1. Highlights

- **Discretionary investment managers**: The FCA is considering banning rebating of third party payments by discretionary investment managers.

- **Tape-recording**: The FCA proposes to remove the current taping exemptions under MiFID, so that discretionary investment managers, certain retail IFAs, corporate broking and corporate finance firms will become subject to the MiFID II recording rule. See Section 5.3 and 5.7 below.

- **Adviser independence**: The FCA is consulting on whether the MiFID II requirement to assess a "sufficient range" of different providers' products is in practice different from the current RDR requirement for a "comprehensive and fair" analysis of potential products in a "relevant market".

- **Restricted advice**: The FCA is proposing to copy across MiFID II inducement standards for independent advice to restricted advice. See Section 5.9 below.

- **Third country firms**: The Government is proposing not to change its current regime. See Section 6.1 below.

- **Removal of board members**: The Government proposes to empower the PRA and the FCA to require an institution to remove members of its board with immediate effect. See Section 6.6 below.

- **Binary options**: The Government is bringing binary options (currently classified as bets and supervised by the Gambling Commission) within the scope of MiFID financial instruments (and thus within the market abuse regime). See Section 6.8 below.
• **Structured deposits**: The RAO is to be amended to ensure that the selling of or advising on structured deposits is regulated.

• **MiFID II Impact Assessment**: HM Treasury's Impact Assessment estimates the costs to firms across the EU as follows:
  - One-off compliance costs of between €512 and €732 million; and
  - On-going costs from 2017 of between €312 and €586 million.

The Government estimates that the UK will bear approximately 36% of the cost.

2. **FCA Discussion Paper**

The discussion paper (key points are summarised in section 5 below) sets out the FCA's policy choices in relation to MiFID II transposition of the following issues:

- the implications of some of the MiFID II conduct of business and organisational requirements;
- the changes in domestic rules required to implement the new minimum regulatory framework for MiFID II Article 3 exempt firms;
- options for alternative domestic criteria for the categorisation of local authorities; and
- the application of certain MiFID II requirements to non-MiFID firms.

The discussion paper does not expressly consider cover the implications of MiFID II for wholesale markets. The FCA also notes in its discussion paper that the exact legal form of the Level 2 implementing measures is still unknown at this point.

A full list of the consultation questions can be accessed [here](#).

**Deadline for submission of comments: 26 May 2015**

3. **HMT Consultation Paper**

The HMT consultation paper, summarised in more detail in section 6 below, considers transposition issues, some involving policy decisions and others technical drafting considerations, in relation to the following:

- Third countries
- Data reporting services
- Position limits and reporting
- Unauthorised persons
- Structured deposits
- Power to remove board members
- Organised Trading Facility.

The consultation paper also discusses the Government's decision to bring binary options, currently classified as bets and supervised by the Gambling Commission, within the scope of MiFID financial instruments (see 6.8 below).

Click [here](#) for a full list of the consultation questions.

The following draft statutory instruments have been published as Annexes A – D to the HMT consultation paper:

- **A. Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2016**
- **B. Financial Services and Markets Act 2000 (Data Reporting Services) Regulations 2016**
- **C. Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016**
- **D. Financial Services and Markets Act 2000 (Qualifying EU Provisions) (Amendment) Order 2016**

**Deadline for submission of comments: 18 June 2015**
4. Next steps

2015

26 May: Deadline for responses to FCA DP15/3

18 June: Deadline for responses to HMT consultation paper

By 3 July: European Commission to adopt draft delegated acts

ESMA to submit RTS to EU Commission

October: Second FCA MiFID II Conference

Later: The FCA will publish a full consultation on Handbook changes; responses to FCA DP15/3 will help develop the FCA's policies ahead of the consultation.

