
Minutes

Minutes of the meeting of the TRADE ASSOCIATION COORDINATION COMMITTEE (TACC)

Held on 20 March 2012; 15:30 – 17:00

At FSA Offices

Present:	FSA:	Delegates:
	David Bailey (DB, Chair)	Simon Andrews (FOA)
	Anna Simons (AS)	Adam Jacobs (ISDA)
	Rob Harris (RH)	Eva Sanchez (FIA EPTA)
	Carlos Molinas (CM)	Ian Bell (AFME)
	David Alexander (DA)	Alex McDonald (WMBA)
	Florian Nitschke (FN)	Paul Richards (ICMA)
	Barry King (BK)	Simon Whittle (AFB)
	Stephane Amoyel (SA)	Katrina Dixon (ABI)
	Giovanni Bandi (GB)	Ian Cornwall (APCIMS)
	Sandra Collins (SC)	Sally Springer (BBA)
		Daniel Measor (AIMA)
		Jane Lowe (IMA)
		Nicholas Voisey (LMA)

Apologies: David Lawton

Action

1. Introductions and Agenda

The Chair introduced the meeting and agenda on behalf of the FSA, giving David Lawton's apologies. He invited comments on the minutes of the previous meeting. A minor amendment was noted and corrected.

2. Freedom of Information Request

The FSA had received a request for the minutes of past TACC meetings under the Freedom of Information (FOI) Act. Delegates were invited to give their views on the disclosure and any specific concerns. It was noted that the TACC meetings were held under Chatham House rules and that therefore quotes should not be attributable. As a result, the FSA's Information Access Team are considering whether it is possible to redact names and organisations from the minutes. There were no objections from members to the disclosure of the content of the minutes. However, some members felt that names of individuals and organisations should be redacted.

From now on, the meeting record will be anonymised and published on the FSA's external website to ensure transparency; as a result, delegates were reminded to take

care to ensure the accuracy of the meeting record, which will be formally signed-off at the subsequent meeting. It was noted that precedent existed within the Tripartite Authorities for this approach. It was stressed that this change should not affect the nature of the discussion.

3. Update on CPSS/IOSCO Work

The FSA outlined the workstreams ongoing under CPSS/IOSCO – a collective of central banks and securities regulators – whose remit includes settlement, payments, trade repositories and central clearing. The key workstream has been the “Principles for Financial Market Infrastructures (FMI)”. This includes general regulatory principles for infrastructure (such as business organisation and governance), as well as specific principles for CCPs (margining and default funds), settlement houses (settlement finality) and trade repositories (collection of data and subsequent provision to regulators). The final paper on the Principles is due to be published in April, with final implementation by end-2012. In practice, the principles were being implemented through Dodd-Frank in the US and EMIR in the EU. A key challenge is the implementation, given the timeframe and the new level of enforcement.

CPSS/IOSCO anticipate work in a number of other areas during 2012, including:

- assessment methodologies for FMIs (which will feed into the IMF’s FSAP process);
- disclosure framework (i.e. demonstrating how FMIs meet the Principles);
- resolution of FMI, which is designed to ensure standards provide equivalent outcomes to bank resolution – developing the FSB paper published in October 2011 – which will discuss likely role for the authorities and the principles for member burden-sharing;
- quarterly risk management information (MI), so clients can understand how risk is managed;
- access to data by the authorities at trade repositories; and
- stress testing for CCPs, including best practice and implementation.

Delegates discussed the extent to which regulations for CCPs tied into the banking regulations (e.g. CRD IV/ Basel III) and the treatment of exposures to CCPs, and what the conditions for “Qualifying” CCPs (QCCPs) would be. Delegates mentioned the potential conflicts between the Dodd-Frank and EMIR legislation that would present challenges in implementation. It was also noted that registrars are not covered by the CPSS/IOSCO work; however, the FSA voiced their continued interest in registrars.

4. EU Credit Rating Agency (CRA) regulation

The FSA introduced the third set of EU CRA regulations (CRA III), which are currently being negotiated by the European Council and Commission. The regulation is at working group level, before negotiation by attachés. A compromise text from the Commission is due in early Q2 2012.

The FSA is supportive of the high-level objectives: increasing competition between CRAs; improving transparency; and reducing the systematic reliance on ratings.

