

**From:** Sonja Erica Väisänen  
**Sent:** 30 March 2018 09:16  
**Cc:** cmce@humbrophy.com  
**Subject:** CMCE - Summary of CMCE MiFID WG call of 23 March 2018

Dear Member of the CMCE MiFID Working Group,

Please find below the summary of the call of the MiFID Working Group which took place on 23 March.

Please do not hesitate to let me know if you have any questions.

Best regards,

Sonja

### **CMCE MiFID WG call on Brexit & MiFID II – 23 March 2018**

As was discussed during the first call of the CMCE Brexit Working Group, one result of the UK leaving the EU is that a modification to the calculation of the **ancillary activity test** under RTS 20 is likely. The call focussed on potential CMCE engagement in the EU and in the UK on the recalibration and any other possible changes to the AA test.

#### **Possible EU engagement:**

- The advisory team raised the question of whether members believe CMCE should engage with EU regulators to seek to influence thinking on potential recalibration / broader changes to the AA test.
- It was asked whether a reactive mode would be more adequate at this point in time, to avoid raising this issue as long as ESMA is not looking at it. Members believed that this was already on ESMA's radar and therefore CMCE should go ahead and engage with national regulators to seek to understand their thinking as a first step.
- Members on the call noted the need to understand whether ESMA will simply recalibrate the thresholds or look at more far reaching changes to the test. In some cases, it might not make sense to simply recalibrate given that EU markets are insignificant. In such cases, perhaps one option would be to include EU and UK market size.
- Members concluded that the desired outcome would be a large a market size figure as possible. Some also noted that they mainly had an interest in recalibration, but not changing the overall structure of the test.
- **It was agreed that as a first step CMCE would reach out to Euronext and EEX to seek intelligence on the AMF's thinking and get a steer on which Member States to speak to. Depending on the outcome of those contacts, CMCE could contact the AMF and AFM or others.**

#### **Possible UK engagement:**

- From members' interaction with HMT, the UK approach seems reasonable. However, the UK will not look to resolve the deficiencies in RTS 20 at this stage, but intends to copy RTS 20 and the AA test into UK law.
- The advisory team noted that if the UK chooses to adopt a statutory instrument to implement the EU approach, this will make it very difficult for the UK to diverge from any future interpretation / guidance the EU may adopt. In this case, should the EU decide that the AA test should be applied at group level, it would be hard for the UK to diverge from that interpretation; whereas the FCA would have more room for manoeuvre if the details of the regime were left to the FCA handbook, rather than being included in law. This is all the more relevant, given that the UK has an interest in aligning its rules with the EU to safe-guard equivalence in a post-Brexit scenario – it will be difficult to make changes to law without that raising attention in the EU, whereas changes to the handbook will be less visible.
- Members responded that based on the recent meeting with HMT, it seemed that there was no appetite to change its approach at this stage, as this would open the door to having to make

changes also in other areas. HMT is understood to be keen to achieve a similar outcome to today by doing as little as possible, with the opportunity to reconsider rules once the UK will have exited the EU.

- **It was concluded that it would be worth raising this issue with HMT, but at this stage engagement with the EU should be the priority.**

Please do not hesitate to let me know if you have any questions.

Best regards,

Sonja Väisänen  
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