

Transcript for the Single Rulebook Webinar on Wednesday 17th February, 2021:

“The Evolution of the UK and EU Rulebooks with the FCA and AFM

Moderator: Wim Nelen, Single Rulebook

Speaker: Stephen Hanks, Financial Conduct Authority

Speaker: Matthijs Geneste, Dutch Authority for Financial Markets

Wim Nelen:

Hello, everyone, and welcome to our webinar on the post-Brexit evolution of the EU and UK rule books.

Wim Nelen:

My name is Wim Nelen. I'm the CEO of Single Rulebook. I will be moderating this webinar. Single Rulebook is a regtech company that allows you to search and navigate regulation, to manage interpretations of regulation and to create traceability from your policies, systems and controls to the regulation.

Wim Nelen:

We have a fantastic panel here today for this webinar. We are bringing together two senior experts from the two biggest markets regulators in Europe, the UK Financial Conduct Authority and the Dutch Authority for Financial Markets.

Wim Nelen:

From the FCA, we have Stephen Hanks. Welcome, Stephen. I don't think you will need an introduction, you have been the public face of MiFID in the UK for some time, but I will ask you nonetheless. Can you please introduce yourself?

Stephen Hanks:

Yes. Hello. Good afternoon. Stephen Hanks. I work in the markets policy department at the Financial Conduct Authority doing work related to MiFID topics and Brexit-related MiFID topics.

Wim Nelen:

Thank you Stephen. For the AFM, we have Matthijs Geneste. Matthijs, I know you from your days at ABN AMRO, where you were the Global Coordinator of Regulatory Affairs. These days, you are working at the AFM in a role that crosses the Policy and the Supervision areas as I believe?

Matthijs Geneste:

Yes, yes. Correct. So I joined the AFM slightly over a year ago. Previously I worked in the industry, amongst others, as the Global Coordinator of Regulatory Affairs for ABN AMRO Clearing. I've got a background in consultancy, mostly on the financial regulatory side. Within the AFM, I am coordinating the capital markets international desk. We're dealing with mostly secondary markets topics, including Brexit, MiFID and a range of other topics.

Wim Nelen:

Great. Thank you and welcome. Welcome to everyone on the call as well. There is a large group of people on the call today. There's clearly a lot of interest in the topic of evolution of the rulebooks post-Brexit. Most of you are fairly senior regulatory experts, so it should be a very interesting session.

Wim Nelen:

The way we plan to organise this is in three parts. In the first part, we will look at the present status and the implications of what happened on the 31st of December at the end of the Brexit transition period. We will look at both the UK and the Netherlands in that respect. In the second part of the webinar, we will be more forward looking, bearing in mind that we speak to two regulators on this webinar. We're not speaking with politicians, and Brexit is in nature a political event that is still unfolding to a large extent at the moment and will continue to unfold for some time, I think. There's a lot of things that regulators know already and can discuss, but we'll stay away from the purely political and focus on the regulatory. In the third part, we will open up the discussion for questions from the audience. There is a Q&A function on your Zoom. You can start submitting questions via that function from now on. You will see an option to submit anonymously or named. Please bear in mind when you decide on that option, that this webinar is recorded, and we plan to put a recording on our website as soon as possible after the webinar.

Wim Nelen:

Stephen, let's start with you and start looking at the present status of regulation in the UK. The UK onshored EU legislation over the course of the transition period and the Treasury has provided the FCA and the PRA with the power to make transitional provisions for a temporary period, the so called TTP. How exactly is the FCA using this power at the moment?

Stephen Hanks:

Well, when it comes to the temporary transitional power, what we did was effectively to list a set of areas where the temporary transitional power would not apply and where people needed to be in compliance by the end of the transition period. In respect of MiFID, the main area that we call out in that way was transaction reporting. So EU firms with branches who are inside the temporary permissions regime from the start of this year have had to transaction report to us.