However, the FSA has openly questioned the timing of the new regulation, given that CRA I and II have not been fully implemented or had time to bed-in. There may also be insufficient evidence to demonstrate what would be proportionate for the remaining risks by CRAs. The FSA is also concerned about potentially conflicting objectives: increasing competition, but also raising the potential barriers to entry by introducing civil liability for ratings.

The FSA expressed concerns that the proposals for mandatory rotation of agencies may not be able to achieve its objective and could be practically very difficult. Moreover, rotation could have an effect on the quality and continuity of ratings, as well as an impact on contracts if the rotation policy failed. The FSA believes that further study and impact analysis of this proposal is required; for example, studies have shown that mandatory rotation of audit firms is associated with an adverse impact on quality. The FSA is also concerned with the proposed regulation of CRA methodologies: in particular, the scale and scope of powers for ESMA and the impact on the ability for CRAs to amend their methodologies when needed. ESMA have also voiced their concern over a number of the proposals to the European Parliament. The proposals for civil liability may be too complex to implement across the EU, due to difficulties in determining the “user” of the rating and how to determine the size of any losses. It was noted that there was a split of opinion across European countries on the rotation policy.

The proposed regulations seek to minimise the systematic reliance on ratings where appropriate and the FSA has voiced concerns about how this could be supervised. Delegates discussed the role of credit ratings in investment mandates, which performed a useful role in defining investor risk appetite. In particular, delegates questioned the Regulation’s effect on private contracts between non-regulated entities and the legality of its retrospective application. Delegates further noted the apparent contradiction between the forecast increase in the use of collateral as a result of other regulation and the desire to reduce the reliance on credit ratings; as well as the need to remove the link between credit ratings and default events. It was noted that ICMA had commissioned a Working Group for collateral issues; the FSA expressed an interest in the result of the discussions.

Finally, the FSA were wary of re-opening the issue of third-country rating endorsement, as new regulation would require additional tests of third-party regulations; given that equivalence for CRA I had only recently been assessed the timing of the regulation was questioned further.

ESMA had recently ruled that the US, Hong Kong, Canada and Singapore all had equivalent CRA regulatory regimes and therefore ratings “issued out of” those countries could be used for regulatory purposes by market participants (joining Japan and Australia). The regulatory regimes in Argentina, Mexico, Brazil were currently under review by ESMA. It was clarified that “issued out of” meant the location of the lead analyst. The regulations stipulate that ratings must indicate that they are endorsed. Delegates questioned whether CRAs had the technology in place to implement this, and even so whether ESMA could enforce it.

CRA III final proposals are due to be completed by end-2012, but this would depend

on the outcome of negotiations over the controversial areas.

5. FSA: Internal Twin Peaks

The FSA introduced the plan for the de-merger of the FSA. As of April 2012, internally, the FSA will split into two organisational structures; the Prudential Business Unit (PBU) and the Conduct Business Unit (CBU). After the departure of CEO Hector Sants at the end of June, the PBU will be headed by Andrew Bailey and the CBU will be headed by Martin Wheatley, who will both report to Adair Turner, who will in more of an Executive Chairman capacity than currently. Depending on the parliamentary timetable, the FSA will formally split in March 2013 into the Prudential Regulatory Authority (PRA) – a subsidiary of the Bank of England – and the Financial Conduct Authority (FCA).

As a result of the internal twin peaks approach, some firms will have two teams of supervisors; one conduct, one prudential. However, the activities of the Markets Division will continue as usual, except that after legal cutover, responsibility for clearing and settlement supervision will transfer to the Bank of England as opposed to the PRA. At legal cutover aspects of related policy will remain within Markets Division who will continue to represent the UK in international policy discussions in ESMA, with shared input from the Bank of England. There will be public Memorandums of Understanding between the two organisations, which are mandated by the legislation. Delegates cited concern about the apparent focus on retail conduct issues for the CBU/FCA.

The FSA will ask Martin Wheatley to join one of the next meetings, so delegates could hear about the future of the FCA.

6. Any Other Business

Delegates requested clarification over changes to legal documentation as a result of EMIR and what the plans are for implementation (after Binding Technical Standards), specifically on market structure.

Delegates also asked whether the FSA would be open to a “MiFID Connect” process of engagement with market participants. The FSA indicated that they would endeavour to seek the views of market participants as much as possible.

Finally, the FSA reminded delegates that the Committee was intended to be an open forum and invited trade associations to present their own work to the Committee.