

September 2017

# MiFID II Working Groups

Overview and status update



# FIA MiFID II working groups

Group	RAG	FIA staff leads	Scope	Purpose	Output
Reporting	Green	Robert Barnes	Transaction reporting	To aid firms' interpretation of the transaction reporting requirements and to produce industry standard templates to facilitate compliance	<ul style="list-style-type: none"> <li>• 150 page detailed guidance setting out how to report 69 vanilla ETD scenarios (to be published August 2017)</li> <li>• Further detailed guidance setting out how to report more complex ETD scenarios, cancellations and amendments</li> <li>• Update to FIA WG guidance following publication of ESMA's transaction reporting guidelines</li> </ul>
Commodity Position Reporting	Green	Robert Barnes	Commodity position reporting (Operations)	To aid firms' interpretation of the position reporting requirements and to produce industry standard templates to facilitate compliance	<ul style="list-style-type: none"> <li>• Position reporting schema</li> <li>• Co-ordination with a number of National Competent Authorities to confirm agreement with schema with the aim to facilitate industry adoption</li> <li>• Good progress made with a number of venues now publishing their detailed requirements</li> </ul>

# FIA MiFID II working groups

Group	RAG	FIA staff leads	Scope	Purpose	Output
Commodities	Green	Christiane Leuthier	<ul style="list-style-type: none"> <li>Ancillary Activities Exemption</li> <li>Commodity position limits (policy)</li> <li>Commodity position reporting (policy)</li> </ul>	To aid firms' interpretation of the requirements applicable to commodities markets under Art. 2.1(j), 2.1(d), 57 and 58 of MiFID II as well as RTS 20 and 21 and the Delegated Act (EU) 2017/565 of 25 April 2016 and to remove local law conflicts	<ul style="list-style-type: none"> <li>Various letters to ESMA in February 2017 and May 2017 requesting clarifications or proposing Level 3 Q&amp;As</li> <li>Regular engagement with the FCA and FIA members on implementation and interpretation</li> <li>On-going discussions with HM Treasury regarding transitional provisions for new MiFID II authorisations – legal drafting provided to HM Treasury regarding RTS 20 regarding RTS 20 ancillary activities test</li> <li>Industry roundtable discussions, following request from HM Treasury / Financial Conduct Authority</li> </ul>
E-trading	Green	Greg Wood (US)  Tessa Jones (UK)	Direct Electronic Access	To aid firms' interpretation of the requirements applicable to trading issues, to assess the readiness of market infrastructure and to produce industry standard templates to facilitate compliance	<ul style="list-style-type: none"> <li>Vendor due diligence questionnaire (published 9 Jan 2017)</li> <li>Client due diligence questionnaire (to be published August 2017)</li> <li>FIA Exchange Member Portal recommendations – Short Code and Algo ID Management</li> <li>Exchange Readiness Questionnaire</li> <li>Best practices paper for implementing pre-trade risk controls (on-going)</li> <li>DEA and algo trading definition and application documents</li> </ul>

# FIA MiFID II working groups

Group	RAG	FIA staff leads	Scope	Purpose	Output
Straight through processing	Green	Declan Ward (Operations) Mitja Siraj (Legal)	The on-venue traded derivatives exemption from MiFIR's straight through processing obligations	To procure rulebook changes so that firms can rely on the exemption for exchange traded derivatives  To use external confirmation to verify compliance with the requirements	Liaising with European exchanges, CCP and external counsel to procure the necessary changes to the exchange and CCP rulebooks
Indirect clearing	Amber (awaiting final RTS)	Declan Ward (Operations) Mitja Siraj (Legal)	Indirect clearing obligations for exchange-traded derivatives	To aid firms' interpretation of the indirect clearing requirements and to produce industry standard templates and operational practices to facilitate compliance	<ul style="list-style-type: none"> <li>• Template documentation</li> <li>• Risk disclosure templates</li> <li>• Legal due diligence questionnaire</li> <li>• Strawman of minimum level of day-1 compliance</li> </ul>
Terms of Business update	Green	Mitja Siraj	Updating FIA's industry standard terms of business documentation to ensure they are, inter alia, MiFID II-compliant	To update FIA's documentation in a light touch manner (via regulatory patch) and more comprehensively (via Terms of Business update) to bring it up to date with the regulatory requirements	<ul style="list-style-type: none"> <li>• Regulatory patch, containing core MiFID II amendments (published July 2017)</li> <li>• 2017 Edition Terms of Business – a more comprehensive overhaul of our current edition, not confined to MiFID II changes (to be published Q4 2017)</li> </ul>

# Reporting – outstanding issues

## Transaction Reporting- RTS 22

MiFID II increases the number of reportable fields from 23 (under MiFID I) to 65 (under MiFID II – see RTS 22)

- At the request of the FCA, FIA sent a series of questions to member firms regarding their MIFID II reporting readiness.
- The next slide lists the questions that were asked, together with a summary of the combined responses.