2016

By 3 January: European ESMA to submit ITS and MiFID II guidelines to EU Commission

Final delegated acts to be available

June: FCA aims to publish final rules

July: Member States to transpose MiFID II Directive and delegated acts

2017

3 January: MiFID II applies in Member States
5. Overview of FCA Discussion Paper "Developing our approach to implementing MiFID II conduct of business and organisational requirements" (DP15/3)

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<tr>
<th>Chapter Reference</th>
<th>Firm Type Affected</th>
<th>Issue under consideration</th>
<th>Background</th>
<th>Overview of proposal / discussion</th>
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| 1. Chapter 2: Applying MiFID II rules to insurance-based investment products and pensions | Firms providing services in relation to insurance-based investments and pensions | MiFID II does not apply to insurance-based investments and pensions. | UK | If the IDD does not deliver a consistent regulatory regime for insurance-based investments, the FCA would consider reading across the following MiFID II obligations to insurance-based investments and pensions:  
  - suitability;  
  - client reporting;  
  - appropriateness test;  
  - product governance; and  
  - staff remuneration.  
  The FCA has said it will not apply MiFID II costs and charges requirements to these products at this stage.  
  The following sections of the discussion paper (see Sections 5.5 and 5.9 below) are also relevant:  
  - independent investment advice - retention of insurance-based investments and pensions in the definition of RIPs; and  
  - inducements.  
| | | | IMD/IDD |  
| | | | The sale of insurance-based investments is also within the scope of the IMD/IDD. |  
| | | | The precise scope and content of IDD is currently unclear; the IDD is not yet finalised and it will not become effective until sometime after MiFID II. |  
| | | | MiFID II amends IMD in the meantime, imposing the following additional requirements on insurance mediation activities and for sales of insurance-based investment products by insurers:  
  - identify and manage conflicts of interest;  
  - obligations to act fairly and honestly; and  
  - marketing communications must be fair, clear and not misleading.  
| | | | Member States may also apply MiFID II-style inducement standards to the distribution of insurance-based investments. |  
| | | |  

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| 2. Chapter 3: Treatment of structured deposits | Firms manufacturing, selling and advising on structured deposits | The FCA is considering how MiFID II investor protection requirements relating to structured deposits should be incorporated into the Handbook. | The scope of MiFID II’s investor protection requirements has been extended to cover the sale of and advice on structured deposits, bringing structured deposits into scope of a range of existing conduct of business and organisational rules that currently apply to investment business through COBS. The Principles for Businesses and Banking Conduct of Business Sourcebook (BCOBS) currently regulate how structured deposits are promoted and sold. | The FCA is seeking views on three options for applying MiFID II investor protection requirements to structured deposits:  
A. Copy out MiFID II provisions into BCOBS, applying them to firms advising on and selling structured deposits. This is the option least favoured by the FCA.  
B. Apply relevant MiFID II requirements to structured deposits through COBS whilst retaining existing BCOBS rules and guidance; non-relevant parts of COBS to be disapplied in relation to structured deposits.  
C. Incorporate structured deposits fully into COBS whilst retaining existing BCOBS rules and guidance – this means switching on both the MiFID II requirements and some additional rules (e.g. client communications). |
| 3. Chapter 4: Receipt of commissions and other benefits for discretionary investment managers | Discretionary investment management (DIM) firms which conduct retail client business  
Funds with commission-paying unit classes | The FCA is considering whether or not to ban DIM firms from accepting commissions and other benefits. | UK RDR rules have banned rebates for advisers. However, RDR rules only apply where personal recommendations are given to retail clients on RIPs. RDR rules do not apply to DIM activities.  
MiFID II has not banned rebates. Discretionary investment managers (and independent advisers) may receive payments from third parties if these are passed on to the clients in full. | The FCA is considering banning rebating of third party payments by firms providing DIM services to clients. The FCA is considering either:  
• a total ban on rebates; or  
• a ban on cash rebates only which will allow other types of rebates to clients, such as units (similar to the approach taken by the FCA to platforms). |
| 4. Chapter 5: Professional client business – client categorisation and treatment of local public authorities and municipalities | Local public authorities and municipalities  
(Local authorities)  
Firms that conduct business with local authorities | This chapter considers potential changes to the criteria for local authorities to be treated as elective professional clients as Member States have an option to do so under MiFID II.  
At the same time, the FCA is considering amending its rules | MiFID II categorises local authorities (with some exceptions) as retail clients who can opt-up to elective professional status where they meet the qualifying criteria. This is a change from MiFID I – see below for the current rules in the UK.  
Member States have discretion to adopt criteria for the assessment of the expertise and knowledge of local authorities requesting to opt-up. The FCA is considering its discretion in relation to the opt-up regime. | MiFID business  
The FCA is considering the following options:  
A. No change to existing opt-up criteria for local authorities (for both MiFID and non-MiFID business) but provide guidance on the qualitative test  
B. Introduce new rules – strengthen the quantitative element of the opt-up criteria for local authorities for MiFID business  
C. Change existing rules – strengthen the opt-up regime for local authorities so that the alternative quantitative opt-up criteria for local authorities mirror the MiFID large undertakings test  
The FCA favours strengthening the opt-up criteria (i.e. Options B or C), but has said that it will consider stakeholder |
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<th>Chapter Reference</th>
<th>Firm Type Affected</th>
<th>Issue under consideration</th>
<th>Background</th>
<th>Overview of proposal / discussion</th>
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<tr>
<td>5. Chapter 6: Adviser independence</td>
<td>Firms, such as financial advisers and stockbrokers, providing advice in relation to: shares; bonds; derivatives; insurance-based investments and pensions; and structured deposits.</td>
<td>on the classification of local authorities in respect of non-MiFID business.</td>
<td>test, it may be categorised as a per se professional client. • If it is not a professional per se, the local authority is, by default, a retail client. • As a retail client, it may request to be opted up to elective professional client status if it meets the opt-up criteria. <strong>Non-MiFID business</strong> For non-MiFID business, local authorities are categorised as per se professional clients.</td>
<td>responses before finalising its policy position. <strong>Non-MiFID business</strong> The FCA is considering amending its rules to the effect that local authorities are re-categorised as retail clients in respect of non-MiFID business, with the option to opt up to elective professional client status.</td>
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**RDR**
- RDR rules aim to ensure that independent advisers provide a "comprehensive and fair analysis" of potential products in a "relevant market".
- **Types of products covered by the RDR independence requirement:**
  - All "retail investment products" (RIPs) which comprise a range of MiFID (e.g. UCITS and structured products) and non-MiFID (e.g. insurance-based investments) products

