

## MiFID II: inducements; research and inducement; taping; best-execution; client categorisation; independence; disclosure; OPS; investment research

### Financial Conduct Authority

RPC rating: **validated**

This opinion covers nine measures; for each, a brief description of the change, its impacts and the quality of the submission is given in the table below. The combined equivalent annual net direct cost to business (EANDCB) is underneath.

#### General Comments

For the proposed measures outlined below, the FCA has supported its analysis of the impacts on business with data from industry, business surveys, and consultations. The RPC is pleased to see the comprehensive approach taken by the FCA, drawing on several different sources, including consultation with industry. The analysis is concise, but some areas require an understanding of both the industry and existing regulatory landscape. The assessments could have been improved had the FCA presented its assessment in terms that are likely to be understood by the general reader.

Measure	Description	Impact	Quality of submission
RPC-4261-FCA-Extension of certain MiFID II inducement	MiFID II prohibits firms which provide investment advice on an independent basis from accepting or retaining any fees, monetary or otherwise, in relation	The regulator explains that firms affected are those providing financial advice or portfolio management services to retail clients on MiFID	The regulator has provided a sufficient level of evidence for the RPC to believe that the

<p>provisions to firms providing investment advice and portfolio management to retail clients</p> <p>Implementation date: 3<sup>rd</sup> January 2018</p>	<p>to the services they provide to clients. The changes presented here extend this prohibition to firms which provide investment advice on a restricted basis i.e. advice restricted to certain products and/or providers.</p>	<p>instruments; the FCA estimate that there are 16,854 such firms. It estimates total one-off familiarisation costs of £4.7 million. The regulator also estimates limited ongoing implementation costs, on the grounds that the new rules mirror existing Retail Distribution Review (RDR) rules and therefore will require no material change to firms' systems.</p>	<p>quality of analysis for this measure is fit for purpose. The assessment uses a reasonable and proportionate approach to analyse potential costs to business.</p>
<p>RPC-4262-FCA-Extension of the MiFID II research and inducements provisions to collective portfolio managers</p> <p>Implementation date: 3<sup>rd</sup> January 2018</p>	<p>Under MiFID II, the ban on accepting or retaining any fees relating to the provision of services to clients, does not apply to research. Firms providing individual portfolio management are allowed to receive research without breaching the inducement rules, as long as the research is paid for directly from the firm's resources or through a Research Payment Account (RPA). A RPA is funded by separate charge to the client and must be agreed and disclosed. The changes presented here</p>	<p>The FCA estimates that 311 firms will incur direct material costs from this discretionary policy decision, as it has decided to exempt collective portfolio managers from the provision. The FCA states that the cost of external research purchased by the firm should not be included as firms were already paying for research. The measures just changed the payment method. It should be noted, however, that any additional cost of paying for external research caused by the changes has been included in the</p>	<p>During the consultation, the regulator noted that some survey respondents were unsure of the precise legal interpretation of some of the requirements and that there is, therefore, some uncertainty survey responses. It argues that the benefits of the measure to consumers will outweigh the costs</p>

	extend the requirements to collective portfolio managers (CPMs).	analysis. The regulator estimates, based on survey results, that 33%-76% of affected firms do not delegate investment management and will therefore incur costs as a result of these changes. The FCA estimates, based on the same surveys, that total one-off costs are between £3.8 -£8.4 million and ongoing costs between £2 -£4.5 million.	but does not present benefit estimates to support this assertion. The RPC confirms that the approach adopted by the FCA is reasonable and proportionate but agrees that the assessment could have been improved had the survey questions been clearer. The RPC also notes that the assessment could have been improved by presenting appropriate benefit estimates.
RPC-4263-FCA-Extending MiFID II requirements for firms to record telephone conversations or	Existing FCA rules require certain firms to record telephone and electronic communications which relate to an agreement between the firm and the client. MiFID II introduced a similar obligation on an EU level and required records to be kept for 5 years. The	The FCA estimates a total of 1,184 firms will be impacted by the proposed changes. The regulator explains that some firms will be less affected than others due to existing taping requirements and will therefore only incur familiarisation and gap	The RPC believes that the approach taken by the FCA is reasonable and proportionate.

<p>electronic communications</p> <p>Implementation date: 3<sup>rd</sup> January 2018</p>	<p>changes presented here extend existing regulations to cover discretionary investment managers (DIMs), energy market participants (EMPs), oil market participants (OMPs), and UK branches of third country firms.</p>	<p>analysis costs. It estimates these to be one-off costs of £0.2 million. DIMs who do not already tape, will incur one-off costs of installing the infrastructure and ongoing costs of taping, storage, and conversation retrieval. The FCA estimates costs based on analysis from a previous CBA which multiplies the increase in yearly cost of storage per user by the number of users and estimates ongoing costs of £0.6 million from year 5 onwards. On this basis, the regulator estimates one-off costs of between £2.5-£5 million and ongoing costs of between £2.4-£4.7 million.</p>	
<p>RPC-4264-FCA-Extending the MiFID II best execution requirements to Article 3 retail financial advisers and UCITS</p>	<p>MiFID II obligates firms to put in place arrangements and monitoring to make sure they are achieving best execution on behalf of their clients. More specifically, MiFID II requires investment firms that execute, transmit or place orders to:</p>	<p>The FCA explains that businesses covered by the proposal include 2,439 financial advice firms and 81 UCITS management companies. For financial advice firms to read and digest the changes and conduct gap analysis to check their current practices against the new expectations, the regulator estimates</p>	<p>The regulator has provided a proportionate level of evidence to support its assessment of the measure. The FCA states that benefits to consumers are likely to exceed costs but does not include them</p>

