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WELCOME TO FIA EUROPE INFONET



As FIA Europe's chief executive officer, Simon Puleston Jones, stated recently, the implementation of EMIR will look like a 'walk in the park' when MiFID II/MiFIR kicks in. Just four weeks after the InfoNet event reported on in this issue, the industry got a feel of quite how complex the process of implementing this directive and its accompanying regulation really would be.

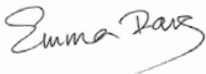
The consultation paper and discussion paper published by the European Securities Markets Authority (ESMA) on 22 May have a combined 844 pages with 860 questions for the financial services industry to answer. For the listed derivatives sector, the core subjects are: open access; commodities; derivatives (including the trading obligation, portfolio compression, indirect clearing and third-country issues relating to derivatives); and transaction reporting. There are other areas, including algo/HFT and transparency, which cannot be ignored.

Each of these areas has to be dissected, analysed and assessed in terms of their impact on the industry – all within a period of ten weeks. So, not the 'walk in the park' of EMIR, more like climbing Everest.

With all the attention now on MiFID II/R given the deadline for responses of 1 August, it is easy to forget that EMIR is still in its implementation phase. CCP authorisations continue – at the time of writing, only six CCPs had been authorised. In each case, this has triggered the process for approval of mandatory clearing for certain OTC products (those offered by the CCP in question).

The whole process has been like a game of Mousetrap, with CCPs going around the board before being able to set the silver ball rolling along the maze-like structure before knocking the pole that releases the net that falls on the mouse – the mouse, in this case, being the OTC products.

If only the reality of EMIR and MiFID II were as much fun.



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CONTENTS

5 InfoNet post-event report:
Trading and execution issues
in derivatives

16 FIA Europe News

18 FIA Europe Events



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A REPORT ON THE 19TH FIA EUROPE INFONET

TRADING & EXECUTION ISSUES IN DERIVATIVES



INFONET PANEL:

- SPJ** Simon Puleston Jones
CEO, FIA Europe
- CC** Charlotte Crosswell
CEO, NASDAQ OMX NLX
- RW** Richard Wilson
CEO, Newedge UK Financial
- SG** Steve Grob
Director of Group Strategy, Fidessa

Simon Puleston Jones We've spent a lot of time talking about clearing and associated issues in the context of EMIR over the last three years, so this is a really good opportunity to talk about something different. Trading and execution will provide much of the focus over the next two to three years as we move towards MIFID II and MIFIR implementation.

One of my challenges over the next two to three years will be to help educate the industry on what MIFID II is all about and how we are going to implement it together as an industry.

Clearly, with respect to MIFID II we can expect developments in market structures. We can expect the trading of OTC derivatives to be pushed onto execution venues rather than through bilateral trading relationships. We can expect position limits and measures on investor protection and the provision of investment services. There will be a need for transparency, both pre-trade and post-trade. There'll also be an element of overlap with the EMIR reporting regime and further requirements around data consolidation.

We then have to consider authorisation and organisational requirements for the compliance, risk management and audit functions, and for senior management. With respect to regulators, there will be powers of investigation, of remedies and, perhaps most importantly in some ways, sanctions.

And finally, of course, MIFID II is a directive that has to be implemented within national regulation, whereas MIFIR has direct effect within the member states without any need for any further laws within those states.

We are familiar with regulated markets and MTFs, but now we have a new category called OTFs, a term which is largely used as a bit of a proxy for SEFs (which are becoming an increasingly familiar part of the US landscape). Some of the ways that SEFs work are more aligned to an MTF and other parts are more aligned to an OTF, so it is not entirely correct to compare a SEF with an OTF.

We also have the issue of recognition of other people's regimes, including with respect to SEFs. I fear that part of the battle will be in seeking mutual recognition of regimes around the world. Part of the challenge is that the US has got up and running first and we're very much playing catch-up.

The definition of OTF is deliberately broad and designed to capture any facility that is not an RM regulated market or an MTF [multilateral trading facility]. OTFs are required, as with those other venues, to have a licence. When you apply for a licence as an OTF you have to explain in detail why you are not and cannot be a regulated market or an MTF. ESMA will be drafting RTS [regulatory technical standards] to determine which classes of derivatives are subject to the obligation to

trade on those venues and that's very closely aligned with the clearing obligation under EMIR. If a class of swaps is declared subject to the clearing obligation under EMIR, then ESMA is required to give thought as to whether it should force the mandatory execution of those trades on an execution venue rather than being traded bilaterally.

