



MIFID II

MiFID Strikes back



IMPORTANT: Please read for information relating to MiFID II

The Markets in Financial Instruments Directive (“MiFID”) was a European Directive that was introduced across Europe in November 2007. MiFID II (or son of MiFID) is an update and expansion of the original Directive and due to take effect on 3rd January 2017. Last month, the proposed regulations were passed from ESMA, the European regulator, to the European Commission for their consideration. Once reviewed, the Commission will pass the Directive to the European Parliament for ratification. European states will transpose MiFID II into national laws by the summer of 2016 and it will come into force on 3rd January 2017.

Who is “caught”

Essentially those firms that are in the BiPRU prudential category will be fall within this directive. This equates to most asset managers that have the ability to take on managed accounts, including Alternative Investment Fund Managers who carry on these additional MiFID activities, brokers and most advisor/arranger firms. At this stage, those managers that only manage AIFs should not be impacted, however we are waiting to see if the FCA will look to gold plate the Directive and apply the regulations to those firms who are currently under the AIFMD.

Themes

The main themes of MiFID II revolve around market transparency, there is more of a focus on the markets themselves, a question over whether some professional customers need protecting, more record keeping and astonishingly and completely unexpectedly more reporting of information to the regulator!

Key issues and potential significant changes

It should noted that until the regulations are passed mid next year, the content of MiFID II can change and we could also see the FCA put particular emphasis on certain areas and less on others. Indeed the governments of UK, France and Germany have been lobbying against the changes to dealing commissions and sent two joint letters to the EU although we don't expect this to be successful at this point.

Although we don't know what exemptions there may be that will be given for certain types of MiFID firms, we have a good idea from the current iteration of the Directive of what the key changes will be and the impact on our clients. Just to note, firms may be impacted by some or all of the points below but it will depend on the business you undertake and the list below does not include all potential changes but rather the key ones we have identified.

- Telephone recording – current exemptions are falling away and all firms must record “relevant conversations” which are conversations which result in a client transaction.
- Transaction reporting – The current number of reporting fields for a transaction will rise from 23 fields to 65. If you are relying on the broker to report the transactions for you then you will now have to have a specific signed agreement with the broker covering both party's responsibilities but the investment manager will still be responsible for the accuracy of the submitted data.

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- Dealing commissions – all dealing commissions must be “fully unbundled” with managers choosing between either a) paying for the research themselves or b) agreeing with each client a separate research payment account (“RPA”). At this stage we are yet to see details of how a RPA will work in practice.
- Best execution – firms will need to consider total costs associated with executing a trade and, significantly, will need to publish the top five execution venues by trading volume of the total executed orders. This may cause some interesting discussions between the manager and their prime brokers!!
- Reporting to clients – frequency that managers must report to their clients will drop from 6 monthly to quarterly with certain new information included.
- Disclosure requirements – managers will need to show overall costs to a client and additionally disclose all costs such as costs for research, custody, transaction fee, management and performance fees and incidental costs.
- OTC derivatives – OTC derivatives that are “sufficiently liquid” will be required to be traded on a regulated traded venue.
- Product governance – managers will need to carry out a product scenario analysis that includes considering the risk of poor investor outcomes. The manager will need to ensure that the product is designed to meet the needs of the identified target market and the distribution strategy is compatible with the target market with distributors being sent appropriate information.
- Customer protection – professional customers must have written agreements; increased complaint handling requirements for complaints from professional customers.
- Governing body – they will be new requirements for the composition, qualifications and responsibilities of a firm’s management body.
- Algorithmic traders – if you trade with a computer algorithm automatically without human intervention then you will need to keep and report additional information to the FCA. Additionally, there are with new organisational requirements.

Summary

Newgate will work with its clients to ensure that they are fully prepared for MiFID II. We can perform a gap analysis for customers to see the areas you will need to work on. We will keep firms up to date with developments as the date for implementation comes nearer. If you have any questions, please don’t hesitate to call us on our office number of 020 3696 8750.

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