**MiFID II**
- MiFID II requires firms offering independent advice to assess a "sufficient range" of different product providers’ products.
- ESMA has suggested that independent advisers should consider a range of financial instruments proportionate to the scope of advice and adequately representative of the products available on the market.
- **Types of products covered by the MiFID II independence requirement:**
  - MiFID II financial instruments including shares, bonds and derivatives (not within the definition of RIPs), UCITS and structured products (within the definition of RIPs)

**MiFID II and RDR**
- The FCA is asking firms to consider the extent to which the MiFID II standard of independent advice is different in practice to the UK’s RDR standard.
- **Independent advice on shares, bonds and derivatives** The FCA is considering various approaches to implementing MiFID II independent standard for advice on shares, bonds and derivatives, including:
  - Replicate the existing approach for independent advice on RIPs for firms to provide advice based on a "comprehensive and fair" analysis of the relevant market.
  - Define a "basket" of products which a firm would need to consider in order to hold itself out as independent.
  - Potentially create an entirely separate standard for independent advice on derivatives (as the FCA envisages that most stockbrokers would be unable to meet any independence standard for derivatives).
- **RIPs definition: Insurance-based investments, pensions and structured deposits**
  - The FCA is considering whether or not to retain insurance-based investments and pensions in its definition of RIP.
  - It is also considering including structured deposits within the RIP definition.
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</table>
| 6. Chapter 7: Applying MiFID II remuneration requirements for sales staff and advisers to non-MiFID firms | Non-MiFID firms with sales staff and advisers | This chapter explores the extent to which the FCA should apply MiFID II's remuneration rules for sales staff and advisers to non-MiFID firms. | MiFID II introduces rules on sales incentives and the remuneration of sales staff and advisers:  
• Firms should not remunerate or assess the performance of staff in a way which conflicts with their duty to act in the best interests of their client; or  
• Provide an incentive for recommending or selling a particular financial instrument when another product may better meet the client's needs.  
The rules aim to ensure that sales staff and advisers are not remunerated in a way that creates incentives for staff to sell products inappropriately.  
ESMA has produced technical advice in this area, largely based on existing ESMA guidelines on remuneration policies and practices (June 2013).  
Various pieces of EU legislation also address (or will address) remuneration for specific markets, financial markets and types of firms, including Solvency II, IDD, Mortgage Credit Directive and CRD IV.  
In the UK, there are both high-level (Principle 3) and specific rules (Remuneration Codes), as well as guidelines (FG 13/1 - Risks to customers from financial incentives) governing remuneration and incentives. | The FCA is considering developing cross-cutting obligations for non-MiFID II firms, based on MiFID II remuneration standards for sales staff and advisers, regardless of the type of business they conduct.  
For firms which may be subject to another remuneration regime, it would be necessary to analyse compatibility with the other remuneration regimes to avoid conflicting requirements.  
The FCA may wait until there is more clarity on the precise scope and requirements of other EU legislative developments before proceeding to introduce cross-cutting standards.  
If the FCA decides to wait, then it would conduct further policy work and a cost benefit analysis (to be included in the MiFID II consultation paper later in 2015). |
| 7. Chapter 8: Recording of telephone conversations and electronic communications | Discretionary investment managers  
Firms currently exempt from MiFID under Article 3 such as certain retail IFAs, corporate broking and corporate finance firms | This section is divided into Chapter 8a and Chapter 8b:  
• Chapter 8a considers the changes which need to be made to implement a regime "at least analogous" to the MiFID II recording rules for Article 3 firms.  
