

Minutes

Meeting: MiFID II Implementation – Trade Association Roundtable

Date of Meeting: 17 March 2016

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

Present: Stephen Hanks - FCA Catherine Crouch - FCA

Sarah Raisin - FCA Iliana Lani - FCA

Gavin Stewart – FCA Paul Atkinson - FCA

ABI AFB

AFME AIG

AIMA APFA

BVCA EDMA

EFET FESE

FIA - EPTA FIA Europe

FIX GAFTA

IA ICI Global

ICMA ILAG

ISDA MFA

QCA RBA

SQIB TISA

UK Platforms WMA

WMBA

1 Implementing measures and Commission proposal to delay the date of application of MiFID II

- 1.1 The FCA said that discussions were ongoing on the legislation to delay the application of MiFID II. The Council had discussed a proposal to tie the transposition and application dates to set periods (respectively 9 and 15 months) after the completion of the implementing measures. Some attendees expressed support for such an approach. The FCA said that the reasoning for this proposal was clear but that there were questions as to whether it was legally sound which were being explored in the Council discussions.
- 1.2 In Council discussions there had also been debate about whether the date of application of Article 4 of the Market Abuse Regulation and the Packaged Retail and Insurance-Based Investments Regulation (PRIIPs) should be linked to the date of application of MiFID II. The Council is scrutinising the substantive amendments the Parliament has proposed on the transparency regime for package transactions and security financing transactions and the own-account dealing exemption in Article 2.1.d. The Parliament will vote on delay legislation in early April.
- 1.3 The FCA said the negotiations on the delay legislation would continue for the next few weeks. However, the intention was to reach political agreement in April so that the legislation could enter into force before the current transposition date of 3 July.
- 1.4 The FCA said it expected the delegated acts to be adopted by the Commission and published in April which would then trigger a three month scrutiny period for the Parliament and the Council.
- 1.5 During the round table Markus Ferber MEP released a statement saying that the Parliament had been informed by the European Commission that the Commission was asking ESMA to make changes to the RTS on non-equity transparency, the ancillary exemption for specialist commodity derivatives firms and position limits. The FCA said it could not comment on the statement but ESMA subsequently published letters it sent to the Commission about possible changes to those RTS.

2 FCA transposition plans following CP 15/43

- 2.1 The FCA thanked associations for their responses to CP 15/43. It said that, amongst other points, the responses: raised questions about the FCA's approach to dealing with directly applicable regulations in the Handbook; offered diverse views on post-trade transparency and the use of extended deferrals; and raised a practical issue about trade reporting when one of the counterparties is a systematic internaliser. Attendees asked whether there would be further details on whether systematic internalisers could trade on a matched principal basis. The FCA said that the delegated acts might say something about this and that it was possible that level 3 Q&A from ESMA would also pick up on this.
- 2.2 The FCA noted that the Treasury has to complete the implementing legislation before we publish our policy statement as our implementing legislation is, in part, based on the statutory instruments, especially in the area of regulated markets. Finalisation of the statutory instruments is unlikely before the final quarter of this year and the FCA said it would consider whether in advance of that it would be possible to say anything on topics in the CP that are not dependent on the statutory instruments.
- 2.3 The FCA then turned to discussing its plans for further consultation on implementation. It said it was considering publishing a second consultation in late July 2016 which would cover SYSC, EG, DEPP, COMP and CASS areas of the Handbook and a third consultation in late September which would cover mainly remaining COBS areas in September 2016. It asked attendees for their view on whether they would prefer this approach or for there to be just a single consultation paper in late September. There was strong support from

attendees for the former. The FCA said it was planning to try and complete transposition by April 2017 so that as a result of the delay in the overall timetable, industry would get a slightly longer period of certainty about their new obligations.

- 2.4 An attendee asked how the timing of the implementation of the Insurance Distribution Directive (IDD) would affect the transposition of MiFID II's conduct of business rules. The FCA said that the different timings for delivery of the respective Level 2 measures presented a challenge and that it is considering how best to approach while awaiting greater certainty on the IDD's implementing measures.

3 FCA preparations for authorisations

- 3.1 The FCA said that all dates mentioned were tentative until we receive the finalised implementing measures. Based on the information we have so far we are planning to open the gateway for the existing regulated activities and investment types towards the end of 2016. For any new regulated activities or investment types we are currently aiming for firms to submit draft applications at the beginning of 2017. The FCA aim to open the authorisations gateway for MiFID II as soon as is practicable.
- 3.2 Firms will continue to submit applications through the FCA Connect system except for the DRSPs applications. Our existing authorisation application forms will change and there will be new DRSPs and MTF / OTF forms.
- 3.3 The FCA will seek views from the industry before the forms are used. Due to the volume and the complexity of the applications we expect, the FCA strongly encourage as many early applications as possible to enable readiness by January 2018.
- 3.4 A question was asked about clarity on the boundaries between MTFs and OTFs. The FCA said that in addition to what is in PERG it expects ESMA Level 3 Q&A to provide further assistance to firms in this regard.

4 Potential FCA guide to applications and notifications under MiFID II

- 4.1 The FCA noted, that when the Level 2 measures are finalised we will look to publish an applications and notifications guide. This guide will broadly cover the following categories: trading venues, broker – dealers, commodity market participants, investment advisers, AIFMD / UCITS, incoming EEA investment firms and 3rd country firms.
- 4.2 In addition to chapters by firm types, others are expected to include authorisation process, passporting for UK firms, corporate governance, exemptions and waivers.

5 AOB

- 5.1 The next roundtables are scheduled for:
- 25 April 2016 at 9.30am
 - 26 May 2016 at 2pm
 - 6 July 2016 at 9.30am
- 5.2 The FCA noted the conduct event it is running for associations and firms to discuss product governance and costs and charges is on the 18 April 2016 and invites have been circulated.