That requirement to trade on trading venues is much like the clearing obligation in terms of to whom it applies: financial counterparties and non-financial counterparties (NFC) that are above the clearing threshold, i.e. NFC+ as we call them these days under EMIR.

I'd like to turn now to HFT, which has been flavour of the month since the publication of Michael Lewis' book, *Flash Boys*. As you are aware, HFT has a bit of a bad name in certain quarters, but even Michael Lewis has been careful to differentiate HFT per se from the uses to which it has been put, so there's still much debate to be had.

With respect to trading algorithms, we already have a regime in Germany. Algo flagging went live last month. You have to flag whether your trade originates from an algorithm, i.e. from a computer. The MIFID II directive does contain a definition of what an algorithm is. It is essentially any trading where a computer algorithm automatically determines individual parameters of orders, such as whether to initiate the order and the timing, quantity and price of the orders.

There are new organisational requirements for firms engaged in algo trading: that captures an awful lot of firms. They have to have robust risk controls. There are requirements on them to notify their national regulators not only as to the nature of their trading, but also to the specific strategies and parameters and the compliance and risk controls in place with respect to that trading. And, perhaps most onerously, there is a requirement for algo trading strategies to be in continuous operation throughout the trading day on the hours of that trading venue and for that algo to provide liquidity, i.e. firm quotes, on a regular and ongoing basis regardless of the market conditions.

And it's not only those that have the algos that are subject to the requirements. The trading venues



“Our attention is now moving away from what’s happening in Brussels to what ESMA is going to come out with in the level two text.”

Simon Puleston Jones, FIA Europe

themselves are also subject to requirements if people are executing on their venue using an algorithm. They are required to have in place effective systems and procedures to ensure that those trading systems are resilient, have the capacity to deal with peak order flow under market stress, and that they're able to reject orders above pre-set limits. They also need to ensure that algos don't contribute to disorderly trading conditions on the market.

Persons involved in high frequency trading who are direct members of a trading venue will have to be authorised as an investment firm under MIFID II. And market operators will in turn be required to ensure that the HFT traders who execute a significant number of trades in financial markets continue providing liquidity to the market subject to similar conditions that apply to market makers.

So you have an interesting dual requirement where on the one hand you've got the algos who are required by MIFID II to provide liquidity, and on the other you've got the exchanges with the obligation to ensure that those

traders do in fact provide the liquidity. So there is an element of policing by the trading venues.

Flash Boys has received a lot of press, with debate centring on whether HFT is fundamentally evil, illegal, and tantamount to insider trading and a variety of other things. I would think it's the view of many on the panel here that that is a rather biased view, which is perhaps rather un-nuanced in its suggestion, so it'll be interesting to hear more about the benefits, like liquidity, that HFT brings to our industry.

Open access will be one of the key topics; the whole idea that if you are a trading venue, then you have to be open in terms of having CCPs clear for you. In turn, if you are a CCP, then you have to be open to trading venues requesting you to clear their products, and that has to be accepted on a non-discriminatory and transparent basis.

I mentioned pre-trade and post-trade transparency. The trading venues are required to publish their pre-trade information in a continuous manner. The information must be available to the public on reasonable commercial and non-discriminatory terms. And when it comes to post-trade, there are many forms of reporting required. The trading venue has to make public weekly reports on the aggregate positions held by different categories of traders and provide regulators with a complete breakdown of the positions of its members and participants, including any positions that are held on behalf of their clients. In order to do that it needs the members and the participants themselves to provide that information in real time to the trading venues, so I can foresee some implementation challenges.

With position limits, there's a risk that you hit a position limit cap and that you can be required to close out some of your positions so as to reduce your open interest. It's designed to support liquidity, prevent market abuse and support orderly pricing and settlement conditions. Again, ESMA will be drafting the RTS.

Our attention is now moving away from what's happening in Brussels to what ESMA is going to come out with in the level two text. A discussion paper and consultation will shortly be published and then there will be the drafts of the RTS in the autumn. Then there'll be a second round next year. It is really important that

our industry feeds into that discussion paper; gives its thoughts as to what the challenges might be in implementing this in practice; whether we think the right balance has been struck on certain things; and what some of the hazards might be ahead.

