

February 28, 2017

UK Treasury confirms change to the Regulated Activities Order

The UK Treasury confirmed today that it will amend Article 53 of the Regulated Activities Order (covering the regulated activity of “advising on investments”) to bring it into line with the definition of “giving investment advice” under the EU Markets in Financial Instruments Directive (“**MiFID**”). This means that, once the change is in effect, a firm will only be providing investment advice under Article 53 of the Regulated Activities Order when it gives a “personal recommendation” that is presented as suitable for the person to whom it is made or that is based on an investor’s circumstances. This will replace the broader definition of advising on investments, which did not depend on the advice amounting to a personal recommendation or being based on an investor’s circumstances.

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The basis for the change stems from the government’s 2015 Financial Advice Market Review, which proposed reforms to provide consumers with affordable and accessible financial advice. The change will allow consumer-facing firms to give “general forms of consumer support” and “helpful guidance” to individuals to support their own investment decision-making, and provide factual information to individuals, without this amounting to investment advice. The industry has generally welcomed the change, in the terms of the benefits of providing a clearer boundary between regulated advice and guidance and convergence with the MiFID definition.

The FCA will publish guidance in due course to support firms offering services that help consumers make their own investment decisions without a personal recommendation.

The changes will take effect on 3 January 2018, to coincide with the application date of MiFID II.