Stephen Hanks:

Across other areas, we set out various provisions where effectively we applied the temporary transitional power so that people's obligations were modified, and they could continue to comply with their obligations as they stood before the end of the transition period for a period of up to the end of March next year. We then said in respective areas, which we hadn't called out in either of those two lists, then also we would allow people to continue to comply with their obligations prior to the end of the transition period up until the end of March 2022.

Stephen Hanks:

There are a couple of areas, the share trading obligation and the derivatives trading obligation, where we also used the TTP and where we made statements towards the end of last year. There we have not specified the period at which that use of the TTP will come to an end. At latest, it can run to the end of 2022, which is when the TTP powers come to an end or if at some point between now and that point in time, we decide to modify what we do.

Wim Nelen:

That seems very helpful for regulated firms. It also leaves some policy options open for the future, which is probably helpful as well. On a very practical level, when I was a practitioner in a UK regulated firm, I used to find my obligations within the European Official Journal, and I could find, for example, the regulations and directives there, like MiFIR, and I could see the related delegated acts with the latest consolidated versions with the amendments and corrections. I could puzzle that together with the ESMA Q&As and guidelines and opinions that were published and are still published on the ESMA website. Where can I find these texts back now within the UK context?

Stephen Hanks:

Different places is the answer. Obviously, the government was responsible for the directly applicable level one regulations, so you're taking the markets in financial instruments regulation. As an example, it made a series of changes to that to deal with deficiencies, which included things like replacing references to ESMA to references to domestic regulators. But what you can see on government websites are the amendments and not a consolidated version of the revised UK version of MiFIR.

Stephen Hanks:

That is, in effect, typical of what tends to happen when a government makes amendments to pieces of legislation, that the consolidated versions are not available often from official sources, so people either have to go to firms who provide particular services of consolidating legislation or they are available for free on a number of law firms' websites, consolidated versions, which the law firms have put together and including often they've done it whereby you can see the exact changes that were made as part of the onshoring process. When it comes to the technical standards, those are on our website, and you can look at the UK versions there.

Wim Nelen:

Yes. The level two instruments and the level three guidance are now part of the FCA Handbook website.

Stephen Hanks:

Well, there's a difference between the level two and the level three. The level two, where it is in the form of a directly applicable regulation, again, was Treasury legislation, and therefore, what you have is, again, looking at consolidated versions either from some sort of vendor or from the free versions on the websites of law firms.

Stephen Hanks:

When it came to the level three guidance, we put out some guidance last year telling people how they should deal with the guidance that was produced whilst we were members of ESMA. What that said effectively is that in the main, you can continue to rely on the guidance that was produced whilst we were part of ESMA.

Stephen Hanks:

There are some bits of it that are not applicable. There are some occasions where we already made clear, whilst we were part of ESMA, that we disagreed with the guidance and we were not applying it. So, obviously, that's not relevant, and all guidance that has been produced since we left ESMA also is not relevant in the UK. It's now a matter for us to determine what guidance we want to produce in future relating to now the UK versions of the pieces of legislation.

Wim Nelen:

Yes. Let's discuss that further in the second part of this webinar. That's very helpful. Let's first look at the Netherlands. Matthijs, I think in the 16th century, the first ever stock exchange in the world opened its floor in Amsterdam. Over the course of the Brexit transition, you received a substantial number of applications for authorisation of trading venues and trading firms. In recent days, we have seen press articles calling Amsterdam, again, the trading capital of Europe. Does the AFM need to adapt to this new status?

Matthijs Geneste:

Well, I think you could argue that since Brexit, our supervisory scope has broadened significantly. So we've welcomed quite a number of new venues that are trading or facilitating the trade in new types of asset classes that previously didn't have a strong Amsterdam-based presence.

Matthijs Geneste:

We've welcomed quite a large number of new investment firms. I think, like you rightly said, we experienced a large inflow of volumes since the first week of January. The transfer of EU equity and a number of derivative volumes to Amsterdam-based venues went quite smoothly. I think you could say that the platforms and participants were generally very well prepared. I think it was common knowledge that over the last few years that Brexit would happen eventually. I think what also helped was that many firms took a no-deal Brexit as their baseline scenario.