And with that I'm going to try to kick off with a few questions to the panel. The press discussion on HFT has been, in my view, rather one-sided. What are your thoughts on Lewis's book and do you think what he suggested is accurate? Are the markets rigged?

Michael Lewis acknowledges that it's not the speed of trading that per se is the problem. It's the uses to which HFT has been put, that are the particular area of concern. One particular focus of the book is where the trader is there pressing enter on his terminal and suddenly the prices disappear, and there are certain things where the industry is able to say very clearly that there's no downside in providing feeds from all those different exchanges.

But there are other specific criticisms. I wonder if there's any appetite amongst the industry almost to take a line by line analysis of the main points of the book and say, actually we can refute that. Because, for example, one thing that is suggested in the book is that if you do co-locate by putting your servers right next to the servers of the exchange, then the nearer you are to the main entry point into the exchange, you're going to pay \$20 million, \$40 million, to get your box and your special wire, your shorter wire, nearer to the box, and from what you're saying it sounds like that is not the case.

Charlotte Crosswell The interesting debate, for exchanges, is all about fair access, open access. Exchanges file everything with the regulators. The regulator, in terms of NASDAQ group, approves that and says, OK, I'm happy with your co-location strategy, I'm happy with your co-location fees. It is difficult to sit there and see a populous vote talking about the market being unfair.

If you take that co-location service away, you're going to say, where can I get to, in the next car parking space to be closest to the data centre? So the problem won't go away if co-location goes away tomorrow. That will hand it to the person who can pay for the building next-door. So I think we just have to be a little careful, as you said, line by line of what's actually true or not.

SPJ As we think about HFT, people tend to use the word algo almost every time the word HFT is mentioned and we were saying earlier it's not necessarily the speed of trading that's the problem; it's the way that the technology is put to use.

So as one looks at algo strategies under MIFID II you're going to have to go get that strategy approved and there's no ability within the level two part of MIFID II to actually flesh out any of the requirements relating to algos. So, on the one hand one might say, the industry has maybe missed its opportunity to comment on algos, whether it's right that you should have to provide not only details of the nature of it but actually granular detail as to the strategies. On the other hand, is this all a bit of fluff in relation to algos?

Richard Wilson Over the past few years, quite infamous, unfortunate losses have been reported. Speed itself, however, has never been the issue. It is more about having controls in place that are in line with the technology. Today, only some exchanges have effective pre-trade controls and that, overall, affects fair access and creates an un-level playing field. As an industry, that's where if something goes wrong, everyone suffers.

It's very important that we have a consistent level of controls and discipline at the exchange level.

SPJ Yes. On the one hand, one might be quite nervous about the idea of your regulators seeing your strategy in detail and then, with the sometimes cyclical nature of our industry, those regulators move back into the mainstream of the industry – potentially to people's

competitors. Is it really anything to be concerned about that you've got individuals that see their execution strategies or, again, do algos evolve so quickly that really there's no particular benefit and actually there are very few people in the world that really understand the nuts and bolts of these algos?

Steve Grob Personally, the Lewis book should be read on the beach, because that's where that sort of stuff belongs, alongside John Grisham and Mills & Boon! And I think you've got to be really careful that you don't legitimise something by taking it that seriously and trying to step through and rebut the claims in it one-by-one. I don't think that would be my approach. The big irony that I think a lot of people missed in all of this is that it was the regulators that wanted to introduce a multimarket structure, particularly in Europe. In the cash equities world, that created the ideal conditions for HFT to thrive and now it's HFT that's got the regulators wringing their hands about what they are going to do about this 'problem'. If it is a problem, it's one squarely of their own making.

SPJ So, the court of public opinion is one thing, but what really matters is the courts and regulators' view as to what is, and is not acceptable, what the rules are, what the parameters are and actually persuading them as those that regulate the industry where the limits should be.

SG It's just another bandwagon for newspapers and Jo Public to jump on to berate this industry, and if it wasn't this book there'd be something else. It will take a long, long time before our industry is perceived as it once was and books like that certainly don't help. In fact, before the book was published a lot of the debate had actually gone away.

In addition to a report from the Dutch regulator, there have been a couple of others that have reached the same conclusion that HFT, in and of itself, is a relatively benign activity. As to front running, people have always tried to guess or divine what the intentions are of other market participants and this is just an electronic version of that. Maybe everyone should read the book, but my advice would be to stick it alongside the other fiction that you pack for your holiday!

