

## Minutes

Meeting:	MiFID II Implementation – Trade Association Roundtable	
Date of Meeting:	14 November 2016	
Venue:	25 The North Colonnade, Canary Wharf, London, E14 5HS	
Present:	Stephen Hanks - FCA	Catherine Crouch – FCA
	Karen Northey - FCA	Sarah Raisin – FCA
	Paul Atkinson - FCA	Jason Pope – FCA
	Various trade associations and firms	

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### 1 Introductions

### 2 ESMA draft guidelines on product governance

- 2.1 The FCA introduced this discussion by noting that product governance had been a feature of UK conduct regulation for some time. Guidelines had been adopted in the better part of a decade ago and various pieces of thematic work had been done in recent years. Therefore firms in the UK should be well placed to implement the product governance requirements in MiFID II.
- 2.2 An attendee expressed concern about potential differences of view across the EU on issues such as which entity is judged to be the manufacturer of a product. The FCA said that discussion within the ESAs and bilateral discussion between regulators should help to narrow differences of interpretation. An attendee queried why the guidelines (paragraph 22) make the manufacturer responsible for determining the communication channel to be used with clients. The FCA said that this might be appropriate with innovative products.
- 2.3 An attendee asked about what expectations the guidelines created in relation to execution-only business. The FCA said that firms would need to conduct an analysis of whether a product could be sold execution-only, but this would likely require less information than where there was a more tailored approach to distribution. An attendee asked whether it would really be necessary to do a target market assessment for listed securities. The FCA explained that the product governance requirements were intended to have wide application but to be applied proportionately. It noted that in our draft rules in CP 16/29 the proportionality requirement had been put upfront to make clear that the rules had to be viewed through this prism.
- 2.4 An attendee queried why the guidelines defines portfolio managers as distributors. The FCA said that the legislation has a wide approach to what is covered by distribution.

### **3 Authorisation Forms**

- 3.1 FCA had prior to the roundtable circulated to trade associations the pack of draft authorisation forms that would be used for MiFID II with permission to circulate them to members. It would be happy to accept written comments by the end of November at the latest and would circulate the pack to a wider range of firms for opinions shortly.
- 3.2 Various issues were raised by attendees. The FCA said that: an existing authorised person wanting to operate an OTF would need to submit a request for a variation of permission together with applications for transparency waivers; the process of dealing with transparency waivers would be through the normal supervisory process; a change of legal status would require an application for a new authorisation; and no variation of permission was required to become an SI, although firms needed to notify the FCA.
- 3.3 The FCA said it expected to be able to receive applications for authorisations and variations of permissions linked to MiFID II from the end of January. Firms seeking to become authorised would need to have applications deemed complete – most applications are incomplete on initial submission – by the FCA by 3 July 2017 in order to be sure of being granted authorisation by 3 January 2018. Applications would need to be complete earlier than this if firms also wanted to passport from 3 January 2018.

### **4 ESMA Level 3 Q&A**

- 4.1 The FCA invited questions about the Level 3 Q&A published by ESMA in October 2016<sup>1</sup> across investor protection and secondary markets issues.
- 4.2 A question was asked about the impact on buy-side firms in regard to trade reporting of the delay in the first assessment of the Systematic Internaliser (SI) thresholds. The FCA acknowledged that there was an issue here but that on balance ESMA had decided that the right thing to do was to only apply the SI thresholds when the same dataset was available to all firms. It had looked carefully at the legal issues surrounding this Q&A. Buy-side firms could delegate the trade reporting of transactions to their brokers although would remain responsible for ensuring that trades were reported correctly.
- 4.3 An attendee asked about ESMA's plans to publish a database of SIs. The FCA said there will be an EU-wide list of SIs published by ESMA, but this will not identify the financial instruments they are SIs in.

### **5 ESMA CP on packages**

- 5.1 The FCA said the draft RTS on packages was seeking to identify packages that were subject to pre-trade transparency based on provisions in the legislation which had amended the date for the transposition and application of MiFID. There was an understanding on ESMA's part that identifying liquid packages was difficult, particularly given the existing lack of data. It had therefore shied away from producing a specific list of liquid packages or identifying such packages on the basis of quantitative criteria. Because of the challenges in this area, ESMA would be particularly attentive to consultation responses.
- 5.2 Attendees recognised the challenges faced by ESMA but said they had reservations about whether the criteria suggested by ESMA would identify truly liquid packages which could trade transparently. They said they would seek to talk to the FCA about this after further discussions with members.

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<sup>1</sup> [https://www.esma.europa.eu/sites/default/files/library/mifid\\_ii\\_mifir\\_qa\\_on\\_transparency\\_topics.pdf](https://www.esma.europa.eu/sites/default/files/library/mifid_ii_mifir_qa_on_transparency_topics.pdf) and [https://www.esma.europa.eu/sites/default/files/library/2016-1444\\_mifid\\_ii\\_qa\\_investor\\_protection.pdf](https://www.esma.europa.eu/sites/default/files/library/2016-1444_mifid_ii_qa_investor_protection.pdf)