Matthijs Geneste:

Like you said, Amsterdam has quite a long history in terms of the presence of trading infrastructure. I think the first stock that was ever traded were shares in the Dutch East India Company. I think at the moment, I think Amsterdam also benefits from the fact that we have a large electronic trading community present, we have good IT infrastructure and I think we're relatively close to London, not just geographically, but I think if you look at the AFM specifically and the impact that it had for us as an organisation.

Matthijs Geneste:

Some cold numbers: So we processed about 60 new licenses; we hired 20 new FTE to cope with the number of entities that set up in Amsterdam; we restructured our capital market supervisory teams and functions to ensure that we have efficient supervision capability across different types of platforms, infrastructure, asset classes, and investment firms; we are adapting to much more of a data-driven approach.

Matthijs Geneste:

I think in terms of the rule books, we didn't have to make significant changes. I think there were some provisions in place to deal with, I think, a more dramatic post-Brexit fallout or a longer transition period, but it didn't prove necessary to implement those.

Matthijs Geneste:

I think what is changing, and I think one of the major changes that we've experienced thus far is that we have to change the way we position ourselves in European policy discussions, as our supervisory scope has, of course, broadened, and the Netherlands is now the host of a large part of the EU market infrastructure across different types of asset classes. This means we have to gain experience with new types of asset classes; with new types of training protocols, such as RFQs. A large number of transparency waivers under MiFID are currently under our supervision.

Matthijs Geneste:

We also made some internal changes to the way we participate. In ESMA groups, we created a new internal coordination desk to ensure efficient participation and positioning by working closer between the supervisory teams and the policy staff, while at the same time, we're seeking continued alignment and dialogue with the likes of the Ministry of Finance, the European Commission, other competent authorities, industry groups, market participants.

Matthijs Geneste:

We're taking some stronger opinions and positions in areas that we consider extremely important in market infrastructure discussions, and that's, I think, along the general AFM theme of ensuring that... well, along the merits of fair, open, and transparent markets.

Matthijs Geneste:

I think, lastly, what's worthwhile to mention is that a large number of firms that are under our supervision are also supervised by the FCA. We have an excellent working relationship with our UK colleagues. There's an MOU in place between the AFM and the FCA, and I can see the relationship and cooperation

between us two only grows stronger in the near future, as I believe we do share some common views in terms of market structure, transparency, and the likes.

Wim Nelen:

One thing that triggered a lot of discussion over the course of the transition with respect to applications of UK firms within the EU was the question of substance. There was even a working group in ESMA to align all the European regulators on the idea of substance, meaning that the expectations of the European regulators with respect to functions that would have to be physically present within the EU and the people and the actual CVs of the people that would have to be there in order to fulfill certain regulated activities after Brexit. Does the AFM now see the substance that it expected to see when it approved the applications of UK trading venues and firms?

Matthijs Geneste:

I can give some background on this question. I think maybe you're referring to ESMA as a supervisory coordination network. They concluded their work at the end of last year, and what they have done is they have prepared, they debated about and published a wide range of opinions and interpretations on substance and presence requirements across multiple types of applicable legislation in the EU.

Matthijs Geneste:

For example, MiFID, and the whole idea was to make sure these interpretations were synchronized across the EU and to ensure that all NCAs basically followed the same interpretations. I think you can find quite a lot on their work on the ESMA website. All in all, I believe they dealt with about 250 different cases.

Matthijs Geneste:

So I think what we have done for each firm is make sure that when a new license is issued, that firm would have to comply with those requirements as set out in the legislation and as agreed within the supervisory coordination network. I think most importantly is that we don't want empty shells, we don't want lonely house plants in a nondescript office or letterboxes. But I think, just to give you a few examples, that the basic rule of thumb is that you need the presence of at least two board members/directors physically in the EU. Then, as a rule of thumb, the larger the entity gets, the more functions or the more functions that are performed within that entity, the stronger the requirements will get in terms of presence of staff that oversees daily operations, risk management, compliance, et cetera.