RW There are currently subpoenas being issued





“Only some exchanges have effective pre-trade controls and that, overall, affects fair access and creates an un-level playing field.”

Richard Wilson, Newedge UK Financial

in the US and lawsuits lodged. Political risks have been driving regulatory developments in the past few years. It's very hard for us to win any arguments in terms of popularity. And, quite frankly, you never want to defend against a work of fiction. However, we do need to project appropriate controls, explain why they're appropriate, and then ensure that the industry respects, supports them, and deals with the related challenges, as we will continue to be challenged for quite some time.

SPJ Before we get into another granular topic, let's take a step back for a second and think about what this new world of MIFID II represents in terms of how firms, be they FCMs or trading platforms or IT providers, are providing for these new regulations. Steve, we're really interested in some of the technology aspects of this.

SG The first thing you have to do is understand what it's all about. One of the things we've had to do is to build our own team of regulatory experts who read all the different rules and regulations and consultation papers and produce their views on what it actually means, and that becomes a cost of being in this industry

now. We actually make that available publicly, or at least the tip of that iceberg, through a website called Regulation Matters, and then we debate those issues with our customers and slowly you start to form a view as to what it means in terms of the workflow that we provide and how, and in what ways, that needs to change.

I think the sense that we get is that although MIFID I was introduced in November 2007, some of the very fundamental things that were wrong with that in the cash equities world have not been fixed seven years on. It just becomes a continual process of having to digest all of this stuff. On top of that, when you're a global firm like we are, you have to think quite hard about how these regulations interact with each other.

I think you made the point earlier about SEFs and OTFs. It's interesting that SEFs are by definition in the US multilateral in terms of being open to all, and yet OTFs are by definition discriminatory in terms of restricting participation, and yet both types of platform are going to be trading much the same types of contracts.

So it's those sorts of issues that we have to step through and work out with our customers what they mean in terms of the technology. Then there's a huge task to build the code, roll it out, test it and then make it available, so it's a pretty intense process.

SPJ Standardisation is one thing that we've seen repeatedly in EMIR. Wherever we can achieve it really helps when it comes to implementation. That applies equally for technology.

SG Well, it is and it's a question of interpretation too, which is why we built up our own internal expertise. You take your definition of an algo. Technically, if I had a fat finger limit, I could push the key to buy 5,000 lots. If the computer is actually intercepting that and saying send it or don't send it, depending on whether I meant 5,000 or 50,000, then the computer has now decided whether to send that order to market – suddenly it's an algo. And there's another bit in the definition that also says an algo is anything where the system isn't supervised by a human being at some regular interval.

We've had a lot of debate internally about which of the things that we produce are actually algos and

which are just normal operating mechanics of a system. Again, the only way you can solve that is to form a view and be brave enough to go and share it with your contemporaries and customers and see what they come up with.

SPJ From an exchange point of view this is the land of promise and opportunity, given that you're truly pushing a competition agenda and there's lots of opportunity out there for someone in NLX's position.

CC Well I hate to say it, I think it's probably too late for NLX because by the time that actually comes in, it probably will either have succeeded or failed by that point. But, when we were going through some of the debates in Brussels on it, what I was trying to lay out was, if you want to bring competition in derivatives, let's at least put something in the regulation that's going to allow new entrants. Let's not wait for the next megamerger to happen – and the Deutsche Boerse/ NYSE merger was obviously highly publicised on being blocked exactly on these issues of not providing open

access or not wanting to.

So NLX had to come to market with a different proposition, which is the make or break strategy. It's a bit like, if anyone here knows The Order Machine or TOM out of Amsterdam. They believe they've got such a strong offering that they can actually move the clearing to a different clearing house until you break the current clearing house and they're showing, 30, 40 per cent market share on some of their options.

We had to do something similar with LCH. We said, we've got such a strong offering we think we can actually move trading and clearing. We'd do it with open access, hopefully what that means is that new entrants can come into this market and the clients can choose where they want to execute and where they want to clear, and the great thing is it's going to bring clearing choice.

Also, what is open access? A lot of people said open access is just being able to ask them to clear for you, but not have fungibility. Is open access fungibility? The Germans defined it as meaning 'interoperability' because

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that spooked all the regulators for so long they nearly took it out of the text. I spent a long time explaining to many of the Cypriots, the Irish and everybody else who was taking the presidency at the time that it didn't mean interoperability, so I think people are confusing it.

