



# Joint Implementation Plan for MiFID

May 2006



HM TREASURY





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# Executive summary

Implementation of MiFID – the Markets in Financial Instruments Directive – poses significant challenges. The objective of the Treasury and the FSA is to implement in a pragmatic and cost-effective way: meeting the requirements of the Directive in a way that makes sense for UK markets, both wholesale and retail, in line with the statutory objectives and principles of good regulation set out in the Financial Services and Markets Act 2000 (FSMA).

This joint implementation plan explains how we will continue to work together, and with industry and consumers, to achieve this objective in a timely fashion. It sets out how we will apply our Better Regulation principles. It covers our approach to consultation, including the likely

timing and coverage of the FSA's consultation programme as outlined in its 2006-07 Business Plan published in February 2006, and the planned timetable for making changes to UK legislation and FSA rules. And it explains how we will work with the Commission and other Member States, and through the Committee of European Securities Regulator (CESR), to promote consistent application of the Directive.

Setting out our implementation programme in as much detail as possible, and with as much certainty as the European timetable for finalising the MiFID negotiations allows, will help the industry to firm-up its own plans for implementation, and to push ahead with them in a timely way.

# 1. Introduction

MiFID, which will directly affect authorised firms carrying on designated investment business and recognised investment exchanges, is due to be implemented by 1 November 2007. In particular, the Directive will significantly alter how firms carrying on investment business organise their internal systems and controls and how they interact with their customers. Implementing and applying the Directive is therefore a major challenge. In recognition of this challenge, the FSA published Planning for MiFID<sup>1</sup> in November 2005 to highlight the key areas of change, and to help firms in their preparations.

MiFID is a key element of the European Union's Financial Services Action Plan (FSAP)<sup>2</sup>, which is designed to facilitate the integration of Europe's financial markets. It comprises two levels of European legislation. 'Level 1', a Directive of the European Parliament and Council, was adopted in April 2004. In several areas, this Level 1 Directive makes provision for its requirements to be supplemented by 'technical implementing measures' adopted by the European Commission (the Commission), so-called 'Level 2' legislation. The Commission has developed draft legislative proposals for Level 2, published on 6 February 2006. These take account of advice received from the Committee of European Securities Regulators (CESR) in early 2005, and of subsequent discussions between finance ministries of Member States in the European

Securities Committee (ESC) and consultation with industry and consumers.

The Commission has proposed both a regulation and a directive at Level 2. The provisions of the Level 1 and Level 2 directives will be implemented through changes to UK law and FSA rules. The substantive provisions under the Level 2 regulation will generally be directly applicable in the UK. However, amendments to UK law will still be required to remove existing requirements overwritten by the regulation, and ensure consistency.

Final adoption of these Level 2 measures by the Commission, following consideration by the European Parliament (the Parliament) and a vote by the ESC (scheduled for late June), is expected in Q3 2006. Member States are required to adopt legislation, rules and guidance to give effect to the Directive's provisions, as described above, by 31 January 2007. The provisions implementing the Directive – that is, the entire package of Level 1 and Level 2 measures – are due to take effect, and apply to firms, from 1 November 2007.

This joint implementation plan provides a comprehensive update on how the Treasury and the FSA intend to approach implementation of MiFID in the UK.

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1 Planning for MiFID. FSA November 2005 [www.fsa.gov.uk/pubs/international/Planning\\_mifid.pdf](http://www.fsa.gov.uk/pubs/international/Planning_mifid.pdf)

2 Financial services: Implementing the framework for financial markets: Action Plan. European Commission 11 May 1999 [http://europa.eu.int/comm/internal\\_market/finances/docs/actionplan/index/action\\_en.pdf](http://europa.eu.int/comm/internal_market/finances/docs/actionplan/index/action_en.pdf)

## 2. Better regulation and MiFID

Following the Hampton review<sup>3</sup>, and the report of the government's Better Regulation Task Force (now the Better Regulation Commission), the government launched its Better Regulation Action Plan<sup>4</sup> in March 2005. This plan seeks to promote flexibility and enterprise by adopting a risk-based approach to regulation and a lighter-touch regime for UK businesses. The Hampton review recommends that regulatory bodies should reduce the regulatory burden on UK industry by applying a series of principles when they introduce both European and domestic regulation. These include:

- **proportionality:** regulators should only intervene when necessary – remedies should be appropriate to the risk posed, and costs identified and minimised;
- **accountability:** regulators must be able to justify decisions, and be subject to public scrutiny; and
- **transparency:** regulators should be open, and keep regulations simple and user friendly.