Wim Nelen:

Matthijs, is the AFM now seeing the substance that it expected to see when it approved these applications? Because there are some concerns in the industry that substance was approved when the application was approved, but there might be ongoing reviews in this respect.

Matthijs Geneste:

Yes. I think that's a fair point. So I think that the impact of COVID can, of course, not be underestimated. But I think if you could get at the times of new investment firms and venues that are present in Amsterdam there, I think that there's quite a lot of electronic/digital infrastructure that are not quite intensive in terms of... or quite dense in terms of in terms of FTE.

Matthijs Geneste:

Of course, I think, in general terms, there's been a certain level of understanding on the impact of COVID on relocation and presence. I think it is more difficult now, obviously, than it was a year ago to move from one country to the other. I think, on the other hand, we are also seeing some entities that might have been waiting a bit longer than others with moving staff. I think despite the fact that it was common knowledge that Brexit would be there and Brexit would happen, I think in some cases COVID would have been a welcome excuse, so to say.

Matthijs Geneste:

But I think in dealing with the whole COVID situation, some pragmatic solutions are possible. I think, particular, as we're all working remote. So I think, for example, that there are examples possible where staff are still located overseas, but are employed and working for the EU entity. I think that's an exception rather than the rule.

Wim Nelen:

So there is a temporary COVID impact there, it seems. Stephen, since Brexit contingency planning has been a focus of the regulators in both the EU and UK. There was an interview with EU Commissioner McGuinness two weeks ago, I think, where she said that she considered the contingency measures on the EU side to have been successful because the transition was with smooth. Is that also how the FCA perceives this?

Stephen Hanks:

Yes. We thought that generally speaking things went well. At the end of last year, clearly, we had taken a range of measures, including TTP, TPR and others, in order to smooth the process, but I think firms are to be congratulated on the efforts they made to be sure that they were ready for Brexit. The market infrastructure worked very well. It was able to cope with the movements in trading activity that took place, and Matthijs has spoken about, so we were very pleased from that point of view.

Stephen Hanks:

However, I would caution that, as with other sorts of major regulatory changes, Brexit is a process rather than an event and there's still things to be got through now even though the transition period has ended. Obviously, we have to do the work to authorise the firms who are in the temporary permission regime. Firms themselves have to prepare for the end of the application of the TTP. And there are an ongoing series of individual issues with specific firms that we're still dealing with post the end of the transition period.

Stephen Hanks:

There's also, I've seen, a couple of points in the Q&A that it might be worth me just covering off. Somebody asked about recitals and whether they had been onshored. The answer is: No. They're not formally part of UK law, because UK law doesn't have the concept of recitals, but I think they're still likely to be relevant to the way in which the legislation is interpreted.

Stephen Hanks:

Secondly, somebody asked about level two materials that were prepared before the end of last year, but somehow take effect this year. Again, that will not be relevant in the UK. It's not part of UK law. We have to make our own decisions about whether to implement particular changes that were in train but hadn't come to fruition at the point of which the transition period ended. I mean, one obvious example of that was the open access provisions where the EU had committed to extending the exemption from the open access provisions, but haven't actually legislated for that before the 31st of December. So the open access provisions are currently in effect for exchange-traded derivatives in the UK, but they are something which the Treasury is currently reviewing.

Wim Nelen:

Okay. That's very helpful. Looking towards the future, I think that the first thing that people are expecting now is the European Commission and the Treasury in the UK reaching a memorandum of understanding by the end of next month, where I think we will probably have to see this as an agreement on how the regulatory dialogue will be organised going forward. It seems like some people might have been thinking that the outcome might be equivalence or alignment or the other extreme of the spectrum, a UK decision not to align anymore. That's definitely not what we can expect at the end of next month yet, I think.