• Chapter 8b | Article 16(7) MiFID II requires certain telephone conversations and electronic communications to be recorded.  
The UK has an existing domestic recording regime set out in COBS 11.8.  
**Article 3 Firms**  
MiFID II requires Member States to impose on Article 3 firms (in the UK, mostly retail financial advisers and corporate broking firms) requirements which are "at least analogous" to MiFID II rules in certain areas, including the requirement to record certain telephone conversations and electronic communications under Article 16(7) MiFID II.  
Article 3 firms are currently exempt from the domestic recording rules in COBS 11.8. MiFID II requires the FCA to implement a recording regime for these firms which will mean | Article 3 firms  
The FCA is proposing that Article 3 firms should be subject to the same recording regime as non-Article 3 firms. It is asking affected firms to consider the impact of the MiFID II recording regime on their business and suggest other approaches to recording if necessary.  
**Discretionary investment managers**  
The FCA is proposing to remove the two recording exemptions that currently apply to DIM firms in the UK and apply the MiFID II recording rules to DIM firms. |
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<tr>
<td>8. Chapter 9: Costs and charges disclosure</td>
<td>All firms</td>
<td>The FCA is inviting firms to discuss the practical aspects of implementing and aligning MiFID II’s requirements relating to costs and charges disclosures.</td>
<td>MiFID II requires firms to disclose all costs and charges associated with an investment service and financial instruments, which are not caused by the occurrence of underlying market risk, at the point of sale and on an annual basis.</td>
<td>Technical challenges: The FCA highlighted the challenge of ensuring consistency between the different costs and charges disclosure requirements in the UCITS Directive and the PRIIPs Regulation. The FCA would like to understand the technical challenges likely to be faced by firms in meeting the MiFID II costs and charges disclosure requirements. Standardisation: MiFID II permits Member States to allow costs and charges information to be presented in a standardised format. The FCA is asking views on whether it should investigate, by means of consumer testing and insights from behavioural economics, and develop a standardised format for both point-of-sale and post-sale costs and charges disclosure.</td>
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<td>9. Chapter 10: Inducements</td>
<td>Advisers, discretionary investment managers and other firms</td>
<td>This chapter sets out the likely approach to the enhanced MiFID II inducement rules for advisers, discretionary investment managers and other firms. Chapter 10 does not discuss the issue of receipt of research by firms in relation to independent advice or portfolio management.</td>
<td>MiFID II imposes requirements on inducements, some of which are stricter than the current UK regime. <strong>Independent advisers and discretionary investment managers</strong>: MiFID II bans the receipt and retention of all monetary benefits and non-monetary benefits from third parties, other than &quot;minor non-monetary benefits&quot;. <strong>Other firms - general inducements rules</strong>: MiFID II strengthens existing MiFID inducement provisions. The implementing measures are likely to include provisions on how firms can demonstrate that an inducement meets the &quot;quality enhancement&quot; test. ESMA has suggested including a non-exhaustive list of circumstances in which an inducement will be deemed not to meet the quality enhancement test. <strong>Insurance-based investments and pensions</strong>: MiFID I inducement standards were extended in the UK to apply to the sale of insurance-based investments and pensions. It is The FCA highlights some of the differences between the MiFID II inducements rules and the current inducements regime and RDR rules, for example:</td>
<td>Restricted advice The current UK inducement rules apply to both independent and restricted advice firms. The FCA is proposing to copy across the MiFID II inducement standards for independent advice to restricted advice.</td>
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**Discrimination investment managers**