The danger we have is that the bundling of trading and clearing cost is still going to be determined. If I was an exchange (and I've been promised by Brussels this won't happen) and do what they did in Brazil, where they load all the costs into clearing, so I turn up to Eurex and say, please can you clear my products? And they're saying, yes, OK, I'll take 90 per cent of the cost in clearing and I can't compete, obviously because it wouldn't be a viable option for me to compete as an execution venue – but I think that's going to get addressed and we've got some comfort from Brussels that won't be allowed to happen.

SG But on that point, though, maybe you don't have to wait for the regulators. That issue of being able to pool or offset margin lodged between Eurex, ICE and SwapClear is becoming so important in the cash-constrained Basel III world that we live in that I think that market forces and commercial interests will make people want to try and solve that problem as best they can. Anyone who can go to their client base and say, I can enable you to use your margin more, use your very scarce collateral much more efficiently and effectively (even if it isn't perfect hedging or offsets), I think that's an incredibly viable proposition for the marketplace. So I'm kind of betting that someone comes along with some kind of capability to do that ahead of the folks in Brussels because I think you wait a long time for them.

SPJ You do. Are we expecting survival of the fittest? From an implementation point of view, you've got a whole host of execution venues and you have got to hook up your IT to all of these different systems that all work in different ways. There's a decision to be made. Do I look to be all things, for all of my clients and hook up to everything that's out there, or do I cherry-pick those that I think are going to be around in two to five years' time? It's quite a difficult decision I'd have thought?

SG What was evident in the cash equities world is that you had a whole bunch of alternative venues created because the best execution obligation lies with the broker and they can have any best-ex policy, provided they demonstrate it to their clients and the



“If you want to bring competition in derivatives, let's at least put something in the regulation that's going to allow new entrants.”

Charlotte Crosswell, NASDAQ OMX NLX

regulators.

The situation now is very different where the brokers have chosen that they want one national exchange for cash equities in each country or region and an alternative, and that's it. They need the alternatives so they can keep the primary exchange as honest as they can be, but they don't want the hassle of having to connect to a huge variety of new venues, perhaps with unproven delivery and business models.

So we'll see a big shakeout and you can already see in the US, with the swap volumes, they're starting to gravitate towards very specific SEFs according to the type of product they are and I think absolutely that's the only way it's going to go.

SPJ And there's always a risk that with choice comes fragmentation. Is fragmentation by definition bad because it potentially harms liquidity? It depends whether fragmentation and the loss of liquidity is offset by other things. There are pros and cons.

RW Of course, the date is a long way away; we're talking 2016 and then 2018, then possibly 2021, so part of this picture is longer dated. If we look at the size of the

pie overall, clearly the general move towards exchange listed and centrally cleared is positive for all of us as it increases the overall flow of activity in the FCM space.

Already we are seeing market participants gravitating to individual SEFs in the US. Overall, we should see increased competition, fragmentation and breaking up siloed competition, which is good for our clients and us as an FCM.

It's a natural evolution and as some market participants, such as Newedge, are already plugged into about 100 markets, and the number of CCPs are not going to change that much, you can't really front run or guess the winners and losers. Ultimately, it's a question of client demand.

SG One of the other bigger points that maybe gets raised in terms of fragmentation is whether it's a good or a bad thing. I find it amazing that with what's happening in MiFID II, nowhere have the regulators actually put any evidence forward that what they did with MiFID I has actually produced a better trading environment for different categories of users. Yet still they're rushing headlong into MiFID II, EMIR and everything else as if it's assumed that what they did to markets with MiFID I was actually a good thing.

SPJ One of the big things I've had from members is the need for education around MiFID II. How many of you, hand on heart, would say that you're comfortable in your knowledge of MiFID II? No one. How many of you are not comfortable that you're really as close and got to grips with MiFID II in the way that you would hope you would've done by now: everyone!

RW It is down to the ESMA rules to be finalised in September.

SPJ Let's just finish on transparency. We were talking about pre-trade transparency and the need to publish reports and post trade transparency lots of reporting. Are lit markets and transparent markets inherently a good thing? Particularly where we see in the context of EMIR reporting, for example, that regulators are asking for all this data to go to trade repositories, but they don't actually have the resource to analyse it and the data they're getting is so patchy as to effectively be meaningless. So whilst one might aspire for transparency, the reality might actually turn out to be very different.