In its December 2005 Better Regulation Action Plan<sup>5</sup> the FSA reaffirmed its objectives to become more principles-based, improve its risk-based approach to regulation and better understand the

costs of regulation. The Treasury and the FSA will pursue these principles and objectives to implement the Directive in the clearest and most cost-effective way possible and thereby deliver a better regulation outcome for stakeholders.

### Treasury

The government has published new guidelines<sup>6</sup> describing two requirements for the implementation of EU legislation into UK law:

- **transposition should mirror** as closely as possible the original wording of a directive except where there is a clear justification for doing otherwise; and
- there should be **enhanced scrutiny of the implementation of directives**, in particular through the Prime Minister's Panel for Regulatory Accountability (PRA).

For MiFID, the Treasury is following this approach. In its proposals for legislative changes to implement MiFID, which were published on 15 December 2005<sup>7</sup>, the Treasury focused on the two main areas where UK legislation does not mirror the MiFID requirements:

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3 Reducing administrative burdens: Effective inspection and enforcement. Philip Hampton March 2005. [www.hm-treasury.gov.uk/media/A63/EF/bud05hamptonv1.pdf](http://www.hm-treasury.gov.uk/media/A63/EF/bud05hamptonv1.pdf)

4 Regulation – Less is More, Reducing Burdens, Improving Outcomes. A Better Regulation Task Force report to the Prime Minister March 2005. [www.brc.gov.uk/downloads/pdf/lessismore.pdf](http://www.brc.gov.uk/downloads/pdf/lessismore.pdf)

5 Better Regulation Action Plan. FSA December 2005. [www.fsa.gov.uk/pubs/other/better\\_regulation.pdf](http://www.fsa.gov.uk/pubs/other/better_regulation.pdf)

6 Transposition guide How to implement: European directives effectively. Cabinet Office. Regulatory Impact unit. 16 March 2005. [www.cabinetoffice.gov.uk/regulation/documents/pdf/europe/tpguide.pdf](http://www.cabinetoffice.gov.uk/regulation/documents/pdf/europe/tpguide.pdf)

7 HM Treasury Consultation Document 15 December 2005. [www.hm-treasury.gov.uk/media/2E0/CA/ukimplementationeumarkets151205.pdf](http://www.hm-treasury.gov.uk/media/2E0/CA/ukimplementationeumarkets151205.pdf)

- the Regulated Activities Order, which defines the scope of financial services regulation; and
- the regime for Recognised Investment Exchanges.

In both cases the approach taken in the proposals was put out to consultation following discussions with industry and a consideration of the costs and benefits of alternative approaches were considered. The proposals in the consultation document went to the PRA for approval before publication.

## **FSA**

Although European directives place constraints on the FSA's discretion, it is committed to implementing new regulatory requirements in ways that consolidate its rules and rationalise them by removing duplication and thereby achieve the Better Regulation objectives. Specifically, the FSA is taking the following approach to implement MiFID:

- It will use 'intelligent copy-out' – that is, using the Directive language as far as practicable as the basis for implementing the MiFID requirements in the FSA Handbook. This is to avoid placing any unintended additional obligations on firms;
- It will consult fully on any proposals to add new, or retain existing, national measures to protect consumers or promote clean markets that go beyond the Directive's requirements, supported by appropriate market failure analysis (MFA) and cost benefit analysis (CBA); and will frame these proposals with the single market purpose of the Directive in mind, and within the flexibility provided by Article 4 of the Level 2 Directive (as below);
- It will manage the implementation of MiFID as part of its planned radical review of existing requirements, particularly in the area of retail conduct of business. It will look to remove rules that are no longer effective or proportionate, and move away from detailed rules towards higher-level rules wherever possible;
- Where it is appropriate and proportionate the FSA will amend, in the light of the MiFID requirements, the regime that applies to firms and activities outside the scope of the Directive. One important consideration is the impact on substitutable products and services, of which some fall within the Directive's scope and others outside. The appropriateness of sustaining regulatory requirements in such cases will need review, taking account of costs and benefits; and
- It will continue to engage actively with industry and other stakeholders on its general approach to implementation and timing; working with industry initiatives designed to help the implementation process; and to discuss emerging policy thinking on key implementation issues informally.

## **Article 4 of the implementing Directive**

As part of the Commission's efforts to promote better regulation in respect of European legislation, it has included a provision in the draft implementing directive, Article 4, which seeks to limit Member States freedom to add additional obligations at the national level to those contained in MiFID. The Commission's stated intention in doing this has been to protect the effective operation of the single market.

Treasury and FSA will take responsibilities in relation to Article 4 seriously. This means looking carefully at existing legislation and rules to see where they might go beyond the Directive, and then considering whether or not there is a case for their retention in the light of the tests applied under Article 4.