### Implementation challenges

- **Increase in data:** MIFID II significantly increases reportable data fields and requires data to be sourced from front, middle and back office systems as well as personal data.
- **EMIR 2.0:** The EMIR reporting regime also goes through a significant change on 3<sup>rd</sup> November. Having the MIFID/EMIR go live so close together has generated considerable resource stretch. It should be noted that both updates are mid-week which again greatly increases operational risk.
- **Personal data:** In the absence of a single approach offered by trading venues, it is likely that firms will face significant difficulty in reporting personal data.
- **FIRDS:** The inability of firms to rely on the FIRDS list as a golden source of data and it should also be noted that there are serious concerns about firm's ability to identify MIFID II reportable products that are traded on 3rd country trading venues.
- **LEI:** Whilst Legal Entity Identifiers have been rolled out successfully in certain jurisdictions, this is not true globally. Firms are concerned by the lack of LEI take-up in certain jurisdictions.

# Reporting- FCA's Q&A of FIA members

***How many of FIA's members believe that they are going to be ready by 3rd January 2018? The FCA understands some members might not have reporting obligations and therefore it would be helpful to understand that number in relation to the population that is likely to have reporting obligations rather than the total population.***

All firms surveyed so far confirmed that they will be ready for 3 January 2018.

***What degree of confidence do FIA members have regarding the quality of the information to be submitted by 3rd January 2018?***

The majority of firms surveyed were confident in the quality of the information to be submitted with the except one firm who felt that it was difficult to provide a level of confidence while testing was still ongoing.

***What issues are FIA members encountering that could impact (i) their readiness for go-live date and (ii) the quality of the data to be submitted?***

The issues that reoccurred in the answers from all firms surveyed so far are as follows:

- Inability or constraints of firms to rely on ESMA FIRDS list;
- Data quality;
- Data security around storing and transmitting sensitive data; and
- Ensuring exchange readiness and whether they will report on firm's behalf for ETDs.

***What mechanisms do FIA members intend to use for submitting their transaction reports – via an ARM or submit the data directly to the FCA?***

All firms surveyed so far stated that they will be submitting their transaction reports via an ARM.

***For those who will be submitting their transaction reports directly to the FCA, but have not yet engaged with the FCA Markets Reporting Team (MRT), what are the reasons for not yet having done so?***

The firms surveyed so far stated that this was not applicable to them as they will not be submitting transaction reports to the FCA.

# Commodities – outstanding issues

## Ancillary Activity – RTS 20

**Not all commodity firms will meet the application deadline of 3 July 2017 for 2018 authorisation applications to the FCA.**

A transitional period under UK law is required for authorisations:

- Under RTS 20, the calculation whether an entity qualifies for the MiFID II exemption or needs to be authorised are done on an annual basis based on data for the three years preceding the date of calculation, with each year running from 1 January to 31 December. The European Commission further states in Art. 4.1 of RTS 20 that such calculation shall take place in the first quarter of the year following the calculation period. Following submission of a completed application, the relevant NCA may require up to 6 months to process the application. In practice, this means a company exceeding the thresholds in the preceding three years is likely to obtain its authorisation at the earliest 9 months into the following year.
- In the UK, under Art. 26 of FSMA 2000, if an entity continues to engage in regulated activity without being authorised despite exceeding the ancillary activity thresholds, it commits a criminal offence and any regulated activity is unenforceable. The company would have to suspend its trading activity until the date of authorisation to mitigate this risk. Alternatively, the company could apply for authorisation even though it may later find that it is exempt. This involves significant costs and the need to put in place structures and processes to comply with MiFID obligations and is thus not a viable option.
- Germany and Italy have included a transitional period for 2018 in its MiFID II Implementation law. ESMA, in its May Q&As, proposes that a company that has reasonable grounds to believe it is exempt from MiFID II but market data later indicates that the company should be authorised, such company should apply for authorisation as soon as reasonably practicable.