“Generally, the view I have is that if you can't do anything about something, then there's no point complaining about it.”

Steve Grob, Fidessa

SG Transparency is a great thing provided it's for everyone else and not you! As the regulators are trying to understand these reports, which can get very complicated, particularly if it's not your day job, it tends to create a sort of cognitive dissonance where they replace real analysis with shortcut beliefs that they come up with, such as HFT is bad, lit is good, dark pools are bad.

These are just massive oversimplifications and that's where I think a lot of the problems lie. So to ask the question is transparency pre- or post-trade a good or a bad thing, you've actually got to ask about ten more questions before you can answer that one. What size is the order? Where else could it have been traded? I worry that the debate gets sort of dumbed down into those kind of very emotive phrases, as it has done in the case of HFT. Suddenly we have politicians and regulators on TV purporting to be doing something about this 'pesky problem', and it's this oversimplification and dumbing down that is at the heart of it.

RW There's good transparency and bad transparency. MiFID II recognises waivers, pre-trade

and post trade. I expect a consultation process where the details can be developed in cooperation with the industry.

SPJ When we read the question that's being put to us and think, actually, is the question that we're being asked in this discussion paper too simplistic? What's the nuance that we need to respond back with to say, well, actually you're looking at this in a too basic way or in a way that demonstrates through the question you don't really understand the market or what this might mean in practice? Is the view of the panel largely optimistic about the future landscape, or do we think that despite all of this enormous burden of regulation, is it on balance, a positive thing, a good thing, just a different thing and it's neither good nor bad, or is it perhaps a backwards step given your view of MIFID I?

SG I think it's a constant thing and, you know, generally, the view I have is that if you can't do anything about something, then there's no point complaining about it. Certainly a lot of the work that we've been doing with our customers has been about helping them step ahead and take advantage of some of the changes that are happening from a regulatory perspective, and so generally I think I am optimistic. I think there's a bigger problem the FCMs face, which is, does that business model in a world of zero or near-zero interest rates work. Forgetting all the regulation stuff, I think that's got to get fixed too. But as we found in the cash equities world, you just kind of get used to a new crazy rule every week and, you know, seven years on, we're still digesting and implementing equities-based things. There are ways to take advantage of it, though, so I'm optimistic.

CC The technical resources and regulatory resources you need now as a vendor [to address these issues] are not good for the industry. I think for exchanges and CCPs, they're probably beneficiaries from this. You're going to see more business going to CCPs and therefore you're more likely to see that business go onto exchange.

We see it as an opportunity to go and evolve, take your products to market, and not be afraid of taking your products to market, and do that in consultation with the customers. And whichever exchange, there's going to be obviously several who will win out on that, but not all of them. Whoever does that best potentially has a huge upside coming in. But it is finding that balance.

You have got to have a pretty strong proposition out there, but once you're up and live you do have an advantage there and we spent a huge amount of time in R&D, though not enough because we're so stretched trying to build the business as well. I think it's a good position but you're fighting for those resources – that's the biggest challenge we have.

SPJ It's scary the amount of resource this is going to suck up over the next couple of years, but as we all seek to manage that, grow the number of people in the industry and educate people in the industry as we try to attract them to what is increasingly not an execution or clearing industry, it's a change management industry by nature and we just have to accept that and get on with doing it. That being said, generally you're moving in the right direction.

RW The last few years we've seen an avalanche of regulation. In the FCM space, we've borne a significant part of related cost, as well as margin deterioration, because our buying power hasn't been as strong as the vertical silos. With interest rates being at all-time lows, we are probably in the bottom of the curve.

Looking forward, regulation will have more and more a structural impact on the marketplace. It isn't just tinkering with the size; it's changing who the players are, how you deliver service, and where. The cost base and the revenue structures are being changed significantly, so there's a fair amount of storming and reforming that will go on over the next two or three years.

MIFID II breaking up vertical silos, which have frankly been the primary beneficiary of regulatory changes in



the last two or three years, is positive for us. Tapering can only bring us some relief when interest rates increase. So, in the medium term; optimistic. In the short run, it's going to remain rocky.

Question from the audience You touched briefly on the differences between the SEFs and the OTFs. I just wondered if you could talk some more about, given what we know about Dodd-Frank in the US and what we know about EMIR and what we know about MIFID II, how great is the risk of regulatory arbitrage between those two markets?

