

THE EUROPEANS ARE COMING!

The fundamental purposes of the EU are to promote greater social, political and economic harmony among the nations of Western Europe. However, being part of the EU can cause conflicts and I'm not talking about post-election membership referendum schedule.

In our own financial services market there are clear conflicts with the UK regulation and the emergence of MiFID II rules from Europe. Last month the FCA published a discussion paper on its approach to the MiFID II rules. FCA confirmed the timetable for implementation is challenging and is currently consulting with the industry, and TISA is involved in the steering group. The FCA will consult on rule changes in December and confirm the final rules by July 2016 with implementation by 3 January 2017.

One key area for discussion is the proposal requiring firms to record all telephone and electronic communications relating to clients, which may extend to face-to-face conversations. Records have to be kept for five years, potentially seven years, and available to clients on request.

The regulator may consider removing previous exemptions for certain firms, which included financial advisers, allowing the assessment of firms' compliance within conduct of business requirements, pursuit of enforcement cases for market abuse and support claims of non-compliance with their regulatory requirements.

Historically, firms defending complaints often have insufficient proof as to what occurred. Therefore whilst recording calls could mean incurring higher upfront acquisition costs, it could reduce costs in the long-term by helping firms defend complaints and reduce liabilities. Audio recordings are probably the only authentic validation of what has occurred during a conversation between the adviser and his client.

The other key issue in the paper sets out thoughts on the status of independence for the advice label. The post-RDR implementation review demonstrates consumers are confused about independent and restricted advice – MiFID II rules introduce a European-wide definition of independence for the first time.

The requirement for independent firms is to make recommendations based on a *sufficient range* of providers' products rather than whole of market, as per the current FCA definition. This could actually lead to the definition being stricter, as it covers a broader range of products. This is a key area we are currently discussing with the FCA to seek absolute clarification of interpretation. It make it more difficult for advisers to maintain the independent label and lead to further narrow specialism of advisers.

The regulations also propose to cover execution-only business, introducing stronger protections for consumers. It proposes requiring firms carry out an appropriateness test for any complex product which is sold without advice. The conundrum here is what is the classification of a complex product.

Further details on which products will be classed as complex are not due until January 2016. However looking at the existing RDR roadmap, a few instruments other than vanilla shares and bonds, non-structured Ucits and some structured deposits are likely to be classed as noncomplex. The implication here is that for a lot of products, execution-only is not going to be an option any longer, whilst direct offer financial promotion could struggle to comply with these requirements.

TISA has recently met with EU Commissioners in Brussels and is working closely with the FCA to try and agree the finite detail of the regulations and where possible agree open standards for the financial services industry to be able to adopt, to help the implementation of both regimes to the benefit of both members and consumers.

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