Wim Nelen:

But that doesn't stop the EU, Matthijs, in progressing its existing regulatory agenda regardless. The EBA has a number of prudential measures in the works. The joint committee is working on ESG provisions, and they cut across a lot of existing obligations. And within ESMA, there's a MiFID review ongoing. And actually yesterday, we got an announcement that the Council agreed on a COVID package that introduces some tweaks to MiFID already. Could you give us some context on the MiFID review that is coming up? Then we could look at how that will be implemented or not implemented on UK side as well.

Matthijs Geneste:

Yes. So I think that there are two developments ongoing. So I think there's, on one hand, there's the ESMA agenda that is continuing as is. I think, at the moment, we're working on a report on trading consultation that is taking place or it started earlier this year, which is looking at HFT dynamics. So we're currently busy with finalizing the report on OTFs and multilateral systems or in the scope of multilateral systems rather. There's the ESMA data guidelines that are in the works. We're currently in the preparatory phase of a review of RTS, RTS 1 and RTS 2 or MiFID.

Matthijs Geneste:

Then, of course, there's the European Commission that will start drafting a MiFID review at some point this year. It's not yet clear what the eventual timelines will be, and we're not entirely sure what the scope will be, but I think that there were some indications based on... There are some indications in a publication that they put out on the 19th of January, which sort of sets out the direction of travel or broader topics, such as less reliance on third country infrastructure, the promoting international role of the Euro and more on transparency and a consolidated tape.

Matthijs Geneste:

So I think if you're looking at what our priorities are in terms of MiFID and MiFIR, I think our main goal revolves around achieving meaningful transparency. Again, that's part of our overall message on the merits of open fair and transparent markets. We published two reports about that last year on equity and non-equity, for lack of a better word. Transparency, particularly for bonds and derivatives, we've been advocating for ensuring the benefits of more transparency in those market segments in terms of price discovery ensuring best execution, but not at any price, I think, as some market segments, too much transparency would have the opposite effect.

Matthijs Geneste:

So I think in general we support the Commission's plans for developing a consolidated tape and generally a more potential, more simplification of the transparency waiver and deferral structure, as well as making sure that much more of the fixed income market becomes subject to transparency rather than the 96% of that market segment that still remains in the dark. I think a lot of that depends on how we can improve data quality, and that's where ESMA's RTS 1 and RTS 2 review would be looking at.

Matthijs Geneste:

I think another item that is on our radar is the impact of the mandatory buy-in regime in CSDR for cash bonds, particularly as the UK or HMT has indicated that not everything of CSDR will be implemented. I think EMIR 2.2, the implementation of EMIR 2.2, will, of course be a big topic that will be discussed, I think also in terms of looking at this third country infrastructure that the Commission was referring to. But I think in general, we're open for suggestions, we're open for dialogue and I would encourage you to bring up questions and/or reach out in any other way to us.

Wim Nelen:

Could this MiFID review be an opportunity to reduce the influence of what was previously seen as the influence of UK policy within the EU, for example on clearing access or best execution and client protections in MiFID?

Matthijs Geneste:

Well, I think in general we do share some common goals, and I think that the ones that you mention I think are topics that are close to our hearts as well, so to say. But I think in terms of, historically, we've had an excellent working relationship with the FCA and we worked together on quite a number of topics. I think if you look at the way MiFID is structured and the number of the MiFID provisions, that's, I think, where we at least have a common understanding. Does that answer the question?

Wim Nelen:

Thank you. Stephen, to what extent does the FCA intend to mimic this agenda? Will the FCA go through a review of all similar items, and can it be expected to land somewhere in a similar position?

Stephen Hanks:

I think you need to distinguish between what the EU has done in respect of its so called quick-fix proposals and other sort of wider set of issues, which ESMA's been producing reports on through last year and into this year. On the quick fix, I think that is split between provisions which relate to commodity markets and then a series of changes to various conduct rule. The changes to commodity markets relate to provisions in the UK, which are all now in primary legislation and therefore, cannot be, to the extent we want to, be changed very quickly, and it's obviously a matter entirely for the treasury to decide what it wants to do with primary legislation.

