

UK Treasury releases Consultation Paper under MiFID II

Following the Financial Conduct Authority's ("FCA") release of its discussion paper on implementation of the revised Markets in Financial Instruments Directive ("MiFID II") on 26 March 2015, the UK Treasury released on 27 March 2015 its own consultation paper on implementation of MiFID II. The consultation paper covers aspects of MiFID II for which new legislation, as opposed to FCA rules, is required. The paper also gives an indication of the government's policy approach in a number of key areas. Key points are:

- i. the government's approach to the "third country" regime in MiFID II, which will apply where a non-EU firm provides investment services to EU retail or "elective" professional clients. Under the discretion allowed in MiFID II, the UK government will likely not require third country firms to open an EU branch when providing services to these types of clients, and will instead rely on existing customer protections under UK law;
- ii. the approach to the rules in MiFID II on position limits for commodity derivatives traded on trading venues, which will allow national authorities to impose limits on net positions held by commodity traders, including by persons outside the EU. As these rules will apply to commodity traders which are both FCA authorised firms and firms outside the FCA's supervision, the government proposes to extend the FCA's monitoring and enforcement powers (including the FCA's power to investigate and fine) to persons which are not FCA authorised firms;
- iii. the approach to the rules in MiFID II on algorithmic trading, which require firms which engage in algorithmic trading to have suitable systems and controls in place and meet notification and reporting requirements to competent authorities. As these rules apply to all participants of trading venues, whether or not FCA authorised, it is proposed that the FCA will extend its monitoring and enforcement powers to all such participants;
- iv. the extension of certain UK regulated activities (such as managing investments and advising on investments) to structured deposits (which are deposits with a structured pay-off), in line with the requirement in MiFID II to apply consumer protection provisions to selling or advising activities in relation to structured deposits;
- v. possible new strengthened powers of the FCA and Prudential Regulatory Authority to remove individuals from the management boards of investment firms or market operators;
- vi. a new UK regulated activity of operating an "organised trading facility", in line with the creation under MiFID II of this new type of trading venue; and
- vii. the inclusion within the regulatory perimeter of binary options (which is not itself required under MiFID II, but which the government views as appropriate in light of the growth of the binary options market and concerns about consumer protection).

As noted in the Alert we published on the FCA's Discussion Paper under MiFID II on 26 March 2015, MiFID II will not have effect until 3 January 2017, reflecting the period required for European Union member states to transpose its provisions into national law. The Treasury will consider responses to its consultation and draft legislation which are received by 18 June 2015, with a view to publishing final legislation later in the year.

The consultation paper can be accessed [here](#).

[Monica Gogna](#)
[Michelle Moran](#)
[John Young](#)