COBS 11.8 currently provides two exemptions for discretionary investment managers ((i) where the communications are with other firms subject to the taping rules and (ii) where, broadly, the other firms are not subject to the taping rules and the communications are infrequent/constitute a small proportion of "relevant" conversations).
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| 10. Chapter 11: Complex and non-complex products and application of the appropriateness test | Execution-only firms | This section sets out the potential restrictions on products able to be classified as "non-complex" and discusses the practical application of the appropriateness test. | MiFID I introduced the concept of "complex" and "non-complex" products that are not provided by a portfolio management service or sold through a personal recommendation. Firms are required to conduct an appropriateness test on the knowledge and experience of the client where the products in question are deemed "complex". Complex products cannot be sold on an execution-only basis. COBS 10 contains the current UK requirements in this area. MiFID II has restricted the types of products that can be classified as "non-complex": any shares and bonds that embed a derivative, structured UCITS, non-UCITS collective investment undertakings (e.g. NURSs) and some structured deposits will be considered complex. ESMA guidelines on complex products are due to be published in January 2016 See also ESMA consultation on draft guidelines on complex debt instruments and structured deposits. | The FCA confirms that the types of products that will be considered "non-complex" under MiFID II will be significantly limited. The FCA is using the discussion paper to highlight some of the areas which firms should start to consider now, in particular:  
- **Direct offer financial promotions**: It is unlikely that firms will be able to meet the appropriateness assessment requirements where products are offered via this channel.  
- **Online distribution models** will need to be reviewed to ensure that relevant information can be collected from consumers so that firms can conduct an appropriateness assessment before a "complex" product is sold.  
- **Proportionality**: The FCA would expect the appropriateness assessment to be particularly rigorous if a firm offers more complex financial instruments to less experienced customers. At the same time, not all "complex" products come with the same risks and will not require the same level of knowledge and experience from customers in order to be understood. |
### 6. HM Treasury Consultation on Transposition of the Markets in Financial Instruments Directive II