SPJ From my perspective, I think the risk is fairly significant. I was talking to Kay Swinburne about exactly that sort of issue in the context of clearing as opposed to trading and execution. She said, she gets that there's a two-speed process, that the US is ahead and Europe is behind, and that you do have to make sure you run your businesses in light of that, but if there's any sniff of arbitrage between the US and Europe, then you can expect the commission to come down on the industry like a ton of bricks, be that the CFTC or the European Commission. I was urged in fact by Kay to say to you

to be very careful as you consider the opportunities that are out there because there's a balance between taking those opportunities and actually being seen to just arb, and that's always going to have a bad smell with regulators and politicians at a time that our industry is still under such a close microscope.

SG Where you've got different regulatory bodies trying to get on each other's turf, you end up with a spread in regulations and we all know that wherever there's a spread, there's the potential to make a profit. A spread is just different viewpoints after all. It's incredibly hard for regulators and politicians to pass new laws quicker than market participants can come up with new ways of making money. Given that as an industry we're still not winning popularity contests, why not make some money in the short term would be my view. So I think it's a great question. I think it's very, very real and I suspect it'll be less between the US and Europe and more between Asia and the rest of the world.

SPJ Inevitably just on that arbing point, if that's the way you want to describe it, if the G20 commitments were implemented around the world at the same time

Is your firm subject to regulatory capital and international accounting requirements?



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- Netting opinions
- Collateral opinions
- CCP opinions
- IAS 32 opinions
- "Look-through" CRR 305(2)(c) opinions

in a globally consistent manner there wouldn't be anything to arb and there wouldn't be any conflict of law, and most of the challenges on the cross border stuff come from some regulators being aggressive in their timeframe and single-minded in terms of what they want to achieve.

I think there's a lot of political concern around if you're listening to the industry, that by definition is a bad thing, and what's important to get across is that given it's us lot that have to implement the laws it's important that regulators make an informed decision as they work out what they do, what they don't do and that's where the likes of us come in.

FIA Europe is helping bridge that gap between the industry and regulators and be that honest broker to regulators. The next 12 months is going to be about providing feedback to regulators to try to help mitigate that risk of the cross border as well to say, not only is that going to be the impact in Europe, but have you, the regulators, thought about how that's going to fit together with this SEF regime, what it might mean around Third Country recognition, and please can we start that discussion today rather than do it right up to the last minute and then threaten to not recognise one another and split liquidity straight down the middle of the Atlantic?

Question for the audience Given the talk we had about HFT, if you've got deep enough pockets, then you can get it faster. We work in a capitalist world that works. What would the panel say about an exchange releasing data earlier to these firms? It's not like we've released it at the same time, you just happen to be able to get it quicker. What would you say about that?

SG I agree completely with your point that in a capitalist world I should be able to go and risk and spend my own money building or buying faster computers to do the job that I do. If it can be proven or seen that different exchanges or venues somehow prefer different groups, then I think that's probably a bit more questionable.

CC It comes down to the fair and open access piece, and that's what we've been talking about since the book came out. Is it fair? Is it open to everybody and has it had the regulatory scrutiny? If the market or if the regulators then decide to overturn that and do something else, then that's another issue and I think



“FIA Europe is helping bridge that gap between the industry and regulators and be that honest broker to regulators.”

Simon Puleston Jones, FIA Europe

we welcome the debate on that, but certainly that's the standards you want to adhere to and work out and make sure that everyone is adhering to those.

It's nothing different to the analyst being called in to a certain company and who gets invited to that investor day and gets the results so they're able to go and make that decision as soon as the market opens. It's a constant challenge and it's been happening for years. It just depends which level of scrutiny you're going to go through.

RW Fair and open access needs to be defended.

SPJ When we were talking earlier about that line by line repost to the suggestions in the book, that really is what it comes down to and even Michael Lewis will himself say HFT in itself is not per se bad; it is the uses to which it is put.

