The European Financial Services Sector
regulatory landscape for 2016

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By: Michael McKee

In a short article it is not possible to be totally comprehensive about everything that the regulators are focused on, and which might affect you, in the year ahead but here are some of the bigger issues of which to be mindful.

European law and regulation

The Market Abuse Directive 2 (MAD 2) and the Market Abuse Regulation (MAR) will mostly come into force during 2016. The majority of the provisions in this legislation will come into force on 3 July 2016. MAR and MAD 2 extend the scope of the regime and will cover all financial instruments which will be within scope of MIFID 2. However, as MIFID 2 will not be in force until, probably, January 2018 the implementation of MAR and MAD 2 will, in the first instance, ensure that the regime extends to all financial instruments currently within the scope of MIFID as currently in force. The new regime impacts a range of firms but commodity firms in particular should consider it because of changes that will bring more commodity instruments within scope. Anyone trading financial instruments in EU financial markets should ensure that they are compliant. One consequence of the new law is that the UK’s Code of Market Conduct is likely to become guidance and lose its binding legal status.

The Fourth Money Laundering Directive (4MLD) was published on 26th June 2015 in the EU Official Journal and EU countries have two years to implement it. This means that firms need to start thinking about it during 2016. 4MLD increases the emphasis on risk based approaches introduced by 3 MLD which means, among other things that its scope has been extended beyond financial institutions and casinos to extend customer due diligence (CDD) requirements to gambling businesses generally and high value goods traders. Another change of scope is to include tax crimes as crimes that comes within the scope of 4MLD.

There is also a general emphasis on tighter CDD with greater emphasis on enhanced due diligence (EDD) which means it will be less easier to rely on simplified due diligence than currently.

Payment Services Directive 2 (PSD2) will come into force during 2017 but 2016 is the year when firms need to begin their implementation programmes. It will have a particularly big impact on banks and payment institutions undertaking international payments between the EU and other countries and in non-EU currencies. There is a major extension of the scope of the current PSD by applying PSD 2 to all transactions in any currency where the payments are within the EU - currently PSD only applies to transactions in EU currencies. Another major extension is that the PSD will apply to “one leg in” transactions i.e. where the bank or payment institution is located in the EU then if it makes or receives a payment to or from anywhere else in the world the EU side of the payment must conform to PSD 2 requirements.

The Markets in Financial Instruments Directive 2 (MIFID 2) and the Markets in Financial Instruments Regulation (MIFiR) were to have been implemented on 3 January 2017 but the European Commission has recently proposed...
that this should be delayed until 3 January 2018. While this may seem an opportunity for firms to take their foot off the pedal in 2016 this is not the case. The reason for the delay is the fact that widespread changes to European market infrastructure will need to be made by trading platforms and investment firms and these will have knock on effects on investors and the “buy side” generally. Consequently during 2016 firms need to begin to think hard about the sort of technology changes that are likely to be required and also closely follow the development of EU secondary level legislation such as the delegated acts which the Commission will publish in the first half of 2016.

While much of the European Market Infrastructure Regulation is already in force 2016 sees the beginning of the new central clearing obligations for derivatives and associated margin and collateral requirements. In particular for the largest financial institutions (Category 1 institutions) the clearing obligation will take effect for Category 1 counterparties on 21 June 2016. The clearing obligation for Category 2 institutions comes into force on 21 December 2016. So for institutions in both categories a considerable amount of implementation work needs to be undertaken between now and those dates.

AUTHORS

Michael McKee
Partner
London | T: +44 (0)20 7349 0296
michael.mckee@dlapiper.com