Regulator Assessment: Qualifying Regulatory Provisions

Title of proposal: Amendments to certain disclosure requirements which apply to non-MiFID business so that they are consistent with the provisions applying to MiFID business

Lead regulator: FCA

Date of assessment: 1 March 2018

Commencement date: 3 January 2018

Origin: Domestic extension of EU legislation

Does this include implementation of a Cutting Red Tape review? No

Which areas of the UK will be affected? Whole of the UK

Brief outline of proposed new or amended regulatory activity

The Markets in Financial Instruments Directive (MiFID II) enhanced the requirements applying to firms in relation to the information they must provide to clients. Following the financial crisis it was decided that it was appropriate to better calibrate the requirements applicable to different categories of clients and, therefore, that some information and reporting requirements should be extended to the relationship with eligible counterparties, for example by requiring that firms must communicate with eligible counterparties in a way that is fair, clear and not misleading, taking account of the nature of the eligible counterparty and its business. Accordingly the MiFID II disclosure provisions are designed to increase client protections, in particular for non-retail clients. MiFID II also introduced enhanced costs and charges disclosure requirements, and some minor additional requirements relating to cross-selling products or services, post-sale reporting and record-keeping.

When implementing the MiFID II provisions in the FCA Handbook, we avoided applying them to firms doing non-MiFID business other than where a persuasive case for doing so existed. Where the recast MiFID II provisions are identical to, very similar to, or can be inferred from, existing provisions in the Handbook, we have amended some rules relevant to non-MiFID business so they are consistent with the provisions applying in relation to MiFID business.

Which type of business will be affected? How many are estimated to be affected?

Firms affected are those doing non-MiFID business (with the exception of Article 3 firms). An estimate of the firms falling within this population was obtained through searching the FCA register.

Based on the available search parameters a population of 4452 affected firms was identified. It is important to note however that this is likely to be a significant over estimate. The reason for this is that, due to a lack of specific search flags, there are certain firms that we know are included within this population which should be removed (for example Collective Portfolio Management firms) however there is no way of consistently identifying these without looking at the permissions of each individual firm which was considered to be a disproportionate approach in terms of both the time and resource that it would take to do this.

Price base year	Implementation date	Duration of policy (years)	Business Net Present Value	Net cost to business (EANDCB)	BIT score
2016	3 January 2018	10 years	-1.5	0.2	0.9

Please set out the impact to business clearly with a breakdown of costs and benefits

We sent out a questionnaire to around 5,000 FCA authorised firms in September 2015, asking for data to support its proposals for consultation in respect of all MiFID II changes. It followed this up with a second round of surveys. It then consulted on its proposals in a series of consultation during 2016 and 2017 on which it sought feedback on the proposals and the accompanying CBA.

In the section below we outline the costs to firms for the discretionary actions described above. The details presented below are drawn from underlying analysis conducted for the CBA in CP16/29, which was finalised in PS17/14, and additional calculations undertaken for this impact assessment in relation to the familiarisation & GAP analysis costs

Familiarisation & GAP analysis costs

We expect the impacted firms to read and digest the relevant changes and subsequently perform a gap analysis where they will familiarise themselves with the detailed requirements of the new rules and guidance, and check their current practices against these expectations.

Based on assumptions on the time required to undertake this analysis and the cost of this time to firms, we estimate that firms will incur an average cost of £352 to undertake this work. In aggregate this indicates an overall cost of £1.6 million.[1] [2]

Implementation costs

As only minor changes are being proposed in relation to the disclosure requirements that apply to firms doing non-MiFID business it is our view that the discretionary application of the provisions proposed will have a negligible impact on the industry in relation to implementation costs.

[1] The assumptions used to estimate these costs have been derived from a research project on compliance costs that involved consultation with firms and trade bodies, discussions with vendors, a review of previous CBAs, internal FCA consultation, and desk-based research. To put a cost on time, we have sourced salary information for a range of occupations in financial services. Figures for large and medium firms are based on the 2016 Willis Towers Watson UK Financial Services Report. Small firm salaries were sourced from a systematic review of adverts on the website of Reed, cross-referenced with other publicly available sources. We add an allowance for overheads of 30% to all time costs to account for non-wage labour costs, as advocated by the HM Treasury Green Book.

[2] This aggregate cost figure is likely to be an upper bound estimate given the potential overestimation of the number of firms impacted.

In theory one-off costs for firms doing non-MiFID business could include costs for: staff training, legal costs, compliance costs, and the cost of updating disclosure processes. However, as we only made rule changes where the recast provisions are identical to, very similar to, or can be inferred from, existing provisions in the Handbook, we are not altering the effect of the existing rules which apply to these firms. As such we expect any additional cost to be negligible in practice.

As a result of discretionary changes to the MiFID II client categorisation rules, which are being applied to non-MiFID scope business, a small number of non-MiFID firms may incur additional disclosure costs because they will need to provide more information to their clients. This will be the case if they have Local Authority clients who would have been professional clients but will now need to be considered retail clients, or clients who would have been eligible counterparties (ECPs)[3] but will now need to be considered professional clients. We expect these changes to have negligible costs given the small number of firms likely impacted.[4]

The changes proposed to the disclosure requirements to non-MiFID firms are expected to benefit consumers. For example, consumers will benefit from the changes as they should improve market integrity and transparency. The benefits to consumers are likely to exceed costs to firms. However, under the Act, benefits to consumers are out of scope for impact assessments. These benefits are considered in our cost benefit analysis (CBA) prior to rule changes.

Please provide any additional information (if required) that may assist the RPC to validate the BIT Score.

The relevant FCA consultation paper for these provisions is: FCA, September 2016, CP16/29: Markets in Financial Instruments Directive II Implementation – Consultation Paper III, https://www.fca.org.uk/publication/consultation/cp16-29.pdf

The relevant FCA policy statement for these provisions is: FCA, July 2017, PS17/14: Markets in Financial Instruments Directive II Implementation – Policy Statement II, https://www.fca.org.uk/publication/policy/ps17-14.pdf

[3] Broadly speaking, professional clients include per se professionals such as other authorised financial service firms or pension funds, large companies that exceed certain size thresholds, and national government or central bank bodies. The eligible counterparty classification is only relevant to certain types of activity – namely dealing on own account, executing orders, or receiving and transmitting orders – and is available to financial services firms, national governments and central banks, with other professional clients such as large corporates having the option to be 'elective' ECPs. Retail clients are negatively defined as neither of the above, and are provided the greatest degree of protection, although they can elect up to professional client status if certain criteria are met, the client requests this in writing, the firm provides a written warning as to the protections they will lose, and this is acknowledged in writing by the client.

[4] Further details on the costs of discretionary changes to client categorisation rules can be found in the "*Markets in Financial Instruments Directive II Implementation – Client Categorisatio*n" impact assessment.