The Michael Lewises, and even the Will Huttons of this world make us think and it's helpful to be pushed on some of these things so that we can constantly evaluate ourselves. Are we doing the right thing in the right way? The answer to that question should always be yes. ■

FIA EUROPE NEWS

RESPONSES TO REGULATORY PAPERS AND POSITION PAPERS / RESPONSES TO CONSULTATIONS

February 2014 Financial Stability Board Consultation paper dated 4 February 2014
- 'Feasibility Study on approaches to aggregate OTC derivatives data'

Regulatory guidance

February 2014 FCA MIFID Briefing for Trade Repositories 25/02/14

Position papers

February 2014 Proposal for regulation of EU Parliament and Council on Benchmarks final
- 31 January 2013 (Posted 14 February 2014)

February 2014 Appendix 2 - Price Indices Guidelines for Price Aggregators and Data Providers
- November 2011 (Posted 14 February 2014)
- 31 January 2013 (Posted 14 February 2014)

NEWS

May 2014 ISDA and FIA Europe Publish European Cleared Derivatives Execution Agreement

March 2014 Letter to the EC - Written submissions as a follow-up to the Public Hearing of 10 March 2014 on the Leverage Ratio

March 2014 US and European Financial Services Trade Associations Statement on Transatlantic Trade and Investment Partnership

NEW MEMBERS

We are pleased to welcome the following new members:

- Susquehanna International Securities
- Allen & Overy LLP

How can I help FFK?

You can help on a corporate or individual basis

Organise your own
'open' external
events

Organise your own
internal events

Sponsor/support/
help us sell existing
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Encourage
individual/staff team
challenges



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FIA EUROPE EVENTS CALENDAR

■ POWER TRADING FORUM

THURSDAY 19 JUNE

REED SMITH

Discussion topics will include:

REMIT Transaction Reporting

Power Market Liquidity

- what is the level of the UK Power Market Liquidity and how has it changed?

Credit & Clearing

A full agenda and speakers to be confirmed shortly.

■ POWER TRADING FORUM'S AWAY DAY

THURSDAY 10 JULY

DRAX POWER STATION, NORTH YORKSHIRE

FIA Europe is pleased to announce a visit for Forum members to Drax Power Station, the largest, cleanest and most efficient coal-fired power plant in the UK.

■ INTRODUCING: FIA EUROPE'S CLEARING IN A DAY

One day seminar to be held in London, September 2014 (details tbc)

■ SFOA/FIA/FIA EUROPE BÜRGENSTOCK: THE GLOBAL FORUM FOR DERIVATIVES MARKETS

23-25 SEPTEMBER 2014

THE INTERCONTINENTAL HOTEL,
GENEVA, SWITZERLAND

■ FIA EUROPE'S ANNUAL POWER TRADING DINNER 2014

THURSDAY 16 OCTOBER

THE SAVOY, LONDON

Now in its 12th year, this black-tie dinner provides a valuable networking opportunity for members of the power and energy trading community

■ FIA EUROPE'S CLEARING & TECHNOLOGY GALA DINNER

WEDNESDAY 3 DECEMBER

ARTILLERY GARDENS AT THE HAC

Following the success of the inaugural dinner in 2013, the dinner provides a networking opportunity for the futures industry's clearing, operations and technologies communities.

■ 2014 COMPLIANCE FORUMS

THURSDAY 31 JULY – NORTON ROSE FULBRIGHT

THURSDAY 25 SEPTEMBER – J.P. MORGAN

THURSDAY 27 NOVEMBER – NORTON ROSE FULBRIGHT

Topics to be confirmed

FFK EVENTS

■ GOLF DAY

FRIDAY 4 JULY – BROCKET HALL

■ POKER NIGHT

THURSDAY 2 OCTOBER – VENUE TBC



Futures for Kids

FORTHCOMING INFONETS

■ INNOVATION IN DERIVATIVES – NEW MARKETS, NEW TECHNOLOGIES, NEW SERVICES

TUESDAY 8 JULY - GROCERS HALL, LONDON EC2

Despite the recent focus on regulatory change the industry must innovate to survive and grow. Industry specialists look at how to best nurture innovation.

Who can attend?

This event is open to executives at FIA Europe member firms and to specially invited guests of FIA Europe and InfoNet Sponsors.

■ THE PRE- AND POST-TRADE ENVIRONMENT

OCTOBER - GROCERS HALL, LONDON EC2

■ THE COMMERCIAL OUTLOOK FOR ETD BUSINESS

JANUARY 2015 - GROCERS HALL, LONDON EC2

For more information on all events, including sponsorship opportunities, please contact Bernadette Connolly on bconnolly@fia-europe.org or +44 20 7090 1334.

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