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<th>Chapter Reference</th>
<th>Issue</th>
<th>Overview of proposal</th>
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| 1. Chapter 2: Third Countries | Article 39 MiFID II provides Member States with the option of requiring a third country firm providing investment services or carrying on investment activities with retail clients or professional clients to establish a branch in that Member State. | The Government is proposing to retain the current regime which allows third country firms to provide investment services or perform activities in the UK in one of the following three ways:  
- establish a UK subsidiary;  
- third country firm may be authorised by the FCA or PRA if it has a UK branch; or  
- rely on certain exclusions provided for in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) (e.g. Article 72 "Overseas Persons" exclusion).  
The Government believes that the current regime has "the virtue of being sufficiently tailored to client types and to the risks in question and balances the need to maintain investor protection, market integrity and financial stability, while remaining open to business internationally". However, the Government cites some of the more negative consequences of not exercising its discretion under Article 39 as follows:  
- UK retail client will not be able to rely on the strengthened branch requirements specified in MiFID II;  
- UK branches will not have the benefit of the MiFIR Third Country Passport (assuming a positive equivalence decision in respect of the third country jurisdiction can been made) which allows passporting of wholesale services/activities to per se professional clients and eligible counterparties into other Member States (instead, as is currently the case, third country firms will need to set up an authorised subsidiary in the relevant Member State). |
| 2. Chapter 3: Data reporting services | Article 59(1) places an obligation on Member States to require that the following data reporting services (DRS) providers (DRSPs) become authorised before providing DRS:  
- Consolidated Tape Providers;  
- Approved Publication Arrangements; and  
- Approved Reporting Mechanisms. | The Government proposes the following:  
- Create a specific regime for DRSPs independent of the RAO in the draft Financial Services and Markets Act 2000 (Data Reporting Services) Regulations 2016 (Annex B).  
- Apply FCA's investigatory powers (including sections 165-168 FSMA) to DRSPs.  
- Apply provisions akin to section 89 (Misleading statements) and section 90 Financial Services Act 2012 (Misleading impressions) to DRSPs.  
- To extend these provisions to apply to operators of MTFs and OTFs. |
| 3. Chapter 4: Position limits and reporting | Article 57 MiFID II sets out a position limit regime for commodity derivatives traded on trading venues and for economically equivalent OTC contracts, requiring each Member State competent authority to establish the size of a net position which any person can hold.  
In addition, MiFID II requires trading venues that offer trading in commodity derivatives to have appropriate position management controls in place to mitigate the effects of a large or dominant commodity derivatives position. | Position limits  
- Draft Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2016 (FSMA Regulations 2016 - Annex A) transposes the position limit regime. Further details of the position limit regime are subject to regulatory technical standards and will also be specified in FCA rules.  
Position management and Position reporting  
- Where obligations apply to investment firms and credit institutions operating trading venues, the obligations will be set out in FCA rules.  
- Where obligations apply to trading venues operated by recognised investment exchanges, these obligations are proposed to be added to the schedule to the Financial Services and |
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<th>Issue</th>
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<td>MiFID II also introduces a position reporting regime.</td>
<td>Markets Act 2000 (Recognition Requirement) Regulations by the FSMA Regulations 2016 (Annex A).</td>
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<td><strong>4. Chapter 5: Unauthorised persons</strong></td>
<td><strong>Algorithmic trading/Direct electronic access/General clearing member</strong></td>
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<td>Articles 17(1) to (6) MiFID II apply to members/participants of regulated markets and MTFs who are not required to be authorised pursuant to Article 2(1)(a), (e), (i) and (j) MiFID II.</td>
<td>Part 4 of the FSMA Regulations 2016 gives effect to provisions in MiFID II concerning the regulation of the conduct of persons who are not required to be authorised under MiFID II but nonetheless participate in financial markets. The regulations place MiFID II obligations on a person:</td>
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<td>- who is not required to be authorised under Part 4A FSMA;</td>
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<td>- who is a member or participant of a regulated market or MTF;</td>
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<td>- to whom Article 2(1)(a), (e), (i) or (j) MiFID II applies; and</td>
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<td>- engages in algorithmic trading; or</td>
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<td>- provides direct electronic access; or</td>
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<td>- acts as a general clearing member; or</td>
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<td>- is involved in the synchronisation of business clocks.</td>
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<td>The FSMA Regulations 2016 also provides the FCA with powers to enforce the obligations MiFID II imposes on unauthorised persons.</td>
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<td><strong>Benchmarks</strong></td>
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<td>Article 37 MiFIR potentially applies to persons with proprietary rights to benchmarks but who may be unauthorised.</td>
