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| ACI Regulatory Working Group |

# ACI Regulatory Working Group

# Minutes of meeting 02-2015 on 12 June 2015

### Agenda

1. State of play since the last meeting
2. Benchmarks developments
   1. Regulation on indices used as benchmarks in financial instruments and financial contracts
   2. Euribor +
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3. MiFID II
   1. MiFID II implementation measures on level II – transparency and liquidity thresholds
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4. ESMA consultation papers:
   1. The Clearing Obligation for additional classes of interest rate derivatives including fixed-to-float interest rate swaps denominated in CZK, DKK, HUF, NOK, SEK and PLN as well as forward rate agreements (FRAs) denominated in NOK, SEK and PLN.: <http://www.esma.europa.eu/system/files/esma-2015-807_-_consultation_paper_no_4_on_the_clearing_obligation_irs_2.pdf>
   2. Draft guidelines specifying criteria for the assessment of knowledge and competence of natural persons in investment firms that provide investment advice or information about financial instruments, investment services or ancillary services to clients: <http://www.esma.europa.eu/system/files/2015-753_cp_mifid_guidelines_on_knowledge_and_competence.pdf>
5. Current files:
   1. EMIR: the definition of derivatives
   2. Dodd Frank
   3. EU Structural Reform (The Liikanen Report/Report of the European Commission's High-level Expert Group on Bank Structural Reform)
   4. Capital Markets Union
   5. FTT

### Participants

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Christine Habel

### Minutes

1. **State of play since the last meeting**

The WG has had an offer from the German Regulatory WG to have mutual meetings. It was decided that the WG should participate in such a meeting in Frankfurt this autumn if the schedules were compatible.

1. **Benchmarks developments** 
   1. **Regulation on indices used as benchmarks in financial instruments and financial contracts**

The latest status on the benchmark regulation:

The Councils General Approach was agreed upon on 4 February 2015 by “silence procedure”.

The European Parliaments Econ Committee voted on 31 March 2015 and the text was supported by the Plenary in May 2015.

The Commission’s text and the Council’s compromise are both based on the situation in Euro areas with large banks and where many of these can submit reference rates such as Euribor. This creates challenges for non-Euro countries with minor currencies.

The report from the European Parliament seems to show consideration for the fact that there are different size players in the market for benchmarks. The European Parliament suggests that the annexes are deleted and the main rules are incorporated in the regulation itself. The European Parliament suggests that there should be a stricter regime for critical benchmarks – which is to say the benchmarks that were in focus when the regulation was drafted.

If the European Parliament’s report is adopted as it is, this will result in the regulation being more proportionate than the original draft. The difference between critical and non-critical benchmarks is larger. This means less administrative burdens without diluting the purpose. That said the regulation still triggers a huge amount of administrative burdens to the industry. The European Parliament’s approach is just more appropriate. But we will have to wait and see the final text.

The trialogue started 2 June 2015. It is expected to be final after this summer. Thereafter ESMA will have to work on the level II regulations.

The WG disused the different draft regulations. Seen from a market perspective it seems that the report from the European Parliaments ECON committee is much more appropriate than the council compromise text. The WG will follow the further developments closely.

* 1. **Euribor +**

The EMMI has been working on a substitute for Euribor which is based on actual trades and not quotes. The EMMI work on this is relatively advanced.

The general assumption from a regulatory aspect is that quoted reference rates should be avoided at any cost. The crucial concern from a marked point of view is what the impact of Euribor + is going to have on the market. The WG expressed the outmost concern.

The EMMI has also issued an open hearing on how the future possibilities of correcting a mistake in Euribor should be.

The WG agreed that any possibility of correcting mistakes should take the ISDA rules into account. This means that it should only be possible to correct mistakes until an hour after publication of the reference rate.

Since the WG is not allowed by itself to send in answers to a hearing is was decided to ask HQ to summit this message. It had to be submitted online. There was no need to send in any other messages than the message saying that the rules should correspond with the ISDA documentation.