Stephen Hanks:

For the conduct issues, which are mainly, although not entirely exclusively, covered by provisions in FCA handbook, we have been looking at those areas and would expect to come forward with a consultation paper in the next few months. People have been in the Q&A asking quite a few questions about, in particular, the RTS 27 and RTS 28 best execution, reports on execution quality and then reports on top five execution venues. We have been looking at those, and we would expect to include proposals in relation to those in a consultation paper.

Stephen Hanks:

When it comes to the wider set of issues around market structure, micro-structural issues, the transparency regime that ESMA has been looking at, consolidated tape that will be in, we assume, the Commission's proposals for revisions to particularly MiFIR in the course of this year. Again, we have an issue that there are a lot of those provisions, which are contained now in UK legislation, UK often primary legislation, as well as in the FCA handbook. Therefore, we need to be working very closely with Treasury to discuss whether there are things which we feel need to be changed. There's nothing I can tell you today about what the UK may do in this respect, but I'm sure there will be further communication before much longer in terms of what the Treasury and FCA want to do in terms of potential regulatory, wider regulatory, reform and the sorts of things that are in the quick fix.

Stephen Hanks:

I have to say, I mean, I recognise a lot of the issues which are raised in the various ESMA reports. I think there's quite a lot in those reports which seems quite sensible to me. I know inevitably there will be some things where we would disagree, and I'm not sure had we still been members of ESMA, would have disagreed in the discussions in the Secondary Markets Standing Committee. But again, I agree also with Matthijs that, look, we share very similar objectives as regulators between ourselves, the Dutch and other members of ESMA, so I think the same sort of issues are always going to be of concern both here and in the EU, but inevitably, there are potential differences of approach to achieving the same objective.

Wim Nelen:

Well, one of the areas where I was thinking that we could relatively quickly see different opinions are the ESMA Q&As where there's about 2,000 ESMA Q&As at this point in time, I think, that are published across various PDF documents on the ESMA website. Some of these Q&A will have been heavily

influenced by the UK when it was within the EU at the time. I'm not sure what they plan to do with that going forward. Similarly, the FCA has now published these ESMA Q&As within its rule book, and it has published a note next to that saying that firms need to pay due regard to these Q&As. Is this an area where we will see low level divergence relatively quickly, because that seems to be the area that is the easiest to change for the regulators?

Stephen Hanks:

Well, we don't have any plans to go through the many hundreds of questions that are in the ESMA Q&A to revise, weed out, etcetera, ones where we may not have been in full agreement. I think that, as I said previously, it is pretty clear that there were some, even when we were members of ESMA, which we disagreed with and that have not applied. In the UK, it's a matter of record of the Board of Supervisor meetings to see that we voted against various Q&A, and we did highlight in the December Supervisory Statement, I think, our approach to frequent batch auctions, where we took some interpretations which are different to those included in ESMA Q&A.

Stephen Hanks:

Now, for ourselves, we're going have to make decisions about how we handle guidance, because the legal regime that applies to ESMA... well, aside from the fact that has changed since a lot of the Q&A were produced... I think, Matthijs will have more to say on that... is not the legal regime that applies in the UK. Because the ESMA regulation doesn't apply to the FCA, it was considered to be a deficiency. So we're subject to the requirements in the Financial Services and Markets Act in terms of the way in which we go about making guidance, and we need to reflect on that and reflect as to whether or not or in what form we should be issuing guidance in future on common regulation. But it's inevitable that given differences in markets that maybe some issues which are more prominent in our market than they're in the EU, so there may be some things which we speak about which the EU doesn't, because it's less of a concern and vice versa. And then, there may be some interpretive issues.

Wim Nelen:

Thank you Stephen. Matthijs, within the EU there was recently a change in the Q&A process?

