

FCA Hints at Delay to MiFID II Implementation

October 1, 2015

Financial Services and Regulation

The Financial Conduct Authority (FCA) has stated that its expected December 2015 consultation on the changes to the FCA Handbook required by the recast Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR) may need to be split in two or postponed. This announcement was contained in the minutes of the FCA's "MiFID II Implementation Roundtable" (the Minutes), published on September 25, 2015, which explained that it expects the European Commission to delay the adoption of Delegated Acts required by MiFID II and MiFIR until November 2015, thereby making a change to the FCA's proposed consultation timetable more likely.

Likely delays

The Minutes state that the European Commission has not adopted the necessary Delegated Acts required by MiFID II/MiFIR as yet. Given there is still a lengthy internal consultation process to complete within the European Commission followed by translation of the new texts of the Delegated Acts once they are agreed, the FCA is of the view that they are unlikely to be adopted "before the beginning of November 2015 at the earliest".

As a result of the uncertainty surrounding the European legislative timetable, the FCA is prepared to shift its own timetable for the planned December 2015 consultation on FCA Handbook changes if required. The FCA is considering issuing one consultation paper in December 2015 on matters for which there is certainty, and a separate one early in 2016 for the remaining unresolved issues. The FCA has acknowledged that the later it consults on these outstanding items, the later firms will have the required certainty they need for adequate implementation. However, it stresses that simply because there have been delays at this stage, firms should not assume that the July 2016 deadline for transposition of MiFID II or the January 2017 date of application will be put back.

Cost benefit analysis

The FCA mentioned that it will be undertaking a cost benefit analysis for aspects of the implementation of MiFID II where it has a level of discretion. This mostly concerns retail conduct issues. It explained that it will be sending out a questionnaire to firms shortly and hopes that Trade Association members will participate fully.

Financial Advice Market Review and MAR implementation

The FCA also provided an update on the Financial Advice Market Review unveiled by the HM Treasury in August 2015, noting that it will touch upon “issues which are relevant to aspects of MiFID II”. This is due in early 2016.

On the implementation of the Market Abuse Regulation, the FCA noted that the timetable would be similar to that of MiFID II. The FCA expects to issue a consultation regarding the required changes to the FCA Handbook “in late October or early November 2015”. The FCA is planning roundtable meetings with separate Trade Associations for the end of this year and early 2016.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Financial Services and Regulation practice group:

Charlotte Hill
William Maycock

+44 20 7067 2190
+44 20 7067 2191

chill@cov.com
wmaycock@cov.com

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

Covington & Burling LLP, an international law firm, provides corporate, litigation and regulatory expertise to enable clients to achieve their goals. This communication is intended to bring relevant developments to our clients and other interested colleagues. Please send an email to unsubscribe@cov.com if you do not wish to receive future emails or electronic alerts.