

## Minutes

Meeting:	MiFID II Implementation – Trading Venue Roundtable	
Date of Meeting:	05 February 2016	
Venue:	25 The North Colonnade, Canary Wharf, London E14 5HS	
Present:	Stephen Hanks - FCA	Catherine Crouch - FCA
	Fabio Braga – FCA	Jose Seabra – FCA
	James Roberts – FCA	Makoto Seta – FCA
	Jamie Whitehorn – FCA	Alan Barnes – FCA
	Roger Pordes - FCA	Gregory Konczak – FCA
	Christiana Chatzicharalampous – FCA	Paul Atkinson – FCA
	Aquis	Baltic Exchange
	BATS	BGC
	Bloomberg	CME Europe
	Equilend	Euronext LIFFE
	Goldman Sachs	GFI
	Griffin Markets	ICAP
	ICE	Instinet
	Kepler Cheuvreux	Liquidnet
	LMAX	LME
	LSEG	Market Axess
	NASDAQ	Thomson Reuters
	Tradeweb	Tradition
	Tullett Prebon	UBS

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## **1 Introductions and overview of the MIFID II process**

- 1.1 The FCA said that, based on publicly reported comments, it expected the European Commission to shortly propose putting back the date of application for the whole of MiFID II by a year, to January 2018.
- 1.2 It was currently unclear whether there would be substantive changes to the Level 1 text as a result of the prospective legislation on delay.
- 1.3 For implementing measures, the timeline is uncertain, with adoption of the delegated acts expected no earlier than March. The Commission has yet to adopt or send back any of the technical standards to ESMA but, as noted in previous discussions with trade associations, the regulatory technical standards on position limits, the ancillary exemption and non-equity transparency appear to be those most likely to change compared to the ESMA drafts.
- 1.4 ESMA Level 3 Q&A material will not be published until the implementing measures are finalised. The various relevant ESMA standing committees have preparatory work on Q&As underway.
- 1.5 Attendees noted that it would be helpful for firms if ESMA were to publish, even at just a high level, a view of the areas for their Level 3 focus. The FCA noted firms' concerns.
- 1.6 Attendees asked when the FCA would publish the second MiFID II consultation paper. The FCA said that whilst no firm date had been fixed it was looking towards publication in the middle of this year. The exact timing would partly depend on the progress of the implementing measures.

## **2 Market Data**

- 2.1 Questions were raised by attendees around the application process for DRSPs run by trading venues. The FCA noted that full applications would be required from new MTFs who also seek DRSP authorisation. Existing MTFs may be subjected to a less administrative approach given their existing authorisation, and on-going supervisory relationship. This wouldn't be a shortcut in terms of information submitted, more an acknowledgement that we have through our supervisory relationship a lot of information around the firm.
- 2.2 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. Attendees expressed concern that this change switched the transaction reporting obligation from the firm to trading venues of which they are members, and that the increased costs for trading venues should be factored into a decision on this. Linked to this some venues expressed concern about their ability to identify which asset management firms were authorised under MiFID as opposed to UCITS or the AIFMD. The FCA noted that ESMA has a register of investment firms that will, in due course, have information about UK investment firms.
- 2.3 The question was raised as to which competent authority a trading venue sends a transaction report to when its member or participant is not an investment firm but is authorised in the EU under another Single Market Directive. In subsequent correspondence, the FCA highlighted that ESMA's draft guidelines on transaction reporting indicated that a trading venue transaction reports to its home regulator for all transactions undertaken by members who are not investment firms.

### **3 PERG Guidance on a multilateral system**

- 3.1 Attendees discussed different ways in which trades could be brought on venue. Different scenarios were discussed. One suggested that the FCA's proposed guidance on multilateral system appeared to cover all broker activities. Another pointed out that systems and arrangements for interaction of orders and formation of contracts could result in a contract being negotiated on one system and concluded elsewhere, resulting in the possibility of multiple venues being involved in the formation of a contract, for example if a broker negotiated a trade with a client which was then passed through to an appropriate venue. A further example of a trade which could be arranged by an OTF, and executed on a regulated market was given. One attendee opined that they understood that the whole trade would need to be executed within a single broker to be classed as OTC.
- 3.2 In response the FCA noted that there exists a spectrum of models through which trades that are intended to be brought on venue could be negotiated, and the classification of those models would depend on a supervisory assessment of how they operate with a view to providing a level playing field for all venue-like systems.
- 3.3 Attendees suggested that it would be helpful if the FCA or ESMA could issue guidance on types of activity which did not constitute venue activity.

### **4 + 5 Regulated markets, Multilateral Trading Facilities and Organised Trading Facilities**

- 4.1 Attendees noted that guidance on processes around the suspension of instruments would be helpful. It was noted that the proposed REC rules reflect the Treasury's draft changes to the recognition requirements. The FCA said that the final version of REC will need to reflect any changes the Treasury makes to its proposed changes to the recognition requirements following the consultation it conducted.

### **6 Transparency**

- 6.1 Attendees questioned how the FCA will process applications in advance of application of MiFID II. The FCA confirmed that we will try to process a large number of applications in readiness for the date of application. There exists an interface between the FCA and ESMA which allows batch processing.
- 6.2 For waivers, as appropriate we will assess whether existing trading venues are in compliance with new requirements as part of our ongoing supervisory relationships.
- 6.3 It was queried whether SIs would need to go through the same approval process as trading venues to use waivers from pre-trade transparency. The FCA noted that the treatment of trading venues and SIs on this procedural point was different in MiFID II, but that proper SI transparency compliance will be an area of supervisory focus.

### **7 Algorithmic and high-frequency trading requirements**

- 7.1 FCA noted that for tick sizes and negotiated trade issues, attendees should reference the appropriate recitals.
- 7.2 For request for quote trades, the FCA noted that the May 2015 draft had an original reference, but this appears to have dropped from more recent drafts. The FCA notes that these are essentially SYSC requirements, and need to encompass some degree of proportionality, as some are binary in structure and others are more graduated.
- 7.3 Once we have the delegated acts, the FCA should soon thereafter know whether ESMA will issue guidance, or whether this is a job for the FCA.

- 7.4 Attendees questioned whether there could ever be an obligation on a dark trading venue to have a market making scheme. The FCA noted that the circumstances in which an investment firm is obliged to enter into a market making agreement do not explicitly distinguish between light and dark trading venues but that it seemed unlikely that a firm trading on a dark venue would hit the threshold for being required to enter into a market making obligation.

## **8 AOB**

- 8.1 A question was raised around direct electronic access and 3rd country clients (non-EEA). The FCA noted there were two separate issues here. First, how the restriction on the dealing on own account exemption in Article 2.1(d) for persons with DEA access to trading venues affects persons based outside the EU. Questions about this exemption have been raised with the European Commission in transposition workshops with the Member States and an answer is awaited. Second, whether firms based outside of the EEA can provide DEA access to EEA trading venues. The FCA consultation paper followed the draft Treasury implementing legislation in this regard which did not permit firms based outside the EEA to provide access to EEA trading venues.
- 8.2 The FCA were asked about the draft guidance in MAR 5 which indicates that an investment firm with the appropriate permissions can execute client orders against its proprietary capital or engage in matched principal trading outside the MTF it operates. It said that the guidance reflected what it thought was the intent behind the restriction on MTFs.