<p>management companies</p> <p>Implementation date: 3<sup>rd</sup> January 2018</p>	<ul style="list-style-type: none"> <li>• Provide more detail in execution policies and summary disclosures to clients</li> <li>• Demonstrate fairness of price when dealing in over the counter products</li> <li>• Produce an annual report listing the top five places to which they route client orders and a summary of the execution quality they achieved over the period.</li> </ul> <p>The changes presented here extend these requirements to financial advisors and Undertakings for the Collective Investment of Transferable Securities (UCITS) management companies.</p>	<p>total one-off costs of £0.5 million. The regulator estimates limited remediations costs due to firms already complying with existing requirements set out in the original markets and financial instruments directive (MiFID). The main change for UCITS management companies involves publishing the annual report. Assuming that 33-76% of UCITS management companies do not delegate all of their investment management activity, the FCA estimates one-off costs to firms of £1.4 - £3.1 million and ongoing costs of £0.5 - £1.2 million.</p>	<p>as they are out of scope of the assessment. The assessment could have been improved with a brief outline of the possible benefits, even if they were not scored against the BIT.</p>
<p>RPC-4265-FCA-Markets in Financial Instruments Directive II Implementation</p>	<p>MiFID and MiFID II use client categories to recognise different levels of experience and expertise. These categories are then used to tailor regulatory protections accordingly. Investors are categorised as either</p>	<p>Using Department of Communities and Local Government (DCLG) data and self-reported investment data, the FCA estimate that 42 firms currently conducting MiFID business and 8 firms conducting non-MiFID</p>	<p>The regulator has provided a sufficient level of evidence for the RPC to believe that the quality of analysis for this measure is fit for</p>

<p>– Client Categorisation</p> <p>Implementation date: 3<sup>rd</sup> January 2018</p>	<p>retail clients, professional clients or eligible counterparties (ECPs). MiFID II does not allow elective professional clients to request treatment as ECPs and introduces requirements when firms do ‘opt-up’ to ECPs, including written confirmation and investor warnings. The changes presented here extend the requirements to UK firms conducting non-MiFID business but using MiFID client categories. MiFID II allows local authorities to ‘opt-up’ to professional client status given they meet certain qualitative tests. The changes presented here require local authorities to meet specific quantitative tests before they can ‘opt-up’.</p>	<p>business will be impacted by this proposal. The regulator estimates that the cost of no longer allowing firms to ‘opt-up’ to eligible counterparty status (ECP) will be negligible given the low number of professional clients who request this status. Given the new quantitative tests local authorities must pass to ‘opt-up’ to professional client status, investment firms will incur costs associated with treating the ones who do not pass these tests as retail clients. The FCA estimates one-off costs to investment firms of £1.9 million and ongoing costs of £812,000. These costs cover both investment firms’ MiFID and non-MiFID business with local authorities.</p>	<p>purpose. The FCA use self-reported investment data to estimate the number of firms affected and survey responses to estimate costs. The RPC believes this is a proportionate approach.</p>
<p>RPC-4267-FCA-Extension of certain MiFID II independence provisions to firms providing</p>	<p>MiFID II outlines rules ensuring that firms offering independent advice do not limit the products considered to those of the advisory firm, or to firms closely linked to the advisory firm. The changes presented here extend the</p>	<p>Using FCA register data, the assessment states that 3,750 firms will be affected by the proposed changes. All impacts of the proposal were assessed using industry surveys and consultation responses. On this</p>	<p>The FCA has provided a proportionate assessment and the quality of analysis for this measure is fit for purpose.</p>

<p>personal recommendations to retail clients on non-MiFID business/products so that they are consistent with the provisions applying to MiFID business</p> <p>Implementation date: 3<sup>rd</sup> January 2018</p>	<p>MiFID II standard on independent advice to firms dealing with non-MiFID retail investment products.</p>	<p>basis, the FCA estimate familiarisation and gap analysis costs of £0.4 million, and states that because the changes between RDR rules and the new MiFID II are minimal firms will incur negligible remediation costs.</p>	
<p>RPC-4268-FCA-Amendments to certain disclosure requirements which apply to non-MiFID business so that they are</p>	<p>MiFID II outlines rules relating to the information firms provide to clients and how they communicate with eligible counterparties (ECPs). They ensure firms communicate in a way which is fair, clear and not misleading. The changes proposed here extend the disclosure requirements to firms conducting non-MiFID business.</p>	<p>Firms affected are those doing non-MiFID business. The FCA uses data from its business register to estimate that 4,452 firms will be impacted by this proposal. Using survey data and consultation responses, it estimates one-off familiarisation costs of £1.6 million. The regulator states that on-going implementation costs will be</p>	<p>The assessment would have benefited from a clearer explanation of the similarities between the existing and proposed regulations, to support the assumption that ongoing costs of disclosure requirements</p>



