila Gauhar – FCA
	Various trade associations and firms	

1 Introduction

- 1.1 The FCA noted the upcoming fourth MiFID II consultation paper (CP 16/43¹) and plans to publish a first policy statement (PS) dealing with mainly markets issues in March 2017, with all other issues to follow in a second PS around June 2017.
- 1.2 To encourage firms to prepare and make the appropriate applications and notifications under the MiFID II regime, the FCA said it intended to publish an Application & Notification User Guide, with links to the new application forms, early in 2017².

CP 16/29

- 1.3 The FCA introduced CP 16/29³, which is focused on both conduct of business issues, as well as other organisational arrangements that are not addressed in the previous two CPs. They then went through the main topics the CP covers providing a chance for questions on each of the topics.

2 Product Governance

- 2.1 The FCA said that the product governance requirements have a broad scope of application but are intended to apply in a way that is appropriate and proportionate taking into account the product and/or service under consideration and the nature of the clients to whom it is being sold. It also noted the consultation on ESMA Guidelines on identifying target markets. A question was asked whether a firm advising on financial instruments constitutes a 'distributor' under the product governance rules. The FCA said it did.

¹ <https://www.fca.org.uk/publication/consultation/cp16-43.pdf>

² <https://www.fca.org.uk/publication/documents/mifid-ii-application-notification-guide.pdf>

³ <https://www.fca.org.uk/publication/consultation/cp16-29.pdf>

- 2.2 A question was asked about the obligation for distributors to provide feedback to the manufacturer. The FCA said the information required is that necessary to support the product review by the manufacturer, particularly that it is being distributed to its intended target market.
- 2.3 One attendee asked whether segregated mandates were caught by product governance requirements, it was noted that whilst the directive does not apply, and it feels more appropriate to retail but that wholesale should also take note.
- 2.4 The status of non-complex UCITS which were sold very widely was questioned. It was suggested that these were likely to be a product whose target market was the mass retail market.
- 2.5 Firms involved in primary market activities were interested in how the obligations would apply to them. For example when their primary market role ceases, would their undertaking of 'investment service' cease. The FCA said this was one of the issues on which it expected there would be a lot of responses to the ESMA consultation. Whilst the product governance rules were intended to have a wide scope, they were not intended to fundamentally remake the way the primary market works.

3 Training and competence

- 3.1 The FCA has notified ESMA that it will comply with its knowledge and competence guidelines⁴ under MiFID II, and CP 16/29 proposed some changes to the Handbook to give effect to the guidelines. It was asked whether individuals would be required to undertake examinations to meet the knowledge and competence requirements. The FCA said that no mandatory qualifications were to be introduced. This would be something for the employer and employee to determine between themselves.
- 3.2 One attendee wanted to know whether the supervision of employee training could be outsourced, it was noted that whilst the action could be, the responsibility would always remain with the firm.

4 Inducements

- 4.1 In the CP the FCA had made clear that its proposals to apply the inducements rules to investment advice and not just personal recommendations was contingent upon Treasury consideration of possible changes to the definition of investment advice. The Treasury's consideration of possible changes to the definition of advice, following on from the Financial Advice Market Review, was ongoing⁵.

5 Article 3 firms and taping

- 5.1 The FCA said it would be considering very carefully representations in regard to possible alternatives to a taping requirement for Article 3 firms. One attendee said that ESMA's recent Q&A's on taping⁶ appeared to require the taping of face-to-face conversations. The FCA said that this was not the correct way to read what ESMA had said.

6 Research and best execution

- 6.1 The FCA noted that the restrictions on receipt of research in MiFID II apply to firms providing independent investment advice as well as to portfolio managers. Following on

⁴ https://www.esma.europa.eu/sites/default/files/library/esma71-1154262120-153_guidelines_for_the_assessment_of_knowledge_and_competence_corrigendum.pdf

⁵ The government has since published a consultation:

<https://www.gov.uk/government/consultations/amending-the-definition-of-financial-advice-consultation/amending-the-definition-of-financial-advice-consultation>

⁶ https://www.esma.europa.eu/sites/default/files/library/2016-1444_mifid_ii_qa_investor_protection.pdf

from this in response to a question the FCA confirmed that a comparison between products offered by Firm A and Firm B may be viewed as research. Information on the products of Firm A alone may be viewed as a permissible minor non-monetary benefit.

- 6.2 A question was asked about the timing of execution quality reports under RTS 28. The FCA said it expected ESMA Level 3 Q&A to clarify that the first annual report under RTS 28 would be expected four months after the implementation of MiFID II, but that it was recognised firms would have less data to compile reports in 2018 than would be the case in 2019.
- 6.3 Discussion moved on to situations where the relevant executing venue is more ambiguous and thus harder to report on. One example was the increasing use of DEA brokers, and whether they should be reported as the executing venue or whether they should be 'looked through' to the ultimate execution venue. The FCA said that ESMA might seek to clarify this in due course but its initial view was that where a portfolio manager was using DEA it would be more meaningful to refer to the venue being used than the broker.

7 Disclosure requirements

- 7.1 The FCA said that the finalised Handbook text would not solve all the issues industry have with costs and charges disclosure. It would copy out the relevant legislation, part of which is directly applicable for investment firms, and would not provide a standardised template for costs and charges disclosure. The FCA said it expected ESMA to publish Level 3 Q&A on costs and charges and it was discussing with certain trade associations a number of detailed questions they had raised on this topic.
- 7.2 The FCA said it did not intend to be prescriptive about the granularity of the itemisation of costs where clients request such disclosure. But it observed that the clear intention of the legislation was that the main components of costs should be identifiable. A questioner raised the issue of obtaining information from product manufacturers outside the EU. The FCA said that it acknowledged that this presented challenges to firms. They would need to do their best to obtain information to enable them to make meaningful disclosure to their clients.
- 7.3 An attendee noted that consistency in costs and charges disclosure is important to firms and to clients, especially comparability where it is too difficult to standardise. The FCA noted that while we would not prescribe methodologies it would continue to talk to industry to assist with implementation. It was asked whether Stamp Duty (SDRT) was a charge for the purposes of costs and charges disclosure – it is.
- 7.4 The FCA said it expected ESMA to publish Level 3 Q&A on the practicality of end of day reporting of 10 per cent falls in the value of portfolios and leveraged positions.

8 Suitability

- 8.1 A question was asked as to what firms should do with insistent clients. For example can the client be warned that should they execute it would be classed as unadvised. The FCA said that MiFID does not rule out firms executing client orders in circumstances in which the client has been warned under the appropriateness test, or has provided contrary financial advice. The FCA has provided some guidance on this issue in the context of pension reforms⁷ which provides a good starting point for firms thinking about this issue in relation to investment business more broadly.
- 8.2 It was asked whether suitability reports could be done in relation to types of transactions for a client rather than on a trade-by-trade basis. The FCA said the requirement is for a suitability report to be issued each time advice is provided to a client.

⁷ <https://www.fca.org.uk/firms/pension-reforms-insistent-clients>

- 8.3 It was asked whether product interventions co-ordinated between Competent Authorities would become more frequent under MiFID II. The FCA said that was clearly the intention of the co-ordinating powers being given to ESMA.