# 3. Implementation timetable

## European Timetable

The Commission has indicated that it expects the ESC will vote on the implementing measures at the end of June 2006. The Parliament will then have one month to consider whether the implementing measures are consistent with the powers provided for them at Level 1. If the Parliament is content, then the measures can be adopted by the Commission. The Commission expects to adopt Level 2 in mid-September with publication in the Official Journal in the fourth quarter of 2006.

Before the ESC votes on the implementing measures, there will be a resolution from the Parliament setting out its views, in the form of drafting amendments to the texts published by the Commission on 6 February. This resolution is expected to be approved in May by the Parliament's Economic and Monetary Affairs Committee (ECON) before going forward for approval by the Parliamentary plenary in June. The implementing measures are not subject to co-decision, although the Commission, in finalising the text of the implementing measures, is committed to taking the utmost account of the Parliament's views. Detailed timetable assumptions are set out at Annex 1 to this document.

## Domestic Timetable

### *Changes to UK legislation*

The Treasury's consultation on its implementation of the Directive closed on 31 March 2006. Coinciding with the release of this Joint

Implementation Plan, the Treasury has published on its website a summary of the responses it received to its consultation document.

The Treasury has now begun work to revise its proposals in the light of responses to the consultation. Industry will be involved in and kept up to date with this work. This will involve two main elements:

- **Discussion.** The Treasury will engage with industry through bilateral meetings with firms and trade associations, small groups to discuss specific issues and through mechanisms such as the Pre-Consultation Liaison Committee (PRECLC) and the wider MiFID Roundtable meetings (see section 5); and
- **Informal consultation.** Where Treasury deliberations lead to significant changes to the drafting on which it consulted it will circulate revised text by e-mail asking for informal feedback. Pending consideration of all points made on the draft legislation set out in the consultation document, discrete parts of the text will be revised and circulated to those on the Treasury's MiFID contacts list as work on them is completed.<sup>8</sup>

As was stated in the December consultation document, the Treasury intends to have legislation in place to meet the 31 January 2007 deadline for the transposition of the Directive. To meet this deadline it will be necessary to lay the final version of the legislation before Parliament in early December.

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<sup>8</sup> (to be added to the list, contact Stephen Hanks, [stephen.hanks@hm-treasury.x.gsi.gov.uk](mailto:stephen.hanks@hm-treasury.x.gsi.gov.uk))

### *Changes to FSA rules*

The FSA's 2006-07 Business Plan set out the proposed approach to consultation for implementing MiFID. The consultation programme is set out Annex 2. It will be kept under review, and may need to be revised if the timetable for finalising the Level 2 measures is delayed.

Changes to FSA rules and guidance necessary to implement the Directive's requirements will be consulted on through a focussed programme of four consultation papers (CPs). The CPs on systems and controls (planned for May) and on implementing MiFID for firms and markets (scheduled for July) will be published before adoption of the Level 2 measures. They are being prepared on the basis of the Commission's 6 February text. The FSA acknowledges that the final Level 2 measures may contain changes from the 6 February text relevant to the proposals covered by these two papers. The proposals may therefore need to be revised subsequently. The FSA will consider how best to do that once the significance of any changes has been assessed.

The FSA plans to base its implementation proposals in the two October CPs on the final Level 2 measures.

The proposed purpose and content of the CPs are as follows:

The CP *Systems and controls (SYSC)*, planned for May, will set out proposed FSA rules and guidance to implement the organisational requirements in both MiFID and in the Capital Requirements Directive (CRD). It will propose a unified set of requirements applying to firms subject to either or both directives, the 'common platform'.<sup>9</sup>

A feedback statement is planned for the fourth quarter of 2006 giving firms sight of the near-final SYSC rules and guidance. We recognise the

pressures this timing will cause. However, the timing of the SYSC CP is driven by the need to implement the relevant CRD requirements by 1 January 2007. While MiFID requires adoption of national implementing measures by 31 January 2007, it does not require their application to firms and markets before 1 November 2007.

The CP will therefore include transitional provisions to deal with the different implementation dates for CRD and MiFID. It will propose that between 1 January and 1 November 2007 firms subject to the CRD should have a choice whether to comply with the full common platform (which will include requirements derived from MiFID) or a regime based simply on what is necessary to implement the CRD. Pending 1 November 2007 the common platform will not be mandatory for firms that are subject solely to MiFID. However, such firms will have the option of adopting the common platform from 1 January 2007 if they wish.

The SYSC CP will not consult on the implementation of the following MiFID Level 2 provisions:

- conflicts of interest provisions specific to investment research; and
- the conditions for outsourcing retail portfolio management services to non EEA service providers.