Matthijs Geneste:

Yes. So I think that the Q&A process changed quite significantly. So that was all part of ESA review. So I think that the most important change was that the process around Q&A is now supposed to be a lot more transparent, so questions have to be submitted on the ESMA website. I think one of the key changes for ESMA is that a question that involves interpretation of EU law would have to be submitted to the European Commission. So I think that's what you would see is, I think, less of a growth in the number of Q&As that I think we've experienced over the past few years. I think if you look at the entire level three process, that will change.

Matthijs Geneste:

I think it will inevitably be slower with the Commission involved. But I think there's a lot more transparency now around the process and there's much more transparency on the questions that are submitted to ESMA and I think the process internally is now a lot more stricter that questions go to the Commission rather quickly if that would be the case. But I think this is also something where you would have a regulatory dialogue between the FCA and ESMA and an individual at NCA's, potentially. This is an area where, as a regulator, you'd have a mandate, and this is something that's looking at different segments of the market, but not all being part of a broader market infrastructure, global market infrastructure. This is something where it really could work together on or at least have an open dialogue about on the direction of travel.

Wim Nelen:

Okay. Understood. I think we have 15 minutes left now on the webinar, and I'd now like to fully open it up to questions from the audience. Matthijs and Stephen, if you see interesting questions that you want to answer, please go ahead and pick them. I will start us off with one question that I've seen recurring twice in different forms and it is about enforcement of the regimes across the EU and the UK going forward. Can we expect to start seeing divergence in how the same rules are enforced on both sides? Is there a different culture of enforcement?

Stephen Hanks:

Well, I think you can see already that enforcement is a matter for national competent authorities or the relevant bodies in each individual member state. So you already have a situation where there was a significant divergence within the EU in approaches to enforcement. So that's at least as important as any difference between the UK and the EU taken as a whole. I don't think Brexit changes our approach to enforcement per se, either we have statements in our enforcement manual about the approach we take and the way in which our enforcement approach is part of our general supervisory type of priorities. So I would expect us to continue to take the same approach to enforcement as we have done in the past.

Wim Nelen:

Matthijs, is enforcement on the harmonisation agenda within ESMA at the moment?

Matthijs Geneste:

So I think what was also part of the ESA review was a lot more around supervisory convergence. So there's a lot more cooperation in terms of enforcement of the broader topics or broader areas that affect multiple jurisdictions or multiple NCAs, but I think enforcement itself is a lot of that still comes down to individual NCAs as part of the mandate that they have. So a lot of the choices that we make are choices that we would make as an AFM to enforce on. But there's much more cooperation now on the EU level than I think previously and I think also if it's, like I mentioned earlier, we are supervising a number of firms that are also under UK supervision, so you could expect that we maintain a very close dialogue with the FCA about such topics if it comes up.

Wim Nelen:

Okay. I'm also seeing two or three questions about MiFIR and EMIR reporting. This is an area as Stephen mentioned earlier that is already expected to be fully in compliance with the UK rules. The questions relate to whether there will be differences going forward within the UK regime.

Stephen Hanks:

Well, I mean, I think that's something we can only see over time. I don't think we have immediately significant plans to change the existing reporting regimes under MiFIR and EMIR. We recognize that there are operational challenges for firms and to the extent that we make significant changes to those regimes, it would impose exit costs particularly for firms who are reporting both in the EU and in the UK. I mean, that's really a sort of MiFIR transaction reporting issue, where the same transaction might need to be reported by branches of EU funds in the UK both to us and to EU regulators. So I can't completely rule out the fact that there may be changes to our regime or one of the ESMA reports was looking at changes potentially to aspects of the EU transaction reporting regime, but I think it's certainly an area where we recognise it's important for us to tread carefully.

Wim Nelen:

Okay. Stephen, there is a question here also about reverse solicitation: "What is your view on reverse solicitation as some of the UK firms still plan to use it regardless of the fact most EU countries now require licences. What does the FCA plan to do to ensure it is regulated more tightly?"