Other implementation challenges:

- Publication of market size data for the first calculation period is not complete, commodity firms need to develop a methodology to extrapolate missing data;
- Recognition is required of the ancillary exemption notification by non-home states for purposes of the position limits hedging exemption in another member state;
- Clarity is required from NCAs regarding the application process for the hedging exemption for non-financial companies; and
- Members require further clarity regarding the geographical scope of the ancillary activity tests.

# Commodities – outstanding issues

## Position Limits – RTS 21

Position limits for liquid contracts have not yet been published for the majority of contracts (on 10 August, ESMA published position limits for three French AMF contracts). On 29 August, the FCA published a list of the current commodity derivative contracts trading on UK trading venues that will require bespoke position limits (but has not published the limits themselves). Firms will have limited time to implement the relevant systems and processes and to reassess their trading activity in case of finding themselves in breach of limits following their publication.

### Implementation challenges:

- **Hedge exemption:** Further clarity required how the hedge exemption process and conditions for non-investment firms will work in different Member States, for example, whether firms will have to follow different processes in different jurisdictions. Will the notification that an entity is exempt from MiFID II under the ancillary activities exemption be recognised by other Member States when applying for a hedge exemption on a position limit set for a contract on a trading venue in another jurisdiction or will firms have to notify and evidence to that NCA its exempt status before being able to apply for a hedge exemption in that jurisdiction?
- **Third-country firms:** Further clarity required regarding the process for third country firms that need to demonstrate that they would be exempt from MiFID II if they were located in an EU member state before being able to apply for a hedge exemption.
- **Align position reporting with position limits scope:** In accordance with ESMA's Q&As that position limits are not expected to be set for C.10 contracts with underlyings that are not considered commodities the position reporting obligation should not apply to C.10 non-commodity contracts.
- **List of contracts in scope of position limits:** At present there is no list of commodity derivatives that will have position limits applied to them. As a result, it is challenging for market participants to create a taxonomy for their internal monitoring systems.

# Commodities – outstanding issues

## Position Reporting – ITS 4

**ITS 4:** Draft Implementing Technical Standards on Position Reporting have now been published by ESMA.

### Implementation challenges

- **Reporting from a clearing member perspective under Article 58 (3):** Members are concerned that the literal interpretation of MIFID II Article 58 (3) would imply reporting is required from the entity that executes the trade on the trading venue regardless of whether it is this entity that is clearing the trade. The position reporting obligation under Article 58 (3) requires entities to report on a daily basis, however, under a “give up” (clearing broker provides clearing services to clients that have executed trade through a different organisation), the executing broker has no legal obligation under the contract and would not be able to report any subsequent amendment to the position. It is only the clearing broker that can provide the level of detail required for reports under Article 58 (3).
- **End client reporting:** There are circumstances in which the entity deemed responsible for the reporting of the position, the clearing member, is unaware of the identity of the “end client”. In this instance, industry assumption is that the clearing member will make reasonable attempts to ascertain the identity of the “end client”, but this may not be provided within the period required to meet the reporting deadline. In some cases, this may not be available at all, where there are legal issues in revealing onward clients in certain jurisdictions. Further, how can an entity comply with obligations to report through the chain all the way to end client due to the many legal implications particularly those surrounding client/data confidentiality.
- **Zero positions:** Some national competent authorities have suggested that they will require entities submitting reports to report a value of zero in the “Position Quantity” field when the position has been reduced to zero. This will create a large number of reports for venues and NCAs that add little value to the monitoring and surveillance of eligible positions. If this reporting choreography was required, it is also unclear as to when market participants should cease reporting a position.
- **Reporting schema:** Significant uncertainty in relation to the reporting obligation under Article 58 (3). As ESMA has not specified the fields required for reporting under this obligation, market participants have been engaged in creating a common schema that we believe will allow firms to meet our obligation to report under Article 58 (2) and (3) in a manner that is complete, timely and accurate. ESMA appears to support this approach in Preamble 5 to ITS4, where it mentions the use of “standard formats” to “reduce costs” to market participants and ensure straight through processing (STP). Our assumption is that FIA and EEFET common schema (which includes every field detailed in Table 2 of ITS4), will be accepted by both NCAs and ESMA as a valid reporting format. The alternative is a number of different reporting formats across various NCAs and trading venues, which would prove a burden on market participants.

