

## Minutes

Meeting:	MiFID II Implementation – Trade Association Roundtable	
Date of Meeting:	23 February 2017	
Venue:	25 The North Colonnade, Canary Wharf, London, E14 5HS	
Present:	Stephen Hanks - FCA	Catherine Crouch – FCA
	Anne MacKinnon – FCA	Sarah Raisin - FCA
	Representatives of various trade associations and firms	

### 1 Introductory remarks

- 1.1 The FCA once again stressed the importance of firms making applications for authorisation or variations of permission as soon as possible to ensure these can be processed in time for 3 January 2018. Aside from issues currently being considered by ESMA, it asked trade associations to raise with it any issues where firms need greater clarity to enable them to complete their applications.

### 2 FCA work on transposition

- 2.1 To finalise its rule changes by 3 July 2017, the FCA said it intended to publish two policy statements (PSs) - in late March 2017 and in late June 2017 respectively.
- 2.2 The main content of the March PS relates to markets issues (trading venues, algorithmic trading, market data and commodity position limits and reporting) and systems and controls for investment firms. There will be final rules to allow the FCA to charge authorisation fees for new activities under MiFID II and near final rules on other issues.
- 2.3 At the same time, the FCA will publish a fifth consultation paper (CP) on MiFID II implementation. This CP will cover changes to the FCA's Enforcement Guide (EG) and Decision Procedure and Penalties Manual (DEPP) as well as changes to conduct rules for Occupational Pension Scheme firms.

### 3 Treasury implementing legislation

- 3.1 On 9 February 2017, the Treasury published a policy statement on the legislative implementation of MiFID II<sup>1</sup>. Some changes had been made to the proposals consulted on and the legislative proposals covered some issues the Treasury had not been able to cover in its original consultation, such as on changes to the parts of the Regulated Activities Order dealing with investments to reflect the provisions in the MiFID II implementing

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<sup>1</sup> <https://www.gov.uk/government/consultations/transposition-of-the-markets-in-financial-instruments-directive-ii>

regulation on foreign exchange forwards. Work was continuing to finalise the two negative resolution statutory instruments.

#### 4 ESMA Level 3 round up

##### A. January Q&A

- 4.1 On secondary markets issues, ESMA published Q&A on 31 January 2017 covering market making, colocation and systematic internaliser (SI) calculations. On market data issues, ESMA also published Q&A covering various issues relating to financial instrument reference data.
- 4.2 Attendees raised various issues about aspects of trading venues' obligations in regard of transaction reporting and financial instrument reference data. The FCA said it understood that trading venues were continuing to discuss their ongoing concerns with the European institutions. An attendee said that an ESMA Q&A on reference data published in December 2016 did not take proper account of the practicalities of obtaining legal entity identifiers (LEIs) for issuers whose instruments were traded on trading venues.
- 4.3 An attendee queried whether a trading venue acting in accordance with Q&A 2 of section 4 on 'Instrument identification code and Underlying instrument code' in the ESMA Q&A on MiFIR data reporting would be judged as complying with its obligations under Article 27 (1) of MiFIR. The FCA said that, as a general proposition, the Q&A are designed to assist firms by providing clarity on meeting their obligations in the legislation.

##### B. Ongoing Level 3 work

- 4.4 Level 3 work is ongoing across all of the ESMA standing committees and taskforces involved in MiFID II. The FCA provided some background to the sort of issues ESMA was working on, but noted that decisions on what material ESMA would be publish, and when, would be taken through ESMA's governance processes.
- **Commodity Derivatives Task Force (CDTF).** Following non-objection to the two commodity derivative RTS by the European Parliament and Council, the CDTF is working on various potential Q&A on position limits, position reporting and the ancillary activities exemption. The FCA noted that ESMA was well aware that market participants had, in particular, remaining concerns about the treatment of a firm that discovers early next year that it lies outside of the ancillary exemption.
- **Market Data Reporting Standing Committee (MDSC).** This is working on additional potential Q&A on financial instrument reference data.
- **Investor Protection and Intermediaries Standing Committee (IPISC).** This is working on potential Q&A on best execution, research and costs and charges - amongst other topics. It is also finalising its guidelines on product governance (post consultation) and continuing its review of its existing suitability guidelines with a view to consulting on a revised version which takes account of changes to the suitability rules in MiFID II.

Attendees emphasised the importance they attached to getting greater clarity on costs and charges. They said they were concerned that a measure designed to assist consumers was in danger of creating confusion unless there was intervention to ensure that firms took the same approach to calculating various costs and charges in up-front disclosures. An attendee reiterated a point its trade association had made in its response to CP16/29, that the FCA should provide a standard template for costs and charges disclosure to seek to achieve an appropriate degree of uniformity in disclosures. The FCA said that it would continue the dialogue that it was having with a number of associations on costs and charges to assist with implementation of these provisions. The FCA noted that it remained concerned that given the wide field of application of the costs and charges requirement that a standard template would have significant drawbacks.

- **Secondary Markets Standing committee (SMSC).** This is working on potential Q&A on – direct electronic access, algorithmic trading, the characteristics of organised trading facilities and their use of discretion, the activities that can be performed by systematic internalisers (SIs), multilateral trading systems and the scope of 'traded on a trading venue'. Additionally, there would be a consultation paper on the derivatives trading obligation in a couple of months and draft RTS sent to the European Commission (Commission) on package transactions<sup>2</sup> (end of February) and non-equity consolidated tape (end of March).
- 4.5 An attendee asked about ESMA's letter to the Commission on networks of SI's.<sup>3</sup> The FCA said that it was part of ESMA's role to bring to the attention of the Commission potential issues with legislation. National competent authorities (NCAs) would obviously want to share information through ESMA about the implementation of MiFID II and to discuss issues of common concern that might arise from the approaches that firms were taking to how they would do business under the legislation.

## **5 AOB**

- 5.1 The FCA said that work on equivalence for the purposes of the derivatives and share trading obligations was a priority for the Commission this year. Following a discussion between the Commission and Member States, various NCAs were working with regulators outside of the EU to put together submissions for the Commission to initiate consideration by the Commission of whether to adopt an equivalence decision.

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<sup>2</sup> The draft RTS were published subsequently on 28 February:  
[https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-21\\_final\\_report\\_package\\_orders.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-21_final_report_package_orders.pdf)

<sup>3</sup> [https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-19\\_letter\\_chair\\_guersent\\_si\\_0.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-19_letter_chair_guersent_si_0.pdf)