

Minutes

Meeting: MiFID II Implementation – Trade Association Roundtable

Date of Meeting: 22 February 2016

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

Present:

Stephen Hanks - FCA	Catherine Crouch - FCA
Sarah Raisin - FCA	Juliet Onyeka - FCA
Fabio Braga – FCA	James Roberts - FCA
Makoto Seta – FCA	Paul Atkinson - FCA
AFB	AFME
AIG	AIMA
APCC	APFA
BBA	EDMA
EFET	FESE
FIA Europe	FIX
IA	ICI Global
ICMA	ISDA
ILAG	MFA
NFU	Oil & Gas UK
QCA	RBA
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 there was little new to say on the subject of the implementing measures to go beyond what had been said at the last round table. Progress was expected soon.
- 1.2 The Commission has published its proposal for delay on 10th February. The Parliament was seeking to deal with this rapidly, the rapporteur had already published a draft report which proposed putting the transposition deadline back by a year as well as the date of application. Debate about using the delay legislation to make substantive amendments seemed to be focused on two main topics: the application of pre-trade transparency to package transactions, and a change to Article 2.1.d to allow commercial firms to be members or participants in FX venues without being required to be authorised.
- 1.3 A question was asked about press reports that a leaked version of the delegated acts showed the Commission possibly narrowing the scope of instruments judged to be complex for the purposes of the appropriateness test. The FCA said it was necessary to wait for the official texts to see what the legislation actually said. As a general point, if the Commission did depart from ESMA's advice in the delegated acts it adopted it would be necessary for it to explain the changes it had made.
- 1.4 In response to a question around the use of regulations or directives for the implementing measures, the FCA said that at the last Expert Group of the European Securities Committee discussion of the delegated acts in 2015 many Member States had expressed concern about the Commission's then proposal to use only regulations for the delegated acts. In particular, Member States had pushed for conduct and client asset matters to be included within a directive.
- 1.5 The FCA confirmed that the level 3 work, other than the issuance of consultations on guidelines, is dependent on the approval of level 2.
- 1.6 An attendee said that guidelines would be preferable to Q&A because they involved consultation. The FCA acknowledged this comment, and noted that guidelines would take a lot longer to finalise at a time when firms were pressing for certainty as soon as possible. The FCA said that ESMA would approach the issue of Q&A or guidelines on a case-by-case basis.
- 1.7 A question was raised around the Commission's consideration of RTS 2 on non-equity transparency as to whether adequate consideration was being given to concerns about the regime for derivatives alongside that for bonds. The FCA said it thought the Commission was well aware that concerns went beyond bonds but we would need to wait and see how this played out.
- 1.8 The FCA noted that numerous issues related to MiFID, including on transparency, were raised in response to the Commission's consultation on the cumulative burden of regulation. The Commission will need to consider how these responses play into its decisions on the delegated acts and technical standards.
- 1.9 Questions were raised around transposition, and the FCA once more noted that it is our intention to provide clarity as soon as we can, once we have certainty on the level 2.
- 1.10 One attendee noted that concerns had been raised about the application of pre-trade transparency and securities financing transactions, particularly focussing on the repo market. The FCA said it was not currently clear whether this would lead to a tabling of an amendment to the level 1 text through the delay legislation.

1.11 Attendees highlighted the overlap in MAR (the Market Abuse Regulation) and MiFID II with regard to reference data and asked whether the MiFID II delay would also apply to the reference data provisions in MAR. The FCA acknowledged the issue. Attendees highlighted that they felt it would be helpful if Art 4 of MAR was also delayed.

2 CP 15/43

2.1 Data Reporting Service Providers (DRSPs)

- The FCA noted that no grandfathering will take place for existing Trade Data Monitors and Approved Reporting Mechanisms, and the verification process for existing trading venues seeking to operate a DRSP may be lighter touch than the application process for DRSPs in areas where the FCA already hold information about the trading venue. There exists guidance under MAR9 on notifications. The fee CP, CP 15/34, which covered DRSPs has already been published.

2.2 PERG guidance on a multilateral system

- An attendee said that guidance on multilateral facilities and crossing of fund orders by investment managers would be appreciated. They said clients would be adversely affected if such crossing was deemed to be the operation of a multilateral system. The FCA said that, pending discussion with colleagues in ESMA, there was nothing it could add on this topic. The FCA urged attendees to feed back further thoughts on multilateral systems in their response to the CP.

2.3 Regulated markets (RMs), multilateral trading facilities (MTFs), and organised trading facilities (OTFs)

- The FCA noted here that the Handbook changes for regulated markets flowed virtually directly from the Treasury's proposed changes to the recognition requirements for recognised investment exchanges and Articles 18 to 20 of MiFID, whilst those for MTFs and OTFs are based on the level 1 text. No questions were raised.

2.4 Transparency

- A question was asked about the possibility that different Member States would make different choices around the discretions in the post-trade transparency regime for bonds and derivatives. The FCA said it did not have any information about the choices other jurisdictions would make. There was already scope for different national choices under MiFID; however the extra instruments to which MiFID II applied transparency obligations add further complexity.
- An attendee asked about possible discrepancies in the flags required for trade and transaction reporting. The FCA said it would look at the issue but that there had been close co-operation between those working on trade reporting and transaction reporting in the drafting of the RTS.
- Other points were raised around ISINs. The FCA noted that industry and regulators were engaged in a discussion of the specifics of the use of ISINs for derivatives.

2.5 Market Data

- Questions were raised about the proposal to only apply transaction reporting obligations to MiFID firms, so that certain asset managers who currently have a transaction reporting obligation will no longer be required to transaction report. The FCA noted that this reflected a judgement that the costs of imposing the higher MiFID II standard on such firms outweighed the benefits of receiving direct transaction reports from these firms.

2.6 Algorithmic and high-frequency trading requirements

- It was noted that the new MAR chapter mainly copies out requirements in MiFID II. It is still unclear how much further information will emerge in the ESMA level 3 work on this topic. Attendees expressed concern that the proposed MAR 7A, unlike the relevant RTS, did not mention proportionality.

2.7 Principles for business

- The FCA noted that PRIN will apply to eligible counterparties and urged attendees to provide relevant responses to the CP.

3 Report on 19 February MiFID II transposition workshop

- 3.1 The FCA said that the European Commission had held a MiFID II transposition workshop with Member States on 19 February. A long list of questions about the interpretation of the level 1 directive had been discussed at the workshop. The Commission had made clear that the discussion was informal and that it would not be providing or publishing written responses to the questions raised.

4 AOB

- 4.1 The next roundtables are scheduled for:

- 17 March 2016 at 10am
- 25 April 2016 at 9.30am
- 26 May 2016 at 2pm
- 6 July 2016 at 9.30am

- 4.2 The FCA noted that there would be a conduct event to discuss product governance and costs and charges on the 18 April 2016 and invites would be circulated shortly.