# DEA – Key Action Points

RAG	Item	Overview	Actions
<b>Red</b>	Scope of Direct Electronic Access	<p>Consensus across firms that DEA includes all types of access unless intermediated by a human at the broker, or a smart order router or algorithm provided by a broker. This includes all point &amp; click and FIX connections.</p> <p>ESMA are discussing additional requirements for all DEA clients regardless of type of access or sub-delegation of DEA. Additional Q&amp;A expected from ESMA at end of September 2017.</p>	<p>FIA are working with NCAs (FCA, AFM, AMF and BaFin) to limit scope of authorization.</p> <p>Meeting requested with ESMA to discuss, but declined. After internal discussion, FIA decided not to submit formal Q&amp;A to ESMA, but to continue working directly with NCAs to educate on the scope of DEA within ETD compared to equities.</p>
<b>Red</b>	Equivalence and Third Country Access	<p>Until MiFIR Articles 46/47 are implemented, individual countries have different equivalence regimes.</p> <p>UK and NL regimes already have exemption or equivalence, Germany is looking to implement limited equivalence regime as part of 2. FiMaNoG transposition of MiFID 2 into German law. BaFin will need to agree regulatory equivalence across third country jurisdictions.</p> <p>DEA Providers must be authorized as an investment firm or credit institution. If additional requirements are added for DEA clients then 3rd country affiliates and clients may not be able to access EU markets unless there is an appropriate equivalence regime in place for the jurisdiction of the trading venue.</p>	<p>FIA are working with NCAs (FCA, AFM, AMF and BaFin) to educate them on how DEA is used for ETD. Follow-up meetings to be held in September with CONSOB, AMF, FCA and BaFin following the ESMA Q&amp;As.</p>
<b>Amber</b>	MiFID 2 Readiness	<p>Trading Venues, investment firms and ISVs need to be ready for MiFID 2 by January 3<sup>rd</sup> 2018 (authorizations not required July 2<sup>nd</sup> 2018 for Germany under transitional arrangements).</p>	<p>FIA are working with trading venues on changes to their rulebooks and APIs. DEA readiness roundtables have been held and workstreams identified. Next DEA roundtable to be held September 7<sup>th</sup> in London.</p> <p>Proposed readiness test decided against. Focus will instead be on exchange, member and vendor cooperation.</p>
<b>Amber</b>	Scope of Algorithmic Trading	<p>Direct and indirect algorithmic trading identified. Potential requirements under RTS 6 for clients using indirect algorithmic trading such as broker algos and ISV algos.</p>	<p>FIA are working with NCAs to discuss responsibilities between brokers, clients and ISVs for indirect algo use.</p>

# DEA – Key Action Points

RAG	Item	Overview	Actions
<b>Green</b>	Data Privacy	Concerns regarding transmission of personal information to trading venues for reporting purposes.	FIA working with ISDA to submit a letter to ESMA and the NCAs.

# Scope of Direct Electronic Access

## Direct Electronic Access - RTS 6

### Implementation challenges

**Scope of DEA:** Clarity is needed on which activities fall under the scope of DEA.

**DEA and Sub-Delegation:** Clarity is needed on the responsibilities of the DEA Provider regarding a firm accessing a trading venue within a particular EU jurisdiction through a client or affiliate of a DEA Provider. Further, there is concern that the client or affiliate of the DEA Provider that subsequently acts as a DEA Provider (sub-delegation), would be required to ensure that each client of the sub-delegate is uniquely identified to the trading venue within a particular EU jurisdiction.

