

## Minutes

Meeting:	MiFID II Implementation – Trade Association Roundtable	
Date of Meeting:	26 January 2017	
Venue:	25 The North Colonnade, Canary Wharf, London, E14 5HS	
Present:	Stephen Hanks - FCA	Catherine Crouch – FCA
	Sarah Raisin - FCA	Paul Atkinson – FCA
	Anne MacKinnon – FCA	Various trade associations and firms

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### 1 UK authorities' work on transposition

- 1.1 The FCA expects to publish two policy statements (PSs) on MiFID II implementation, in late March and late June of this year. Depending on certain technical issues, the first may contain a draft instrument. The March PS would mainly cover issues consulted on in CP15/43 and CP16/19. One of the issues we received most feedback on in the former was the draft perimeter guidance on the meaning of a multilateral system. The second PS in June would contain all the finalised perimeter guidance, but it was possible, depending on the progress of potential ESMA Q&A, that we would not in the end provide perimeter guidance on this issue.
- 1.2 Alongside the March PS we also expect to publish a fifth consultation paper. This would cover changes to our Decision Procedure and Penalties manual (DEPP) and Enforcement Guide (EG) and a small number of other issues.
- 1.3 HM Treasury ('the Treasury') expects to publish its policy statement in the next month or so, with the legislation then being laid before parliament.

### 2 MiFID II implementation – consultation paper IV - CP16/43

- 2.1 On 16 December 2016, the FCA published its fourth consultation paper<sup>1</sup> on MiFID II implementation. This deals with a series of broadly technical Handbook changes related to a number of areas including specialist conduct of business regimes, tied agents and SME growth markets. The CP also proposed some guidance on transaction reporting, including trading venues' use of Approved Reporting Mechanisms (ARMs), a transitional rule for fees relating to draft applications for authorisation in MiFID II.
- 2.2 The FCA urged attendees to respond to the consultation and to feel free to ask questions in advance of responding.

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

### **3 MiFID II - Application and notification user guide**

- 3.1 On 13 January 2017, the FCA published the 'MiFID II Application and notification user guide'<sup>2</sup>. The guide is intended to assist and encourage firms that need to apply to be authorised for the first time under MiFID II (or firms already authorised that need to vary their permission) to do so as soon as possible to ensure that their applications can be processed by 3 January 2018.
- 3.2 The FCA gateway for receiving applications will open on 30 January 2017 for initial authorisations and variations of permission (VoPs), and will open on the 31 July 2017 for passport notifications.
- 3.3 The FCA asked attendees to provide feedback on readability, helpfulness and whether there could be other ways of presenting the information. The FCA also urged firms to make early applications to ensure readiness.
- 3.4 Even though the scope of certain parts of legislation have not been finalised, the FCA confirmed that firms could begin to submit application documentation with the missing details to follow, which would enable the FCA to begin their completeness assessment and evaluate as far as they could with the information provided.
- 3.5 The FCA acknowledged that some of the procedures for notifications were still under development, however most were expected to be undertaken through Connect+ rather than via email. Further information on this will follow in due course.

### **4 Level 3 round up**

#### **A. December 2016 Q&A**

- 4.1 On secondary market issues, ESMA published Q&A in December on the process of applying for pre-trade transparency waivers and the tick size regime. Attendees were keen to understand what progress ESMA was making on giving clarity as to when a derivative is judged to be 'traded on a trading venue'. The FCA said that ESMA was looking at the issue, taking account of what the legislation says, the practicalities of implementation and the use of the term in relation both to trade reporting and transaction reporting. The FCA recognised that industry was keen to get clarity on this issue as soon as possible, but it said it was important to ensure that proper consideration was given to what is a complex issue.
- 4.2 On investor protection issues, ESMA published Q&A in December on a wide range of topics including best execution, research, costs and charges, underwriting and placing and post-sale reporting. A question was asked about the treatment of research that was paid for by an issuer but pre-deal. The FCA said its relevant experts would pick up on this in a separate discussion with the trade association raising the point. An attendee asked whether ESMA's Q&A 4 on Suitability and Appropriateness, which said that a suitability report has to be provided to a client before a transaction, was consistent with previous FCA guidance. The Q&A reflect a requirement in the Level 1 text which differs from the current FCA requirement for reports to be provided as soon as possible after a transaction is effected in relation to suitability reports for personal recommendations relating to regulated collective investment schemes and investment trusts.
- 4.3 The Commodity Derivatives Task Force (CDTF) was awaiting the completion of scrutiny of the Regulatory Technical Standards (RTS) on the ancillary exemption and position limits before making further progress on Q&A.

#### **B. Ongoing Level 3 work**

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

4.4 On the secondary markets side ESMA is working on various issues including:

- **Packages** – ESMA was working on revisions to the draft RTS on packages. It appreciated, as respondents to the consultation had pointed out, that the data are imperfect. It was important to realise, however, that ESMA had not been asked to provide a definition of a package for which there is a liquid market as such. The Level 1 requires RTS to identify when there is a liquid market for a package order as a whole for those packages where a component of the package is illiquid or is large in scale. ). The draft RTS would go to the European Commission ('the Commission') at the end of February.
- **Derivatives trading obligation** – ESMA was working on consultation paper due in the next two to three months. The FCA noted that there was a potential link between the timing of the application of the trading obligation and the completion of equivalence determinations.
- **Consolidated tape for non-equity instruments** – the main issue emerging from the consultation on the draft RTS was how best to specify the coverage obligation for Consolidated Tape Providers. The draft RTS were likely to be sent to the Commission in a couple of months' time.
- **Q&A** – responses to questions on microstructural issues and SI calculations seem most likely to be those published next by ESMA.

4.5 On the investor protection side ESMA is working on various issues including:

- **Product governance** – the consultation on the target market had led to a large number of responses with issues figuring prominently in the responses including how product governance applies to instruments which are admitted to secondary trading, what really has to be done in terms of defining a target market by execution-only firms selling straightforward products to the mass retail market and controls on distribution.
- **Q&A** – ESMA is working on possible future Q&A on topics including research and best execution.

4.6 Attendees asked whether ESMA would clarify the application of RTS27/28 to repos. They noted that these transactions are excluded from transparency obligations. The FCA said it had been talking to market participants about the issue and was considering the points raised in the context of what the legislation says.

## 5 AOB

5.1 The FCA said that the Commission was due shortly to discuss its approach to determining equivalence for the purposes of the share trading obligation shortly with Member States at the Expert Group of the European Securities Committee. It appeared the discussions would cover the practicalities of National Competent Authorities initiating the equivalence procedure by providing information to the Commission about why they believe the venues in a particular jurisdiction are equivalent.

5.2 Some attendees said they had been confused by a reference on ESMA's website to trading venues having to supply financial instrument to ESMA from the middle of 2017. The FCA confirmed subsequently that trading venues will send financial instrument reference data to its Market Data Processor and that this would go live in January 2018.