<p>consistent with the provisions applying to MiFID business</p> <p>Implementation date: 3<sup>rd</sup> January 2018</p>		<p>negligible because the proposed regulations do not differ greatly from existing regulations for non-MiFID businesses.</p>	<p>will be negligible. However, as the FCA has tested its analysis through an industry survey, which the RPC believes is sufficient in this case.</p>
<p>RPC-4269- FCA-Extending selected MiFID II provisions to Occupational Pension Scheme (OPS) firms</p> <p>Implementation date: 2<sup>nd</sup> April 2018</p>	<p>Covered in the FCA's other submissions, outlined here MiFID II, sets out rules relating to research and inducement (see, RPC-4262), best execution (see, RPC-4264) and taping (see, RPC-4263). The changes presented here extend these requirements to occupational pension scheme (OPS) firms.</p>	<p>The FCA states that there are 16 OPSs in the UK that will be directly impacted from the proposed changes. The assessment accepts that third party firms that supply best execution and research services to OPS firms will incur some costs from extending separate pricing of their services. However, it is argued that these third-party firms already apply separate pricing plans to other institutions already under the MiFID rules and, therefore, the costs will be negligible by extending these to OPSs. The FCA estimates:      one-off costs of between £224,000 and £392,000 and ongoing costs of</p>	<p>The FCA has provided a detailed breakdown of the impacts. The RPC believes the level of analysis provided is fit for purpose.</p>



		<p>between £66,667 and £233,333 as a result of extending the research and inducement standards to OPS firms; one-off costs of between £328,272 and £556,967 and ongoing costs of £105,000 and £245,056 as a result of extending best execution standards to OPS firms; and one-off costs of between £56,695 and £63,945 and ongoing costs of £53,795 to £61,045 as a result of extending taping requirements to OPS firms. For familiarisation and gap analysis the FCA estimates one-off costs of £100,000. The range provided by the FCA represents responses gathered from the survey, in which some OPS firms indicated that they outsourced much of this activity.</p>	
<p>RPC-4270-FCA-        Extending new        MiFID II        investment        research        provision to</p>	<p>MiFID II requires that firms producing investment research must maintain a physical separation between financial analysts and other relevant persons. The changes presented here extend the requirement to third country firms,</p>	<p>The FCA estimates that 15-20 EMPs and OMPs, 565 firms carrying out corporate finance business, and 120 third country firms will be impacted by the proposal. However, it states that this is likely to be an overestimate as</p>	<p>The FCA has provided a sufficient level of evidence for the RPC to believe that the quality of analysis for this measure is fit for</p>

<p>non-MiFID firms.</p> <p>Implementation date: 3<sup>rd</sup> January 2018</p>	<p>energy market participants (EMPs), and oil market participants (OMPs).</p>	<p>not all such firms provide investment research. It estimates one-off familiarisation and gap analysis costs of £0.1 million. For remediation costs, the regulator assumes that the requirement will have no material cost on the affected firms. It states, based on questionnaires and follow-up engagement with industry, that the new regulation will not require any changes to current practices. All the estimates provided are supported by evidence from the consultation process and from industry surveys.</p>	<p>purpose. The RPC is pleased to see the comprehensive approach taken by the FCA, drawing on a number of sources, including consultation with industry.</p>
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**Regulator Assessment**

Classification	Qualifying regulatory provision (IN)
<p>Equivalent annual net direct cost to business</p>	<p>£0.5 million – (RPC-4261)            £3.8 million – (RPC-4262)            £4.3 million – (RPC-4263)            £1.1 million – (RPC-4264)            £1.0 million – (RPC-4265)            £0.0 million – (RPC-4267)            £0.2 million – (RPC-4268)            £0.5 million – (RPC-4269)</p>

	£0.0 million – (RPC-4270)  Combined - £11.4 million
Business net present value	£-4.6 million – (RPC-4261) £-33.1 million – (RPC-4262) £-37.4 million – (RPC-4263) £-9.7 million – (RPC-4264) £-8.6 million – (RPC-4265) £-0.3 million – (RPC-4267) £-1.5 million – (RPC-4268) £-4.0 million – (RPC-4269) £-0.1 million – (RPC-4270)  Combined - £-99.3 million

### RPC Assessment

Classification	Qualifying regulatory provision (IN)
Combined equivalent annual net direct cost to business – RPC Validated <sup>1</sup>	£11.4 million

<sup>1</sup> For reporting purposes, the RPC validates EANDCB and BIT score figures to the nearest £100,000.

Opinion: EANDCB validation  
Origin: domestic  
RPC reference number: RPC - 4261/4262/4263/4264/4265/4267/4268/4269/4270 - FCA  
Date of implementation: see table

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Business Impact Target (BIT) Score <sup>1</sup>	To be confirmed
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**Regulatory Policy Committee**