

Nathaniel Lalone Quoted on Bilateral Trading Uncertainty Under MiFIR

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London Financial Services partner Nathaniel Lalone is quoted by Risk.net regarding the vagueness of the language in the Markets in Financial Instruments Regulation (MiFIR) requiring that certain over-the-counter derivatives be "concluded" on a trading venue. Nate stated, "'Conclude' [on a venue] can mean a lot of different things. It can mean concluded electronically or non-electronically. It could be voice; it could be using an order book or a request-for-quote; it could be some hybrid. It is left deliberately vague, so you would struggle to find something in the actual [MiFIR] text that mandates a specific type of execution method."

No greater clarity can be found in the revised Markets in Financial Instruments Directive (MiFID II), which defines multilateral trading facility (MTF) as "any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system." Nate believes that this could permit, or at least not prohibit, MTFs offering trading methods with bespoke features such as "processed trading," adding, "The definition states that an MTF brings together trading interests in a system in a non-discretionary way that leads to a transaction. To me that language is flexible and does not require a full-on order book but allows for a wide variety of execution methods. Provided they are non-discretionary, it would be hard to piece together a legal argument to say that MTF execution methods must be restricted to just one or two particular ways."

Nate also commented on newly confirmed Commodity Futures Trading Commission (CFTC) Chair Christopher Giancarlo, who may be sympathetic to the European approach. "Giancarlo has long been an outspoken critic of what he calls the 'flawed' US rules on [swap execution facility] trading. He has made the point over the years that the mandatory execution methods adopted by the CFTC have no real basis in the G20 commitments or in the text of the Dodd-Frank Act. So I doubt the US would be unhappy, because the European approach actually reflects the flexibility that the CFTC's acting chairman says he wants." ("Tradeweb's MiFID Bilateral Trading Plans Draw Fire," August 7, 2017)

CONTACTS

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