The FSA will consult on implementation proposals in these areas in the *Reforming COB Regulation* CP. Organisational related matters such as record-keeping will also be consulted on in that CP, planned for October.

*The Implementing MiFID for firms and markets* CP, planned for July, will cover MiFID provisions on market transparency, transaction reporting, authorisation and permissions, passporting and enforcement and cooperation. It will also include other requirements that apply

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<sup>9</sup> A draft of perimeter guidance has been made available by the FSA to help trade associations and firms begin the process of determining whether or not they are directly affected by MiFID and/or the CRD. If firms are subject to MiFID and/or the CRD, they will be subject to the common platform proposals in the SYSC CP. The perimeter guidance is only a working draft and will be subject to a number of changes before it is formally published in draft form for consultation as part of the SYSC CP. Firms will have the opportunity to comment on this guidance in their responses to that CP. The working draft of the guidance is at [www.fsa.gov.uk/pubs/international/draft\\_guidance.pdf](http://www.fsa.gov.uk/pubs/international/draft_guidance.pdf)

to certain types of investment firms, for example the capital and professional indemnity insurance (PII) provisions in Article 67 of the Level 1 text. It may also cover implementation of the client assets provisions.

With respect to authorisation and passporting, there will be relatively little change required to FSA rules, as the MiFID requirements in these areas are generally drafted at a high level. However, there are some instances where changes need to be made, for example, where MiFID introduces new regulated activities such as operating a multilateral trading facility (MTF). The July CP will summarise the key elements of the MiFID authorisation and passporting requirements and explain the changes the FSA proposes to make to the Handbook to implement them.

The October CP *Reforming COB Regulation* will cover the following issues:

- implementation of the MiFID conduct of business requirements;
- the implications for business that falls outside MiFID scope in retail markets;
- the results of the work on COB simplification;
- organisational requirements not included in the SYSC CP (mentioned above);
- consequential changes for other Handbook modules (for example, in relation to the eligible counterparty regime and complaints handling); and
- implementation of the Unfair Commercial Practices Directive.

The COB proposals will be laid out consistently with the new structure for the COB Sourcebook, which was described in CP05/10 published in July 2005.

In line with the intention to have the necessary national measures in place to meet the 31 January 2007 deadline, the FSA aims to put the rules required for the implementation of MiFID to its Board for approval in time for those rules

to be made by the transposition deadline of 31 January 2007. The consultation period will be longer for those proposals included in the CP that are not required to implement the Directive. The alternative for the FSA was to present the minimum implementing requirements as one package and the other provisions, together with the minimum provisions, as another later package. On balance the FSA took the view that it would more helpful to the industry, and a more efficient use of its resources, to present the whole as one package at the earliest opportunity after finalisation of the Level 2 measures.

The CP on *marketing communications*, also planned for October 2006, will cover the implementation of relevant MiFID requirements, set within wider changes flowing from the FSA's financial promotions review.

The FSA also has in train a longer-term review of the information it requires firms to provide about investment products at the point of sale. It plans to publish a separate CP in Q4 2006, in parallel with the *Reforming COB Regulation* CP, setting out proposals for improving the current disclosure regime. For example, this could include replacing the current Key Features Document with a shorter more consumer-friendly Quick Guide. The scope of that document and the October CPs, as described above, will be kept under review, pending final agreement of the Level 2 measures.

#### *Pre-consultation and other information on specific topics*

The FSA recognises that the planned October release date for consultation on COB changes has implications for firms' preparations, and that there are particular areas where firms would welcome an early indication of the FSA's policy thinking. The FSA plans to do this in the following key areas.

A discussion paper (DP) on *Best Execution* is planned for publication in May, and will consider how MiFID's overarching obligation to take all reasonable steps to obtain the best possible result may mean different things in practice, depending on what investment service the firm is providing and what types of clients

and orders it accepts. The paper also will discuss implementation of the procedural elements of MiFID's best execution obligation. It will include the requirements for an investment firm to establish an execution policy and other arrangements, to monitor the effectiveness of its arrangements and to confirm on a regular basis that it has selected execution venues that allow it to obtain the best possible execution results on a consistent basis. Comments received will help inform the FSA's implementation proposals on best execution for inclusion in the October *Reforming COB Regulation CP*.

On client categorisation, the FSA aims to publish an informal paper in early June, as the basis for discussions with industry and other stakeholders. The FSA will look to trade associations to encourage their members to provide as much feedback as possible on the proposals set out in that document, which will then be taken into account in the formal consultation proposals planned for publication in October 2006. The FSA plans to clarify the key practical implications of the new MiFID categorisation requirements, and to identify the main differences from the current FSA regime, including the impact on the approach to regulating inter-professional business.

