
Subject: EVIA MiFID2/R Working Group
Date: Wednesday, 28th February 2018
Time: 10:30 – 11.30am

1. Issues Log: List and status of issues raised and discussed with competent authorities and regulators

Discussed each of the items on the list. Overall feedback from members was that this was a good framework to record engagement with the regulators and how each of the items have been addressed. Extension to specific issues to be formulated as ESMA Q&A. Members were encouraged to provide other areas of concerns to enable a common view. Open issues raised with the FCA will be followed up; however, there are a number of ESMA Q&As due to follow which may provide further clarification.

2. How “link-trades” packages and multi-legged transactions should be handled with regards to which venue the trades would be booked on to and whose rulebook pertains

The general view was that only one venue and rulebook can apply to any trade and that no participants on a MiFIR TV can do so when acting as a TV themselves. Therefore, TVs executing legs and hedges on tertiary venues need to do so by acting as a client investment firm to that TV. There was no further action required on the firm for the reason that each leg of the trade executed on the one/various venues will be subject to the venue rule book and no requirement to link these trades for the purpose for transaction reporting.

3. Personal Information Data

The general view was that this remains one of the principal difficulties in TV MiFID2 implementation and the one in most requirement of fundamental revision. Firms noted a general on boarding of client personal details by TVs at the outset but some divergence as to the preferred route to store, maintain, validate and update these details over the MAR holding period requirement in an extraterritorial environment and in compliance with GDPR.

4. Product Governance for TV's and Arrangers

EVIA had raised with the FCA [Stephen Hanks (SH)] the issue around the applicability of *Product Governance* to TVs in light of the pertinent definition of '*selling an investment service*.' Whilst clearly drafted and intended to cover retail distribution, it remains unclear whether wholesale investment products offered on a venue would be in scope of this set of requirements. Some firms had already established a product committee and all firms are pondering the applicability. HP stated that others may already have a framework within their business risk process when they look to provide new services and products. SH initially passed this on internally to Maria Biase and Roger Pordes for further clarification. MB responded that her scope was purely retail and SH had noted that he is looking for a wholesale policy officer to work with RP on this question.

5. Transaction Reporting FX swap packages

There had been no further developments in respect of this and therefore firms will continue to report individual legs until further guidance. The Austrian Regulator has raised with one firm as to why they were not reporting as an instrument per RTS2 which had raised considerable concerns that this reflected a renewed ESMA vigour to seek a change of market protocols. EVIA had consulted firms, FCA and AFME but could not find any signs of a reopening of this topic. Members remain firmly aligned and EVIA will post this adopted compliance on to its FX pages. ISIN availability for the spot leg was not reported to be proving a hurdle so far this year. A further discussion was held around the differential approach for spot hedges of FX Options in packages versus the spot leg of FX Swaps.

6. RTS 8 - Market Making activities on TV

There were no particular running concerns raised but this week's ESMA testimony to ECON on retaining the separate and distinct SSR definition of a market maker to that in MiFID2 may well impact trading with the market maker on venue when using the short-sell exemption. It could also widen the definition of a liquidity provider and where relevant for issues such as fee structures and those around PFOF. Firms will need to consider formalising their arrangement through the agreements and one member noted that they had started to draft this.

7. Transparent fee structures

Following the FCA's deadline requirements related to the registration requirements to access TV web posted fee schedules, all venues have now addressed this issue.

8. FCA looks at Algo trading

EVIA provided a summary of the FCA paper which was specifically alluded to by the Andrew Bailey speech of 2nd March 2018. Amongst other things, the FCA were expecting firms to have controls, governance, conformance testing, surveillance etc to avoid disorderly markets. The emphasis was to underline that this also applies to those non-MiFID firms using algos when acting as participants and clients to TVs and IFs (i.e. energy commodity firms).

9. EFET letter to Andrew Bailey on poor quality on ISIN codes for OTC commodity products

EVIA provided a summary of the issues raised in the letter:

- different products could end up with the same ISINs
- different methodology used by venues to fill in fields to create ISINs so end up with multiple ISINs for the same product
- lack of granularity that would be fit for purpose for clients to assess.

10. AOB

a) EVIA raised the following:

- lack of completeness of regulatory registers, SH is aware and has indicated that this will be addressed by the end of next month
- OTCex website stating that they are an OTF, however it is not transparent under which register or authority that has approved them, this has been raised to SH
- RTS 5 OTF perimeter of what is ToTV, general view is to leave this and await ESMA Q&A
- Tradeweb and Bloomberg RFQ-to-one initiatives around the TV and MiFIR perimeter had made a couple of media articles and the SH speech at the Trade event on 1st March 2018
- SH speech at the trade event on 1st March 2018 focused on the Double Volume Cap and concomitant venue trading volume spikes as an avoidance measure
- Brexit – firms who do not have an EU presence are looking to subsidiaries into EU. EVIA noted that firms were having discussions with some of the NCAs as far afield as Cyprus and Portugal, yet the consensus view was that Germany and Holland were the principal hosts where open for firms to be authorised locally as a TV

- PFOF – EVIA has shortlisted and engaged with possible QCs to represent our members and will send out an email to update all on our position, and has also held informal discussions with NR, CC, RS law firms
 - Steven Maijoor speech on Fin Tech at the EU conference run by AFORE on 28th February 2018. There were four key aspects: monitoring innovation, development and complexity of use of technology in financial markets
- b) HP recommended that we hold this meeting bi-weekly instead of weekly and this was supported.
- c) One member requested that these meetings be formalised with a set of minutes. This was agreed and EVIA will address this.