
Subject: Notes from the EVIA/LEBA MiFID2/R Working Group
Date: Wednesday, 28th March 2018
Time: 10.30 – 11.30am
Venue: Conference Call

1. The live “MiFID2/R” Issues list was run through and member comments made.

No new issues were added.

2. NCA’s recent discussion on level 3 Q&A on treatment of FX Swaps as a single RTS MiFID instrument

Provided an update that several of the NCAs have confirmed that the ESMA Data Committee is looking at publishing a Level 3 Q&A on the treatment of FX Swaps as a single RTS2 MiFID instrument. Currently the industry reports both legs individually but tagged as linked.

NCAs stated that there will be Q&A to clarify its position but unclear when and we have urged the topic to be referred to the ESMA Secondary Markets Standing Committee (“SMSC”) because there are substantive reference data and transparency angles as well where the creation of more instruments product could be material, as well as the convention by market participants who have implemented the legged approach as it suits the feed into risk systems. EVIA have written to the SMSC chair on this point as well as raising with the FCA (who commented that the Q&A could be more binding than industry currently imagine).

Arising from a wide-ranging discussion, the general comment to members is to maintain the current approach. The industry has implemented a 2-ISIN Packaged Transaction solution that works for the Swaps market and it would be a huge amount of work for all parties to change to a 1-ISIN approach. EVIA have also spoken to GFMA to agree an industry push back, an approach that they set out at the stakeholder advisory group to the ESMA Market Data Taskforce just before Easter.

3. FICC Market Standard Board – Secondary Market Trading Error Compensation

The FICC (FMSB) has adopted a new “Standard” which sets out a more practical approach that compensation for error trades can be paid by compensating to the client’s account for reducing or increasing net brokerage or by other means that does not create a false market or a misleading impression i.e. ‘wash trades.’

We have not received any challenges amongst the members to this approach, which was appreciated since it was initiated by EVIA and would recommend that this is adopted via the Trading Venue rule book when handling error trades. We have passed on our feedback to FMSB that we are satisfied with the outcome of this paper.

4. ESMA

a. Opinion on the treatment of packages under the trading obligation

No one has commented on ESMA's slightly more prescribed approach, as this adds more clarity to where some of the legs are subject to the trading obligation and some to the clearing obligation. EVIA noted that they have been pressed by both ISDA and the FCA for comment on this.

b. Q&A on commodity derivatives updates

There is an open session with EFET on 11th April 2018 to discuss C6/C10 progress and feedback of MiFID2, recent Q&A's, user obligation, venue limits and hedge spec flags. EFET are raising the revised approach by ACER to market abuse and market monitoring under REMIT as particularly pertinent topics.

c. Further ESMA Q&A

EVIA noted that several more Q&A were expected before Easter, covering the work of each of the Task Forces/Standing Committees. This would include transparency and market structure topics, yet the FCA steers have been that these would be non-contentious at this early stage. Therefore, widescale changes to categorisations, to TOTV and to Reference Data were not expected.

5. FCA Trade Reporting Roundtable update

Several members attended this roundtable organised by Stephen Hanks. Notes from the session had been circulated and the topic headings were discussed. However, no requests for action were received.

6. ICE Circular E18/008: Enforcement Data Collection in relation to Orders and Transactions

Members and market participants are required to provide order keeping and transaction reporting details through the ICE Identifier Admin application to enable ICE to comply with its obligation. ICE will no longer accept orders where the relevant transaction reporting data has not been provided. Client ID, Investment decision within the firm etc. They will cancel all GTC orders where this data has not been provided.

7. AOB

a. FIX MiFID Summit 2018

- i. EVIA spoke at this event which evidently had more of an equities focus. The non-equities panel was dominated by the issues surrounding process trades, pre-negotiated trades and other variations as prescribed in the rulebooks of TradeWeb and Bloomberg. Earlier at that conference, the EU NCAs had noted that they were taking issue with transactions that were negotiated off venue and subsequently registered (rather the FCA had stated that their agenda currently was focused on the supervision of algorithmic trading as set out in RTS 7 & RTS 8).
- ii. The comments from Tilman Lueder in his key note speech and subsequent panel comments from the FCA, AMF and AFM were highlighted. In these, the EU Commission set out a revised pro-business approach to MiFID2, which at heart was all about reducing the barriers and costs to market. The EU Commission are adamant on the development of "consolidated tapes"

across MiFID2 instruments, but conversely stated that they were less concerned with data quality accuracy. In commenting that MiFID2 is not about the data, EU_COMM also stated that possessing an LEI should not form a barrier to market access (contravening the solitary redline that the FCA had set down) and that they intend to legislate to remove overseas branches of EU firms from adherence to the scope of MiFID2. The EU also set out an embrace to deference and to recognition that chimed closely with the concerns stated that previous evening in Boca Raton by the CFTC.

- b. Thomson Reuters Risk and Compliance Summit 2018 – 27 March 2018.
- i. *AI technology* – How analytics technology is currently used by the industry, Google, Facebook, Netflix, personal profiling, voice recognition, financial reporting plus the risks of manipulation, financial crime and cyberattacks.
 - ii. *FCA Stephen Hanks comments:*
 1. Unlikely to see amendments to MiFID2 but will see further clarity such we know that ESMA is looking at tick sizes on SSTI with a view to increase the levels.
 2. SI currently not subject to tick sizes but under review.
 3. Trade reporting and disparity amongst jurisdictions.
 - iii. *Modern Day Slavery Act*
 4. Financial crime supports modern day slavery.
 5. What firms can do to support the act.
 - iv. *Use of shell companies*
 6. How anonymised companies are used for financial crime gains.
 7. Challenges in identifying beneficial owners in overly complex structures.
 8. McMafia televised series fiction or fact as of today.
 - v. *Cybercrime* – Is this a topic on Board's agenda?
- c. EDMA/EVIA workshop related to costs in the new MiFID II environment

Issues

Reference Data:

- i. ISIN DSB: lobby to change a Standard Catalogue Approach as current is not fit for purpose.
- ii. Issuer LEIs: propose to extend and seek permanent exemption for non-EEA issuers.
- iii. PII: lobby to remove requirement for venue to maintain as this is a duplication of what is required by the client as part of their own KYC.

Costs to Change

- iv. Including Brexit.

Other items mentioned

- v. Costs of on-going compliance including Algo maintenance, PII, systems & human resources costs.
- vi. Clearing; middleware, STP & RegTech.
- vii. Investment Firm Review/Prudential regulation.

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- d. **Brexit:** Andrew Bailey speech and FCA's approach in working with the Government to implement the withdrawal Bill. Can members send over their Brexit issues to be discussed with Treasury, date to be confirmed.
 - e. **EU Proposal on Digital Service Tax:** proposal includes taxable revenues and includes trading revenues. It may well apply to exchanges but at this stage not clear how far this extends too.