With respect to transaction reporting, the current proposed Level 2 Regulation states that a trade matching or approved reporting mechanism (ARM) shall be approved by the FSA if certain criteria are met and are subject to continued monitoring. ARMs and approved trade matching systems are two of the types of systems which a firm may use to transaction report to the FSA (see article 25(5) of MiFID). The proposed Regulation provides no further guidance to organisations wishing to become an ARM or a trade matching system that can be used for transaction reporting purposes. We plan to publish a separate document to describe to interested parties the process of gaining approval as an ARM or a trade matching system that can transaction report. This will provide full details and guidance on the application process; criteria

to be met by an ARM/trade matching system; any proposed fees; and any proposed grandfathering arrangements for existing Permitted Reporting Mechanisms (PRMs).

Since the publication of CP05/10 *Reviewing the Handbook*<sup>10</sup> in July last year developments in MiFID have resulted in there being a greater impact on the Approved Persons regime than we had first envisaged. As a result of this, and in light of the comments we received following our consultation, we are reviewing our policy. Our current intention is to consult in Q4 2006 separately from the planned MiFID consultations. We will also use this opportunity to review the Handbook text with the aim of making it more principles-based.

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10 CP05/10 Reviewing the Handbook. FSA July 2005. [www.fsa.gov.uk/pubs/cp/cp05\\_10.pdf](http://www.fsa.gov.uk/pubs/cp/cp05_10.pdf)

# 4. Cost benefit analysis

## *Context*

As part of Better Regulation, the major steps in the MiFID implementation process will be accompanied by impact assessments by the government. The Treasury's December 2005 consultation document on MiFID implementation contained background material on the overall impact of the Directive in the UK together with an assessment of the impact of the main legislative changes the Treasury proposed to implement the Directive. This took account of the work that the FSA has been doing on the costs and benefits of the Directive.

Under FSMA, the FSA has a statutory obligation to produce a CBA of any new rules that will result in a more than minimal increase in costs, including those rules which implement European directives. On MiFID, the FSA has undertaken a substantial amount of analysis which it will be finalising as the Level 2 provisions are completed. The FSA will take the results into account in framing its implementation proposals.

The FSA will be covering the CBA of both 'pure' MiFID implementation and of proposals for related changes including those arising from COB simplification and for any discretionary rule-making, consistent with MiFID requirements.

## *Costs*

The FSA continues to work closely with industry stakeholders to estimate as clearly as it can the likely scale and nature of the costs related to MiFID. In doing so, the FSA may also be able to

draw implications from the results of its current study of the costs of regulation, which it plans to publish in June 2006.

The one-off cost for firms of revamping existing, or introducing new, systems, procedures and business or trading models, particularly given the understandable desire of many firms to minimise their legal and compliance risk, should not be underestimated. Many firms are concerned about the possible scale of these costs. However, the Level 2 text has improved during negotiations, so some implementation costs may be reduced as a result. For example, it now seems likely that a smaller amount of costly 'repapering' of existing clients (re-issuing revised client agreements) will be required than might have been the case.

## *Benefits*

MiFID is designed to help issuers and investors by opening-up markets and cutting the costs of securities trading. For example, MiFID will simplify and streamline the passporting regime for firms doing cross-border business, increasing competition and enabling greater EU financial integration, both of which may act as catalysts for improved efficiency of markets. The FSA has commissioned some focused work to assess the potential nature and extent of the resulting benefits.

MiFID will also abolish the so-called concentration rule, which has allowed Member States to give preference to regulated markets as distinct from other execution venues for the execution of securities transactions. MiFID also

sets a pan-European best execution obligation, which should enhance investor protection and price formation. In addition, MiFID will allow a range of firms to realise the economic value of their trade data.

### *Setting out the CBA*

In terms of timing, each of the FSA CPs in the consultation programme described in section 3 will contain an analysis of the costs and benefits relevant to its content. The most substantial of the MiFID changes will impact on the FSA's conduct of business rules and consequently, the overall CBA of MiFID implementation will be set out in the October CP on Reforming COB Regulation. Therefore, those seeking an overall picture of the cost-benefit impact of MiFID should look to that consultation paper in particular.

# 5. Cooperation on transposition and implementation

## *Respective roles and responsibilities*

As indicated earlier, implementing MiFID is a joint matter for the Treasury and FSA. However, each organisation has distinct roles and responsibilities. Negotiation and implementation of European Union directives is the responsibility of Member States' governments. In the UK, this means that overall responsibility for negotiating and implementing most pieces of European Union financial services legislation falls to the Treasury.