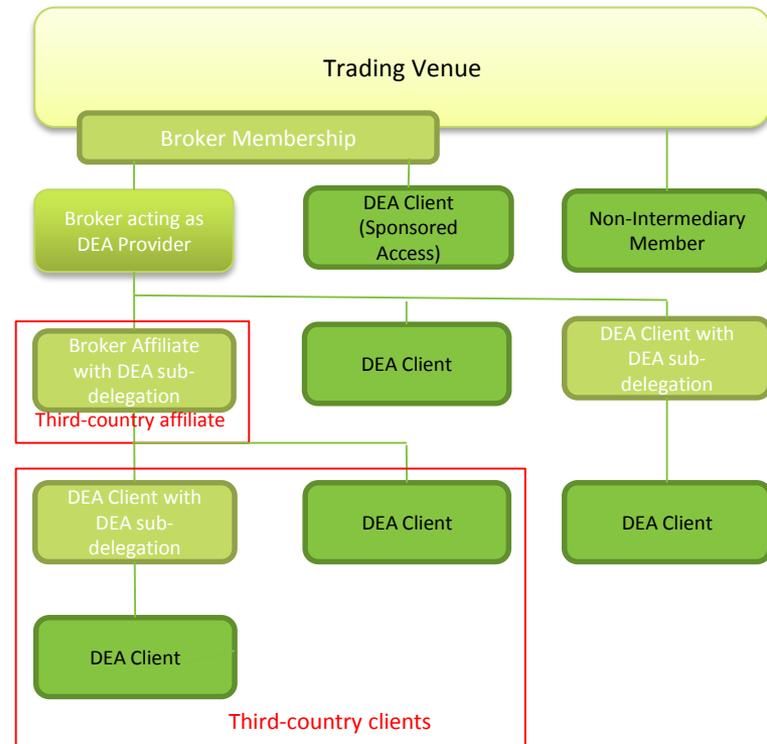
**Authorisation:** Clarity is needed on who will be captured in the DEA chain. There are two schools of thought being discussed at ESMA level:

1. Everyone in the DEA chain should be authorised; and
2. Authorisation should only go up to the DEA Provider and the direct client.

**Third-Country Access:** Concerns around third-country firms using DEA to access EU trading venues- but provide no investment services within the EU. Would they fall under the scope of MIFID II? Further, clarity is needed on equivalence with third-country regulations regarding third-country firm access to EU trading venues. If the third-country firm is not equivalent then would they cease trading on EU trading venue when MIFID II comes into effect?

**ESMA Q&As:** We are currently awaiting the ESMA Q&As on DEA and sub-delegation, which is scheduled for publication at the end of September.

FIA are working with NCAs regarding additional DEA requirements, and educating them on the differences between the ETD market structure and other asset classes, notably equities.



# DEA - Third Country Implications

## Direct Implications

**Third Country Firms:** Overseas members of EU trading venues, including FCMs and other NCMs may need to have supervisory equivalence or an exemption to continue accessing those venues after 3<sup>rd</sup> January 2018.

- Under MiFID II Article 48(7), DEA Providers are explicitly required to be authorised as an investment firm or a credit institution.
- Amended Article 2(1)(d) of MiFID II states that:

*persons dealing on own account in financial instruments other than commodity derivatives or emissions allowances or derivatives thereof and not providing any other investment services or performing any other investment activities in financial instruments other than commodity derivatives or emissions allowances or derivatives thereof unless such persons:*

*(i) are market makers;*

*(ii) are members of or participants in a regulated market or an MTF, on the one hand, or have direct electronic access to a trading venue, on the other hand, except for non-financial entities who execute transactions on a trading venue which are objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity of those non-financial entities or their groups;*

*(iii) apply a high-frequency algorithmic trading technique; or*

*(iv) deal on own account when executing client orders.*

In lieu of pan-European regulatory equivalence proposed under MiFIR Article 46, each EU member state must rely on its own supervisory equivalence or exemption regime (see table on following slide for major markets). The UK has an exemption for third country firms as long as they do not provide investment services within the UK, France and the Netherlands have an existing equivalence determination and Germany is proposing an equivalency framework (see below).

**Germany:** The transposition of MiFID II into German law (“2.FiMaNog”) repeals and replaces the existing German HFT Act, introduces the concept of DEA into German law for the first time, and proposes a six month transitional period (3<sup>rd</sup> January – 2<sup>nd</sup> July 2018) for authorisation with BaFin.

- Firms that are currently required to be licensed under the HFT Act will be required to be licensed under MiFID II;
- Firms that currently provide an order routing service for Eurex will be able to offer a DEA service (if they so choose);
- Firms that are in scope of authorisation under MiFID II but cannot be authorized as a third country firm will be able to continue to access Eurex during the transition period while BaFin:

(a) checks their application for completeness and

(b) determines whether there is an equivalent supervisory framework in the firm’s home jurisdiction.

There is uncertainty regarding what will happen after the transition period if regulatory equivalence has not been determined. Will firms be required to cease accessing Eurex?