<td>Once further clarity is available on the final form of the EU Benchmark Regulation, the Government will consider whether it is necessary to amend FSMA so that a &quot;person with a proprietary right to a benchmark&quot; is subject to FCA enforcement powers and rights of information.</td>
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<td><strong>5. Chapter 6: Structured deposits</strong></td>
<td><strong>MiFID II applies certain investor protection and organisational requirements to investment firms and credit institutions when selling or advising clients on structured deposits, but does not require persons carrying on these activities to become authorised.</strong></td>
<td><strong>The Government proposes to transpose the MiFID II concept of &quot;selling or advising&quot; structured deposits by extending the application of the following activities under the RAO (arguably going beyond pure &quot;selling&quot;) to structured products:</strong></td>
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<td>- Article 21 (Dealing in investment as agent);</td>
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<td>- Article 25(1) (Arranging deals in investment);</td>
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<td>- Article 25(2) (Making arrangements with a view to transactions in investments);</td>
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<td>- Article 37 (Managing investments)</td>
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<td>- Article 53 (Advising on investments)</td>
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<td>The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 will also be amended.</td>
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<td>The Government proposes a notification process in order to streamline the extension of firms' permissions to cover structured deposits.</td>
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| **6. Chapter 7: Power to remove board members** | Article 69(2)(u) MiFID II requires that a competent authority has at least the power to "require the removal of a natural person from the management board of an investment firm or market operator". | The Government is consulting on the following options:  
A. Rely on existing FSMA powers; or  
B. Create a new standalone power in Part V FSMA to allow the PRA or the FCA to require an institution to remove members of its board.  
The Government currently prefers Option B, citing various limitations with relying on existing FSMA powers under Option A:  
- Neither the approved persons regime nor the Senior Managers and Certification Regime (SMCR - effective 7 March 2016) applies to Recognised Investment Exchanges.  
- With the exception of the SMCR power under section 63ZB FSMA (which enables the FCA or PRA to vary an approval under section 59 for the performance of a senior management function in order to advance a statutory objective), the existing powers do not generally allow the regulators to remove a person's approved persons status with immediate effect.  
Option B will be similar in approach and design to that of sections 63ZB and 63ZC FSMA and would permit the FCA or PRA to impose requirements on firms to remove board members with immediate effect, subject to a supervisory notice and the ability to challenge at a tribunal. |
| **7. Chapter 8: Organised Trading Facility** | MiFID II introduces a new category of investment service – the operation of an Organised Trading Facility (OTF). OTFs will be the third type of multilateral system: a discretionary system in which multiple buying and selling interests in non-equities can interact and result in contracts. An OTF operator may engage in matched principal trading with client consent. An OTF operator may also deal on own account, other than matched principal trading, in illiquid sovereign debt instruments. | The following transposition arrangements have been proposed:  
- The Financial Services and Markets Act 2000 (Recognition Requirements) Regulations 2001 will be amended to include specific requirements for exchanges acting as OTF operators (Annex A).  
- FCA rules will be amended in due course to include specific requirements for OTFs operated by investment firms or credit institutions.  
- Operating an OTF will be an investment service under the RAO.  
- The draft Amendment Order 2016 will allow OTF operators to apply for Part 4A permission or a variation of permission ahead of 3 January 2017.  
- Where an OTF operator engages in matched principal trading or trades as principal in illiquid sovereign debt instruments, there will be no need to apply for the "dealing as principal" permission. The FCA will consult on rules in respect of these activities in due course.  
- The FPO will be amended to take account of OTF investment services. |
<p>| <strong>8. Chapter 9: Binary options</strong> | Binary options are a form of financial contract which pay a fixed sum if the option is exercised or expires in the money, or nothing at all if the option is exercised or expires out of the money. In the UK, these options are currently classified as bets and supervised by the Gambling Commission. Some Member States have included binary options in the scope of their transposition of MiFID financial instruments. The Government is seeking comments on draft legislation to bring certain binary options within article 85 of the RAO. Broadly, under the draft legislation (see Annex E to the HMT consultation paper), a binary option is a financial instrument in circumstances where similar derivative contracts would also be regarded as financial instruments e.g. where the option relates to currencies, stock indices, individual shares, commodity prices and economic statistics. Regulatory capital and organisational requirements and investor protections will apply, and binary options will then fall within the scope of the market abuse regime. |</p>
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<thead>
<tr>
<th>Chapter Reference</th>
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<tr>
<td>Issue</td>
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<td>Overview of proposal</td>
</tr>
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Government now believes that binary options, where they relate to specific underlyings, should be viewed as MiFID financial instruments.
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