Negotiation on the implementing measures was led by Peter Green and Stephen Hanks of the Treasury. The FSA is closely involved in the negotiation of directives as a significant source of expertise for the Treasury to draw on, and where legislation will change matters that are within the FSA's sphere of competence. Within the Lamfalussy framework the FSA has, as a member of CESR, played a full role also in framing advice to the Commission or the Level 2 measures.

Under FSMA, the FSA is the body responsible for authorising and regulating financial services firms. This means that European financial services legislation often has a more significant impact on the FSA's Handbook than it does on FSMA and the related statutory instruments. Changes to the FSA's Handbook are, under FSMA, the responsibility of the FSA, subject to consulting on proposed rule changes and undertaking cost benefit analysis of those proposals.

The Treasury has two specific responsibilities in relation to the FSA Handbook, both arising from implementation of EU legislation:

- **section 410** – because the formal responsibility for the implementation of EU legislation falls on governments, section 410 of FSMA gives the Treasury reserve powers to direct the FSA so it does not take action which is incompatible with the government's Community obligations; and
- **interpretation** – leading on the negotiation of EU legislation means that the Treasury is well placed to have a wide view on interpreting the legislation. Inevitably the FSA will, in changing its Handbook, have to address questions of interpretation of MiFID. So there is a role for the Treasury to play in helping the FSA to determine how EU legislation might be interpreted and therefore to inform the choices that the FSA makes in its implementation. Of course, judgements about the interpretation of the Directive in the course of implementation are without prejudice to the fact that ultimately issues of interpretation can only be resolved definitively by the European Court of Justice.

In respect of MiFID, the Treasury's ultimate responsibility for ensuring the Directive has been properly implemented will extend beyond the adoption of measures to give effect to the Directive. It will also include ultimate responsibility for ensuring that any additional obligations on MiFID firms are consistent with the requirements on such obligations in Article 4 of the implementing Directive.

The Treasury and the FSA are working together on the detail of MiFID implementation through weekly meetings of a joint steering group. We work together also to promote:

- **adequate internal arrangements** – joined-up project management and analysis within the Treasury and the FSA;
- **effective liaison with business** – open consultation and two-way communication with affected business sectors; and
- **cooperation with authorities in other Member States** – through bilateral arrangements, through making use of existing institutional structures and through encouraging the Commission and other bodies to set up enhanced co-operation arrangements.

### *Working with stakeholders*

The Treasury and the FSA have welcomed the establishment of ‘MiFID Connect’ by relevant trade associations to help their members implement the Directive. If the UK is to extract the maximum possible benefit from the Directive it is important that the industry is not simply the passive recipient of new requirements handed down by the Treasury and the FSA. Firms need to take a pro-active approach to adapting to the Directive and MiFID Connect should be helpful in that context.

Both organisations are engaging closely with MiFID Connect and we meet its steering committee on a regular basis to:

- ensure all parties are up to date on each other’s work;
- discuss issues of possible concern arising out of what either side is doing; and
- identify issues where specific further work is required.

MiFID Connect has been launched to help ensure a practical, cost-efficient and market-sensitive approach by firms to implementing MiFID in certain key areas, serving to reduce regulatory risk and provide real and tangible assistance to industry in coming into compliance with the new requirements. MiFID Connect aims to develop industry guidelines in key areas; provide specimen

customer-facing MiFID documentation; produce a two-part ‘MiFID Survival Guide’ with a checklist of actions; hold courses and workshops on MiFID implementation; and periodically update industry on changes to the timetable and to the regulatory requirements.

The FSA is closely considering the general question of how it can work with industry codes and similar mechanism in both solving market failure problems and defining practices and procedures consistent with an FSA rulebook based more on high-level principles. Meanwhile in the context of MiFID implementation, the FSA is committed to working with the industry to make best use of the MiFID Connect initiative.

### *The Pre-Consultation Process*

Following on from consultative arrangements in relation to the Level 1 Directive, the Treasury and the FSA have sustained since mid-2004 an intensive ‘pre-consultation’ process with the industry. This is to ensure the industry’s key concern about the negotiation of implementing measures and implementation of MiFID are taken into account. To do so the following external groups have been established:

**PRECLC – Pre-Consultation Liaison Committee:**<sup>11</sup> PRECLC consists of senior members of trade associations and representatives from the Treasury and the FSA. The members meet every six weeks or so under FSA chairmanship to discuss overall strategy for implementation of MiFID in the UK; progress in finalising the Level 2 provisions; and preparations for implementation by the FSA, the Treasury and the industry.