FIA are engaged with both BaFin and Eurex regarding how 2.FiMaNog will impact access to German markets. Conversations ongoing throughout September and October.



# DEA - Third Country Implications

## Indirect Implications

**Identification:** All third country clients of an investment firm trading on an EU trading venue (either through DEA or via voice or other facilitation) are required to identify themselves for transaction reporting purposes. This is typically through a client short code that maps to an LEI.

As noted previously many jurisdictions have not widely adopted LEIs, so this will be of concern for many buy-side firms that have not registered one or more LEIs for themselves.

- EU trading venues will expect a short code on each order sent to the matching engine. This short code will map to an LEI within the member portal provided by the trading venue to create/upload static data required under RTS 24. There is a different approach being adopted regarding validation of this short code – some venues (e.g. ICE) will accept orders with an unmapped short code, and will allow one day to upload the appropriate LEI, whilst others will validate the short code against existing static data and will reject orders without a valid short code.
- Trading venue members (and their affiliates in other regions) will need to implement appropriate processes to ensure that LEIs/short codes are captured/created for clients, and are entered appropriately with all electronic order management and order routing systems. This will include working with ISVs to ensure that appropriate mappings and upstream communication of short codes are ready for either:
  - (a) MiFID II go-live on 3<sup>rd</sup> January 2018; or
  - (b) when each trading venue implements their MiFID II API and mandates compliance. Please refer to the Trading Venue Readiness Timetable.

FIA are working with member firms, trading venues and OMS/EMS vendors to ensure that appropriate information is passed from client to vendor to firm to trading venue. This includes regular readiness roundtables, and collating trading venue releases and requirements.

**DEA Due Diligence:** All DEA Providers must conduct due diligence on prospective DEA clients under RTS 6 Article 22, and are required to conduct a periodic review of existing clients under RTS 6 Article 23.

- Where a DEA Provider sub-delegates access to a client, they need to ensure that the client has a similar due diligence framework in place.
- This includes overseas affiliates of the DEA Provider who facilitate undisclosed access for their clients through an omnibus account structure with the DEA Provider (who is a member of the trading venue and must be authorised as an investment firm under MiFID II).

FIA have been working on a template of due diligence questions that DEA Providers and sub-delegated clients/overseas affiliates can use when they create their own DDQ for their DEA clients. This will be published by mid-September.

# Straight-through processing for ETDs

## RTS 26, Article 2(1)

### SUMMARY OF THE REQUIREMENTS:

The RTS 26 requirements provide for pre-trade order-by-order checking for on-venue traded and bilaterally concluded derivatives.

FIA has always only been looking at on-venue traded derivatives and through advocacy succeeded that for those transactions, there be an exemption from pre-trade order-by-order checking provided that certain conditions are met. RTS 26 Article 2(1) envisages three conditions which all revolve around contractual certainty of clearing which is achieved by provisions in trading venue and CCP rules.

### ROADMAP TO IMPLEMENTATION – ACTIONS COMPLETED

- FIA, in conjunction with Linklaters, has conducted a review of relevant trading venue and CCP rules to ascertain whether they meet all three conditions in RTS 26, Article 2(1). The review covered 25 trading venues and 15 European CCPs.
- The review showed that most trading venues didn't meet Condition 3 and that some trading venues and/or CCP also didn't meet Condition 1 and/or Condition 2.
- FIA has reached out to non-compliant trading venues and CCPs and asked them to amend their rules such that they meet all three Conditions.
- All relevant trading venues and CCPs have responded. The vast majority of them have confirmed that they would make the necessary changes and some of them have already send us suggested drafting for review, whilst others plan to make the changes in due course.

FIA sends out regular updates to its members indicating progress made on this project

### ROADMAP TO IMPLEMENTATION – OUTSTANDING ACTIONS (i.e. steps that need to take place between now and 3 January 2018 so that firms can rely on the exemption)

- FIA will continue to engage with the trading venues and CCPs, encourage them to make the changes in a timely manner, review proposed changes with assistance of external counsel and confirm that the amended provisions meet all three conditions.
- The expectation is that all relevant trading venues and CCPs are going to meet the conditions in Article 2(1) by year-end so that firms will be able to benefit from the exemption from pre-trade order-by-order checking.



