Minutes

Minutes of the meeting of the

TRADE ASSOCIATION COORDINATION COMMITTEE (TACC)

Held on 26 June 2012; 14:00– 15:30

At FSA Offices

Present:	FSA:	Delegates:
	David Lawton(DL)	Adam Jacobs (ISDA)
	Anna Simons (AS)	Gary Simmons (AFME)
	Stephane Amoyel (SA)	Angela Teke (AFME)
	Alasdair Bell (AB)	John Serocold (ICMA)
	Clara Lane (CL)	Simon Whittle (AFB)
	Dilwyn Griffiths (DG)	Katrina Dixon (ABI)
	Richard Johnson (RJ)	Ian Cornwall (APCIMS)
	Alison Barker (AB)	Sally Springer (BBA)
	Valerie Stainton (VS)	Adrian Hood (IMA)
		John Grout (ACT)

Apologies:

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1. Opening remarks

The Chair introduced the meeting and agenda on behalf of the FSA.
He invited comments on the minutes of the previous meeting, none were noted.

The Chair then provided updates on regulatory reform, external developments and European legislative environment.
On regulatory reform, the Chair mentioned that the transition to internal twin peaks at the FSA between the Conduct Business Unit and the Prudential Business Unit had occurred. In the Markets division, little change will occur, although supervision of best execution policy, and the suspicious transaction regime will now fall under the markets division remit.
Externally, the agenda is dominated by developments in the Eurozone. The FSA has been engaging with firms on their contingency plans over a range of scenarios.
In terms of legislation, the Chair mentioned MiFID, Market Abuse, Transparency, CSD legislations as well as the recently published consultation for EMIR technical standards.

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2. Update on the implementation of the European regulation on Short-selling

The FSA updated TACC on the following:

- The adopted version of the delegated act is still not published (although this is expected imminently), which leaves little time for implementation.
- ESMA has set up a taskforce to issue guidelines on exemptions for market makers/primary dealers, and will consult on draft guidelines probably after the holidays although the final version is unlikely before most notifications of exemptions are expected to be received in the autumn.
- The regulation will be transposed directly in the UK with some minor modifications of the handbook
  - Repealing domestic short selling regime
  - New penalties regime for breaches of the Short Selling Regulation provisions. This will follow the general penalties policy set out in the FSA's DEPP handbook.
- There will be a consultation on a policy framework on the exercise of the FSA's discretion to temporarily suspend short selling of instruments which show large intraday price movements.
- The short position disclosure mechanisms have been determined
  - In the UK, public disclosures of significant short positions will be made via a commercial website, using regulatory information services.
  - Private disclosures to the FSA of lower level short positions will ultimately be done via a web portal; however in the interim, disclosure may be made via email.
- ESMA is preparing a FAQ regarding short selling to ensure consistency across the EU.

3. Lessons learnt from the enforcement case regarding Greenlight Capital

The FSA described the events in the Green light Capital enforcement case.

They underlined the key messages of the case:

- Market abuse can arise from investors' privileged access to information.
- Standards of market conduct are expected from the sell-side, as gate-keepers of information, and the buy-side, as privileged users of inside information, to recognise inside information and handle appropriately
- Responsibility of all approved persons to underpin the market abuse regime, not just compliance officers
- They noted the impact of market abuse on overall market integrity and cleanliness.

The FSA also described how this case tied in with some ongoing thematic work done on pre-sounding. The FSA will keep TACC updated on further developments of this work.

4. Themes from supervision of rules governing client assets

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The FSA presented the main themes from Client Assets Sourcebook Supervision (CASS).
The FSA stressed that CASS is a priority for the FSA since Lehmans, and will remain a priority for the FCA. Work is led by a dedicated unit within the Markets division, combining policy (sourcebook), data and risk analysis and supervision teams. The team adopts an intrusive approach with firms and makes use of the full range of supervisory powers available, including where appropriate enforcement action (such as the GBP 35m fine for JP Morgan)
The FSA stressed that rudimentary failures have been occurring repeatedly. In particular, there was a lack of correct allocation of trust letters and a lack of clarity of contractual arrangements.
Most of these failures ultimately trace back to a poor understanding of the application of the regime to firms' business models, exacerbated by, business changes (e.g. mergers and acquisitions, IT change etc.); it is thus important to engage with CASS expertise at the right points of such programmes. Similarly business complexity gives rise to more problems, since CASS is recognised on a legal entity basis, whilst firms generally work on business lines.
Another issue noted was that of poorly managed static data. This could be mitigated by better client on boarding techniques, and better data mapping.

The failures were often basic, we expect firms to focus on these issues and be proactive in work to bring issues to the FSA's attention and put in place mitigation.

The FSA confirmed it had had conversations with audit firms, but delivered the same messages to both the industry and the audit profession. The FSA had not yet had time to analyse the current year's external CASS audit reports fully.

5. Any Other Business

Delegates requested clarification on future consultations. FSA noted the following:

- CASS 5 consultation for insurance brokers,
- Technical Consultation for investment firms for CASS
- EMIR technical standards Consultation

Delegates also asked about the relationship between clearing brokers and their clients under EMIR. FSA responded that under EMIR, different contractual relationships would be needed between clearing clients, members and CCPs.

Delegates also asked for more clarity on the messaging which could be disseminated to firms. The FSA responded that formal guidance will follow a rigorous process, and consultation process; but for other messages, these could and should be communicated to firms unless stated otherwise.