**Industry Liaison Groups:** In addition, the FSA has set up three industry liaison groups to tackle specific issues relating to the ‘scope’ of the Directive, ‘markets and transparency’, and ‘intermediaries’. Their purpose is to ensure the necessary ‘pre-consultation’ on detailed issues in advance of the formal consultation processes for UK implementation. The groups’ membership is drawn from firms, trade associations and law firms.

<sup>11</sup> Summary notes of the discussions and action points can be found on the FSA website: <http://www.fsa.gov.uk/Pages/About/What/International/EU/fsap/mifid/new/index.shtml>

**MiFID Industry Roundtable:** The FSA together with the Treasury hold regular roundtable meetings to update industry representatives on the MiFID process, including progress on MiFID Level 2, and to invite them to raise any concerns or questions they may have. Attendance at the roundtables is broad and ranges from firms and trade associations to lawyers and consultants.

Meetings of these groups will continue during the implementation process. The Treasury and FSA will also continue bilateral contacts with trade associations, firms and other stakeholders, particularly in relation to retail issues, to discuss specific implementation issues and emerging policy thinking in key areas, and to help formulate the proposals on which we will consult in the papers described above.

### *Consulting practitioners and consumers*

The FSA will continue to brief and consult practitioners and consumers through the two panels established under FSMA, and statutorily independent of the FSA – the Financial Services Practitioners Panel and the Financial Services Consumer Panel. The FSA also consults the Smaller Businesses Practitioners Panel which represents the interests of small regulated firms.

### *Transposition in the EU*

The European Commission is holding a series of transposition workshops with Member States to discuss the implementation of MiFID Level 1. The first of these was held on 21 January 2005 and the second on 11 April 2006. Further meetings are currently planned in May, July and October this year.

The European Commission's White Paper on Financial Services Policy 2005 to 2010<sup>12</sup> describes the purposes of transposition workshops as:

‘to provide a forum for establishing consensus on the implementation of particular provisions of EC legislation and to iron out, *ex-ante*, any problems’.

The two workshops held so far have discussed a range of issues including:

- the territorial scope of the Directive;
- the interpretation of some of the exemptions in Article 2 of the Directive;
- how the optional exemption in Article 3 of the Directive is intended to work;
- how regulated markets are to be distinguished from multilateral trading facilities;
- capital requirements for market operators running a multilateral trading facility;
- the interaction between MiFID and the UCITS directive; and
- the application of the Directive, including its passporting provisions, to tied agents.

The UK plays a full role in the transposition meetings, sending representatives of both the Treasury and the FSA. One of our key aims in attending these meetings is to try to ensure that they give the highest priority to considering issues of interpretation that might significantly affect the functioning of the single market. Market participants have received, and will continue to receive, informal feedback from the Treasury on these meetings. The Commission's White Paper on Financial Services Policy 2005-2010 commits the Commission to publish summary notes of the transposition workshops.

### *Level 3*

To facilitate coherent implementation and uniform application of Level 1 and Level 2 by the Member States, CESR may adopt non-binding guidelines. CESR can also adopt common standards on matters not covered by EU legislation (but these standards have to be compatible with Level 1 and 2 legislation). A key aim of CESR at this level is to promote supervisory convergence and best practices.

Once the Level 2 measures are stable, and separately from the transposition workshops,

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<sup>12</sup> White Paper on Financial Services Policy 2005-2010 European Commission.  
[http://europa.eu.int/comm/internal\\_market/finances/docs/white\\_paper/white\\_paper\\_en.pdf](http://europa.eu.int/comm/internal_market/finances/docs/white_paper/white_paper_en.pdf)

CESR will start preparatory work to identify in more detail the priority issues and timelines on future Level 3 activity under MiFID.

At this stage, three possible areas of Level 3 work have been identified:

- Technical issues of operational importance to achieve consistency for cross-border implementation of the Level 1 and Level 2 texts. For instance, CESR is examining the barriers to the consolidation of equity transparency information which may exist post-MiFID. If deemed necessary, CESR will take action to remove barriers.
- The so-called Level 3 ‘by cascade’, which could potentially cover areas for which the Commission has signalled during the ESC negotiations that further operational work is required, or which the Commission and the ESC prefer to be developed at Level 3. It also includes work that CESR may be mandated to conduct under Level 2 measures; and work to provide input to the Commission in the preparation of reports or reviews required by Level 1 or Level 2. The content of such work is subject to the finalisation of the Level 2 measures. It may also cover issues that were not considered by CESR when preparing its technical advice.
- Technical aspects with IT implications, such as the work of the new CESR IT Task Force, chaired by Hector Sants, Managing Director, Wholesale and Institutional Markets, of the FSA, which is drawing up a blueprint for how regulatory authorities can exchange transactions data between each other to assist with the detection of market abuse and other misconduct. This work will also encompass defining the reference data standards for the elements of a transaction report that need to be exchanged and producing proposals on how the necessary infrastructure should be funded.

