

SUMMARY OF KEY DISCUSSION POINTS FROM FOA MEETING WITH FCA/BOE 5TH SEPTEMBER 2013

REQUEST FOR REGULATORY FORBEARANCE

- The FCA said that they had an appreciation of just how much work had to be done by CMs, but was not aware that this potentially meant firms would not be fully EMIR compliant until Q2 2015.
- FOA made it clear that the industry would be looking for regulatory forbearance in light of the difficulties CMs face in meeting the current compliance timetable expectations.

GEOGRAPHICAL SCOPE ISSUES

- Article 39 applies to non-EU clearing members of EU CCPs and non-EU branches of EU Clearing Members
- US FCMs clearing on US CCPs for EU clients are out of scope
- EU members of non-EU CCPs are out of scope

CLIENT AWARENESS AND RESPONSIVENESS

- We flagged that despite firms' best efforts, there is still a low level of awareness of EMIR and the implementation issues among clients.
- The FCA were keen to understand what assumptions firms were making when assessing the level of ind seg take up across different client types. We explained the difficulties faced by CMs in getting a steer from clients on their likely choice given the firms' inability to price the service without complete clarity around CCP fee structures and build requirements etc..

Definition of "EXCESS"

- The FCA indicated that "excess" means any excess whatsoever, regardless of whether it is initial margin, variation margin, margin voluntarily left by the client at the CCP etc.

What is meant by "TO OFFER"

- The FCA reaffirmed their public statements on this, namely that in order to comply with the Article 39 obligation "to offer" clients the choice between omni and individual client segregation, firms must have 'all the plumbing in place' to achieve that level of segregation on the date of CCP authorisation. It is not sufficient to merely make the offer to the client, but take months to set up the account. However they did say that they recognise that there will be a standard 'on-boarding' process which will take time.

FUNDING AND LIQUIDITY CONCERNS

- It was pointed out that given that (i) CCPs have to invest 95% of their cash in high quality collateral, (ii) clients of clearing members may opt to post govt debt as initial margin and (iii) the BCBS-IOSCO margin requirements for non-centrally cleared derivatives, published this week, require posting of high quality collateral that cannot be rehypothecated more than once in the global markets, there will be an enormous demand for high quality collateral such as govt debt. This may have significant implications for liquidity generally. The FCA acknowledged this and said that, despite this, regulators have taken a conscious decision that that is a price worth paying in order to ensure that the financial markets are appropriately collateralised.

CCP/REGULATOR TRANSPARENCY

- The BoE and FCA expect CCPs to be transparent as to their new rulebooks and Article 38/39 disclosures, and to inform clearing members of their proposed seg structures and operational set ups.
- They also took onboard the need for transparency, in as near to real time as possible, on any changes that are proposed to the rulebook/disclosure documents following application but prior to authorisation, and the need to give guidance as to the anticipated authorisation date for each CCP.
- The FCA/BoE will push other competent authorities to ensure that CCPs in their jurisdiction are more transparent.

KEY ETD VENDORS

- We mentioned that only 2 vendors (Sunguard and ION Trading) serve 90% of the market as regards middle/back-office functions, but that there are potentially significant implementation bottlenecks here. We confirmed that the reason they cannot build out their systems fully is that they don't know to what to build (due to transparency issues referred to above etc.) and also have competing priorities given Dodd-Frank build outs etc.
- We also confirmed that every effort is being made to educate vendors on EMIR implementation.

DOCUMENTATION

- It was pointed out that at least some existing clients (e.g asset management clients) will not be fully on-boarded as per Art 39 until Q2 2015.
- The FCA asked why the buy-side had not been involved in the drafting of the FOA Clearing Module (which makes the FOA standard clearing agreement EMIR-compliant) – we explained that this was primarily because the FOA Module was based on the ISDA/FOA Addendum which had extensive buy-side input.

CCP CUT-OFF TIMES/INDIVIDUAL SEG CLIENTS

- We mentioned that CCP cut off times for delivery of margin being early in the day means where individual seg clients transfer collateral to CMs after the CCP cut-off time, CMs cannot post that collateral to the CCP until the following day.

OUTSTANDING QUESTIONS RE EMIR INTERPRETATION

- The FCA stressed that they would be v willing to work with the industry to help clarify any additional outstanding issues and encouraged us to collate them and email a list to them.