



July 2017

## FCA's MiFID II Policy Statement confirms investment funds are not automatically complex

The FCA has published its second policy statement on the implementation of MiFID II ([PS 17/14](#)). This contains the final positions reached by the FCA on all of the proposals from its first five MiFID II consultation papers which were not already addressed in the first policy statement (PS 17/5) back in April 2017.

One particularly welcome statement made by the FCA in the policy statement (and reflecting what was said in its previous consultation paper CP [CP16/29](#)) is the confirmation that shares in collective investment undertakings (other than UCITS funds) are neither automatically non-complex nor automatically complex. Instead, such investment companies will be considered against specific criteria set out in MiFID II and the relevant delegated legislation. Applying these criteria, the vast majority of listed investment company shares would be expected to be deemed non-complex thus allowing brokers/platforms to sell investment company shares on an execution only basis (i.e. without carrying out an appropriateness assessment).

Whilst this reflects the current position under MiFID, as MiFID II narrows the scope of products deemed automatically non-complex, the appropriateness test will be carried out in relation to a wider range of products and the concern has been that the position vis-a-vis investment companies would change. The FCA has, however, maintained its current stance notwithstanding the [MiFID II \(Investor Protection\) Q&A](#) updated by the European Securities and Markets Authority ("ESMA") on 6 June, which states that shares in non-UCITS collective investment undertakings are complex *per se* (and in respect of which we published this [bulletin](#)).

Our headline briefing covering other aspects of the FCA's policy statement is [available here](#). The policy statement is a lengthy document with over 900 pages of technical rules. Firms will need to spend considerable time analysing the final rules in due course and updating their implementation plans.

### FOR FURTHER INFORMATION, PLEASE CONTACT

10 Snow Hill  
London EC1A 2AL  
T: +44 (0)20 7295 3000  
F: +44 (0)20 7295 3500  
[www.traverssmith.com](http://www.traverssmith.com)



#### Aaron Stocks

Partner

E: [aaron.stocks@traverssmith.com](mailto:aaron.stocks@traverssmith.com)  
T: +44 (0)20 7295 3319



#### Will Normand

Partner

E: [will.normand@traverssmith.com](mailto:will.normand@traverssmith.com)  
T: +44 (0)20 7295 3169