* 1. **Libor**

The intelligence is that Libor is conducting the same exercise as Euribor.

The WG was also concerned about this and decided to follow this development as well.

The WG also discussed the Bank of England Fair and Effective Markets Review which had just been published. The review was said to contain a chapter on conduct - benchmarks and FX. It was decided to send a link to the review to the entire WG.

1. **MiFID II** 
   1. **MiFID II implementation measures on level II – transparency and liquidity thresholds**

The ESMA deadline for drafting level II legislation has been postponed. The deadline for implementation is expected also to be postponed.

It is expected that EMIR is going to be postponed too.

* 1. **Algorithmic trading**

The WG had a general exchanged of views on the consequences of MiFID II on algorithmic trading.

1. **ESMA consultation papers:**
   1. **The Clearing Obligation for additional classes of interest rate derivatives including fixed-to-float interest rate swaps denominated in CZK, DKK, HUF, NOK, SEK and PLN as well as forward rate agreements (FRAs) denominated in NOK, SEK and PLN**.: <http://www.esma.europa.eu/system/files/esma-2015-807_-_consultation_paper_no_4_on_the_clearing_obligation_irs_2.pdf>

The WG discussed the consultation paper and concluded that there is not an ACI angel to promote and will therefore not draft an answer. It was however decided that any national submissions should be shared if possible.

* 1. **Draft guidelines specifying criteria for the assessment of knowledge and competence of natural persons in investment firms that provide investment advice or information about financial instruments, investment services or ancillary services to clients:** <http://www.esma.europa.eu/system/files/2015-753_cp_mifid_guidelines_on_knowledge_and_competence.pdf>

The WG discussed the draft guidelines. The general assumption was that Regulatory WG did not have anything to contribute and would therefore not revert with an answer to the hearing. The WG could only see that the definitions of clients and the information were not clear and would need to be clarified. These two remarks per se were not enough to submit an answer.

That said the WG found that the consultation might be a splendid possibility for the ACI to promote the ACI model Code and the ACI education. Therefore it was decided to send the consultation to ACI HQ and suggest that someone with adequate knowledge of the ACI education looked into the draft guidelines.

1. **Current files:**
   1. **EMIR: the definition of derivatives**

The outcome of the current consultation on risk is going to have an impact on derivatives.

The entry into force of some parts of EMIR is expected to be postponed.

* 1. **Dodd Frank**

Volker/Dodd Frank

The impacts of the rules are significant. There have been cases where sales people from European banks have to ask other banks for quotes instead of their own to avoid breaking the rules.

There have also been concerns that the rules will eventually have the consequence that prop trading is band.

The exemptions have to be made desk by desk which is most unfortunately.

Generally the rules have a huge impact on the way business is done.

* 1. **EU Structural Reform (The Liikanen Report/Report of the European Commission's High-level Expert Group on Bank Structural Reform)**

The current regime which is being discussed in Brussels has become much more different than the original proposal. Unfortunately the proposal is not going to be withdrawn since the European Parliament has it on its political agenda.

* 1. **Capital Markets Union**

The word is that there are a number of proposals on their way to public consultations.

* 1. **FTT**

The FTT is mainly a political project which does not have the general support of the member states. It has however not disappeared and some countries still support the FTT.

It is however important to note that the suggestion has a market maker exemption.

**MAR**

The WG discussed the impact of the new Market Abuse Regulation.

The assumption is that this will have an impact on chatrooms of public spaces. More cases might be expected in the FX markets going forward.

The same will be the case in markets where the transparency is going to increase as a consequence of MiFIR. If there is a normal way to make trades public, this information might become insight information and can therefore not be used or shared. The market impact is yet to be seen.

The trend in the markets is generally that no mobile phones, IPads, IPhones are allowed on the dealing floor.

Some banks are considering physical restrictions on where the staff is allowed to be in the dealing room. Restrictions on how it is allowed to start a conversation between colleges and the like is also being considered.