

MiFID and Investment Companies

The AITC has received a number of queries from Members, fund management groups and their advisers as to whether the implementation of the Markets in Financial Instruments Directive (MiFID) will affect the regulatory position of investment companies.

Following an analysis of the legislation, and discussions with the Treasury and the AITC's Technical Committee, the AITC can confirm:

- 1) That investment companies are not within the scope of the Directive itself as collective investment undertakings are exempted. Although MiFID does not contain a definition of collective investment undertakings, definitions of this term in other EU Directives (such as the Prospectus Directive) indicate that the definition would include closed-ended investment companies such as investment trusts and Venture Capital Trusts. The FSA has also confirmed, in draft guidance (see CP 06/09 and the draft CAD / MiFID perimeter guidance - http://www.fsa.gov.uk/pubs/cp/cp06_09.pdf - the answer to Q32 on page 236), that they consider that investment trusts are collective investment undertakings for this purpose.
- 2) The Treasury will be implementing MiFID primarily by amending the Regulated Activities Order (RAO), which defines what constitutes regulated activities for the purposes of the Financial Services and Markets Act 2000. Although it is not the intention of the Treasury to incorporate a specific exemption for collective investment undertakings into the amended RAO, it has stated that it is not its intention to extend the scope of FSA regulation where investment companies are concerned.
- 3) Under the existing RAO, regulated activities are defined in such a way that, other than in exceptional circumstances, the activities carried out by an investment company would be outside the scope of regulated activities. Having examined the changes proposed to the RAO to implement MiFID, the AITC can confirm that, where an investment company's activities are outside the scope of regulated activities as defined by the existing RAO (which we would expect to be the case for all our Members), the implementation of MiFID will not affect this position. The AITC will, of course, continue to monitor the progress of the amendments to the RAO to ensure that this remains the case.

However, it should be emphasised that, whilst it is highly unlikely to arise in practice, there is nothing in the amended RAO which would specifically prevent an investment company from engaging in regulated activities (as is the case with the existing RAO). Members therefore will need to continue to ensure that all future activities they conduct are outside the scope of regulated activities as defined by the RAO and take advice as necessary.

In reaching these conclusions, the AITC has undertaken an extensive review of both MiFID and the existing and amended RAO. If you have any questions, the AITC would be happy to discuss any of the issues raised above in more detail.

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