The FSA will actively contribute to the CESR programme of Level 3 work, to help deliver convergent implementation of the MiFID requirements.

## Contacts

The Treasury and the FSA welcome comments on this joint implementation plan or any aspect of MiFID implementation. Please contact:

### *Treasury*

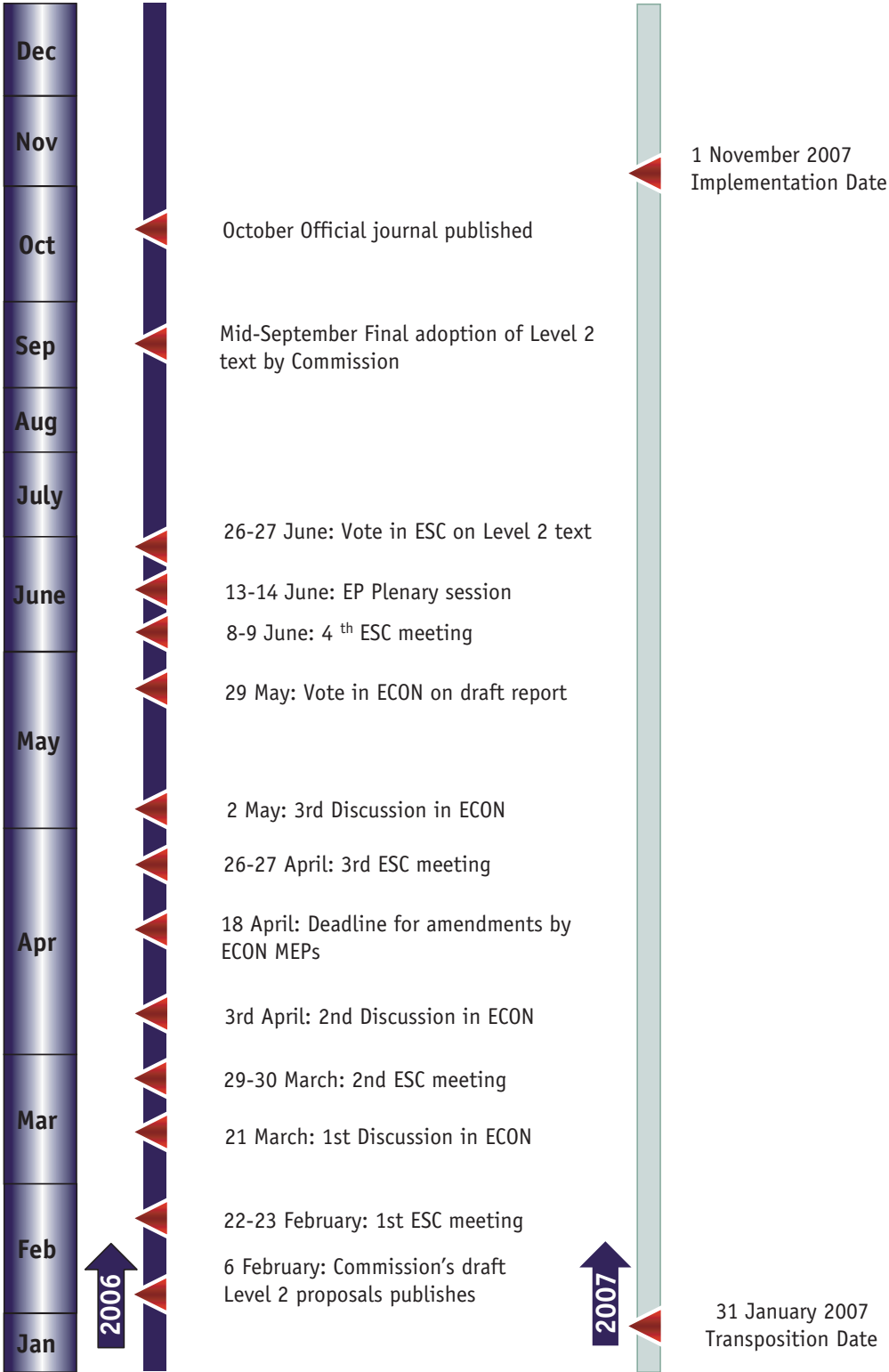
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# Annex 1: European Implementation timetable



# Annex 2: Domestic Consultation programme