# Indirect clearing for ETDs

## MiFIR Article 30 – Indirect clearing arrangement (RTS XX)

### SUMMARY OF THE REQUIREMENTS:

The RTS under MiFIR Article 30 is yet to be adopted by the European Commission.

MiFIR Article 30 introduces the indirect clearing requirements for ETDs and requires ESMA to draft RTS to specify them such they do not increase counterparty credit risk and ensure that the assets and positions of the counterparty benefit from protections with equivalent effect to the requirements in EMIR Article 39 and 48. ESMA sent the Final Report together with the draft RTS on indirect clearing arrangements to the European Commission in May 2016.

FIA has been engaging with member firms on the topic of indirect clearing arrangements since 2013. We have had a number of workstreams in place over the years, largely looking at advocacy. Most recently, FIA split the indirect clearing workstream between legal/documentation and operations with a view to helping firms with implementation of the [draft!] RTS requirements. In November 2016, FIA published a Working document on indirect clearing arrangements for exchange-traded derivatives (ETD) under draft MiFIR RTS on indirect clearing arrangements and in July 2017 FIA published a Memo which outlines main indirect clearing obligations for US FCMs.

### ROADMAP TO IMPLEMENTATION – LEGAL/DOCUMENTATION WORKSTREAM

- FIA is currently in the process of finalising three template documents, which will help firms meet some of the RTS indirect clearing requirements, namely (i) Instructions to counsel template, (ii) CM disclosure template and (iii) DC disclosure template. Once the templates have been finalised, FIA will be in a position to instruct local counsel in relevant jurisdictions to provide local law analysis. The completed documents will allow firms to understand how the ‘obligation of means’ applies to them in specific indirect clearing scenarios and to seek account election from their indirect clients.
- In parallel, FIA is also considering to develop industry standard terms that CMs and their clients can include in contractual documentation to facilitate indirect clearing. Most importantly, the contractual provisions will need to facilitate porting/leapfrog for GOSA indirect clients in the event that the direct client has defaulted.
- FIA sends out regular updates to its members indicating progress made on this project



# Indirect clearing for ETDs

## ROADMAP TO IMPLEMENTATION – OPERATIONS WORKSTREAM

### CCPs

- In depth discussions with major EU CCPs on intended account structures and associated system changes to support MIFIR Indirect Clearing RTS (ETD) including: ICE Clear Europe; Eurex Clearing; LCH Clearnet SA / Ltd; LME Clear; CC&G; NASDAQ OMX; BME Clear.
- Models vary across CCPs particularly in relation to GOSAs, driven by CCP system architecture.
- Scalability and performance impacts discussed relating to trade management (account allocation/give ups/take ins); position management (close outs, position transfers, open interest maintenance); options exercise and assignment; margin calculation; collateral pools; VM cash settlements. In addition, CCP account set up and on-going maintenance processes and initial position transfer processes are to be finalised
- CCP models are yet to be confirmed as the RTS remains as draft.
- A number of CCPs have account structures in place to support the simple omnibus account (NOSA) such that firms may be able to establish now, other CCPs require amendments to related systems to fully support the end to end process.
- The majority of CCPs are targeting August – October for system testing and production implementation with November or December for account set up and population (including GOSAs).
- CCP fee structures for NOSA/GOSAs are yet to be confirmed.

### Clearing Members

- Clearing Members are engaged in preliminary discussions with their clients to confirm the position sets of indirect clients, to examine the length of indirect clearing chains and to determine permissible/non-permitted chains.
- Internal indirect clearing account set up and maintenance processes are being established and internal impacts of the issues discussed with CCPs are being examined.
- Detailed engagement with clients is dependent upon publication of the final RTS and confirmation of the account structures of CCPs and upon finalisation of the outputs of the legal/documentation workstream.
- The “obligation of means” analysis will serve to inform the discussions with and account choices made by Direct Clients on behalf of their indirect clients.
- The delay in the adoption of the RTS and the timing for completion and distribution of client documentation plus timescales for response and set up at the CCPs increasingly leads to a conclusion that on 3 January 2018, only NOSA accounts will be active.
- Whether an engagement approach with NCAs should be developed to confirm this progressive approach to implementation is still to be decided.
- Work continues with FIA Tech to establish a “Lockbox” solution to facilitate provision of GOSA indirect client details in the event of Direct Client default with an initial delivery date in October and full functionality available in November.

