

## Minutes

Meeting: MiFID II Implementation – Trade Association Roundtable

Date of Meeting: 26 May 2016

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

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Present:

Stephen Hanks - FCA	Catherine Crouch - FCA
Federico Cellurale – FCA	Paul Atkinson - FCA
AFB	AFME
AIMA	APCC
BVCA	EDMA
EFET	Energy UK
FESE	FIA - EPTA
FIA Europe	FIX
GAFTA	IA
ILAG	ISDA
MFA	UK Platforms
WMA	WMBA

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### 1 MiFID II delay legislation

- 1.1 The FCA said that the delay legislation had been informally approved by the Council and Parliament and after formal approval would be published in the official journal.
- 1.2 It was asked whether the technical standard for liquid packages would take the form of an amendment to RTS 2 or be a standalone RTS. The FCA said ESMA have yet to get into the detail.
- 1.3 On the RTS more generally, the FCA said it expected the Commission would adopt them all, with the possible exception of those dealing with the ancillary exemption and indirect clearing by the end of July.

- 1.4 The Treasury statutory instruments are being revised based on consultation paper responses and the EU implementing measures. A feedback statement is expected later this year before the draft legislation is presented to Parliament.
- 1.5 The ESMA Board of Supervisors was due to meet that week to look at the technical standard on indirect clearing, and the response to RTS 20 on the ancillary exemption<sup>1</sup>.

## **2 MiFID II and MiFIR delegated regulations**

- 2.1 The FCA said that the delegated acts were now subject to scrutiny by Council and Parliament. The Parliament had previously raised a number of concerns in a letter last year, such as around inducements for restricted financial advisors and the ability of SIs to do matched principal business, about the delegated acts some of which had not directly been addressed by the Commission. At this stage it was not clear what would happen in relation to these points.
- 2.2 Questions were raised around the calculations to determine whether a firm is a systematic internaliser, particularly around class and subclass definitions. The FCA confirmed that ESMA is expected to do some work on interpretive Q&As that will provide additional clarification for firms.
- 2.3 It was asked whether the Parliament had views on investment research, and the FCA said that previously the Parliament's main concern was that the text should be sufficiently clear for firms. The FCA said ESMA was likely to do Level 3 work on investment research in due course and asked attendees to provide views on exactly what they thought required ESMA clarification.
- 2.4 On Market Data, questions were asked around what reasonable and excessive margin looks like if trading venues are not obligated to disclose costs of producing market data. The FCA said the Commission's decision not to require publication of data on costs reflected views from Member States who were concerned the information was commercially sensitive not a public matter, more broadly judgements about whether data pricing complied with the obligation to be on a reasonable commercial basis was something that would be examined through the ongoing supervisory relationship.
- 2.5 A question was also raised around non-discriminatory access for different client categories at different prices. Again the FCA said judgements about whether what firms were doing complied with the rules would be a matter for supervisory judgements.
- 2.6 It was pointed out that the 5 year record keeping requirement disappeared from the level 3 text, and attendees wanted to know how the MiFID II record keeping obligation would interact with record-keeping requirements in other pieces of legislation such as MAR and EMIR. The FCA agreed that the lack of a single standard caused challenges for firms.
- 2.7 An association noted that with the appropriateness test the Commission had not included in the delegated regulation the text in ESMA's advice about clarifying that instruments not included in the specific list of non-complex instruments at Level 1 are automatically complex. The FCA said it was unclear what implications this had for the treatment of investment trusts.

## **3 FCA communication on MiFID II with firms**

- 3.1 The FCA discussed the ongoing MiFID II communications planning. An application and notification guide will be published in the final quarter of the year when the Level 2 measures are finalised.

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<sup>1</sup> These were published on 26 and 30 May respectively.

- 3.2 Workshops would be held with firms in the final quarter of 2016 to discuss applications for authorisation and applications for variation of permission. This would include discussions for firms wanted to operate an Organised Trading Facility (OTF) and a Data Reporting Service Provider.
- 3.3 The FCA said that it is currently trying to refine its estimates of how many firms would be brought into authorisation by the revisions to Article 2(1)(d) of MiFID and wanted to discuss this with firms (subsequently a specific meeting with relevant associations and firms was held to discuss this issue). A question was asked about how 'hedging' should be interpreted in the changes made to Article 2(1)(d) as part of the legislative package to delay MiFID II. The FCA said that the definition of hedging in RTS 20 was a reasonable place to start in thinking about what types of hedging would be permissible.
- 3.4 A question was asked about when there would be clarity on whether crossing of orders by investment managers was a multilateral system. The FCA said it thought it likely this issue would be addressed in ESMA Level 3 Q&A in the autumn.
- 3.5 The FCA said a specific communications approach is under development for people who will need to connect to its market data processor (MDP) that will receive transaction reports, data for transparency calculations and position reports.
- 3.6 The FCA outlined that specific events with firms and trade associations would be held to discuss the remaining consultation papers on MiFID II implementation.
- 3.7 Attendees expressed interest for workshops on microstructural issues, transaction reporting, regulatory outreach work, and trade reporting.
- 3.8 The FCA encouraged attendees to feedback the external events which they feel would be helpful for their members, whether there could be specific email communications above and beyond what we undertake now, and whether they felt we could do better in certain areas. The Live and Local events will also potentially be used to spread appropriate MiFID II messages and updates.