Stephen Hanks:

Reverse solicitation into the EU is a matter for EU Regulators. It's not a matter for the UK. ESMA put out a statement about reversal solicitation and concerns about some practices that it has seen. People need to obviously take account of that in whatever business they're doing, but per se, that is an issue about the regulatory perimeter in the EU, it's not an issue that necessarily we need to get involved in from an FCA perspective.

Wim Nelen:

Stephen, you already answered the question about a draft RTS that was not yet finalised before the end of the transition period. There's a specific question here about the EMIR Refit RTS. Will the FCA implement that in full?

Stephen Hanks:

I'm afraid I'm not the EMIR expert, so I cannot provide a precise answer on that. I think there's quite a lot of questions of that nature about a range of different pieces of legislation, some referring to the various bits of ESG legislation that the EU has adopted, which didn't come into effect before the end of the year and other pieces of legislation. What I can say is each of my relevant sets of policy colleagues are looking at those pieces of legislation and trying to decide whether or not they want to take action.

Stephen Hanks:

I think when it comes to the sort of suite of measures which are adopted relating to ESG, that is ESG issues are a priority both for Treasury and for us in the FCA; therefore, I would expect... although again, I cannot provide precise timing... to see UK proposals coming forward across the sorts of areas where the EU has been taking action.

Wim Nelen:

Thank you. Matthijs, there is a question here also about the EU's Share Trading Obligation and does the AFM have a view on shares where liquidity exists outside of EU venues?

Matthijs Geneste:

I think that is something that we've debated extensively within ESMA during the last few months of 2020, so we put a statement out on the STO going forward and the approach that was chosen. So I would basically have nothing to add there. I think some other contingencies were taken there in terms of the post-trade angle with the temporary recognition of the CSDs. So I think that ESMA statement would probably answer it. I'm not aware of any plans to make any changes to the STO at the moment.

Wim Nelen:

Okay. On a more general note, we have a question related to Fintech here as well. It talks about Switzerland recently publishing an advanced somewhat progressive approach to Fintech and digital assets, and asks if we expect the FCA and AFM to publish something similarly pro-Fintech? Is that something any of you want to answer?

Stephen Hanks:

Well, the Treasury did publish a consultation paper on digital assets... I think it was in January... which is asking a range of questions. Clearly, financial innovation has been, for some time now, an important part of the work we do in the FCA through our Innovate Unit, so I would expect us to continue to work around those issues to seek to encourage financial innovations.

Stephen Hanks:

I think, obviously, the specific issues around digital assets are quite complicated ones. On the one hand, obviously we want to encourage innovation, but on the other hand, they also raise some issues of investor protection, and it's about striking the right balance.

Wim Nelen:

Okay. We have five more minutes now, but are there any other questions that you want to answer, Matthijs or Stephen? Otherwise, I will pick one more question.

Matthijs Geneste:

Yeah. I think briefly on the previous question from the EU side. So in the fall of last year, the Commission published the MiCA Initiative. So I think that seeks to provide quite a comprehensive framework for these crypto assets. That's the main piece of legislation that is in the works. I think otherwise, we can definitely open the floor for more questions.

Stephen Hanks:

There's another question about reverse solicitation. Clearly, we are interested in the issues around the onboarding of clients. My point was simply that we are not the regulators of the regulatory perimeter for the EU. We are not experts on the EU regulatory perimeter. We would expect UK firms to do due diligence on where the regulatory perimeter is and what they can and can't do if they are not authorised in a particular jurisdiction, but it's for the EU Regulators to enforce their own perimeter.

Wim Nelen:

Okay. I think we'll have to leave it there. Stephen and Matthijs, many thanks for your excellent contribution. This was a really informative and open discussion. I would also like to thank everyone for calling in and being with us today. I hope you found it equally as useful as I found it. Thank you, everyone, and have a good rest of the day. Thank you.

Stephen Hanks:

Pleasure. Thanks.

Matthijs Geneste:

Thanks.