

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Circular addressed to Investment Firms and Market Operators regarding MiFID II and MiFIR - Industry Update – MiFID II / MiFIR

On 23rd April 2014, the European Parliament adopted updated rules for MiFID II. The Directive and the Regulation are expected to enter into force in June 2014.

Background

The new rules will be set as two pieces of legislation: [i] a directly applicable regulation (MiFIR) dealing inter alia with transparency and access to trading venues and [ii] a directive (MiFID II) governing authorisation and organisation of trading venues and investor protection.

[i] The Directive (MiFID II) amends specific requirements regarding the provision of investment services, the scope of exemptions from the current Directive (MiFID I), requirements for investment firms on their organisation and the conduct of their business, organisational requirements for trading venues, powers available to competent authorities, sanctions and rules applicable for third party firms.

[ii] The Regulation (MiFIR) sets out requirements in relation to the disclosure of trade transparency data to the public and transaction data to competent authorities, the authorisation and ongoing obligations applicable to providers of data services, the mandatory trading of derivatives on organised venues, and specific supervisory actions regarding financial instruments and positions in derivatives.

Applicability

The new rules will apply to investment firms; market operators and services providing post-trade transparency information in the EU.

Key elements of the new legislation:

The key elements of the legislation are as follows:

1. MiFID II introduces a market structure framework which closes loopholes and ensures that trading, wherever appropriate, takes place on regulated platforms. To this end, it subjects shares and non-equity instruments to a trading obligation. It further ensures that investment firms operating an internal matching system which executes client orders in shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments on a multilateral basis have to be authorised as a Multilateral trading facility (MTF). It also introduces a new multilateral trading venue, the Organised Trading Facility (OTF), for non-equity instruments to trade on organised multilateral trading platforms;
2. MiFID II increases equity market transparency and for the first time establishes a principle of transparency for non-equity instruments such as bonds and derivatives. MiFID II also broadens the pre- and post-trade transparency regime to include non-equity instruments, although in view of the specificities of non-equity instruments, pre-trade transparency waivers are available for large orders, request for quote and voice trading. Post trade transparency is provided for all financial instruments with the possibility of deferred publication or volume masking as appropriate;
3. To meet the G20 commitments, MiFID II provides for strengthened supervisory powers and a harmonised position-limits regime for commodity derivatives to improve transparency, support orderly pricing and prevent market abuse. Under this system competent authorities will impose limits on positions in accordance with a methodology for calculation set by the European Securities and Markets Authority (ESMA). It also introduces a position-reporting obligation by category of trader. This will help regulators and market participants to have better information on the functioning of these markets;
4. A new framework will improve conditions for competition in the trading and clearing of financial instruments. This is essential for the integration of efficient and safe EU capital markets. For this purpose, MiFID II establishes a harmonised EU regime for non-discriminatory access to trading venues and central counterparties (CCPs). Smaller trading venues and newly established CCPs will benefit from optional transition periods. The non-discriminatory access regime will also apply to benchmarks for trading and clearing purposes. Transitional rules will ensure the smooth application of these provisions;
5. MiFID II will introduce trading controls for algorithmic trading activities which have dramatically increased the speed of trading and can cause systemic risks. These safeguards include the requirement for all algorithmic traders to be properly regulated and to provide liquidity when pursuing a market-making strategy. In addition, investment firms which provide direct electronic access to a trading venue will be required to have in place systems and risk controls

to prevent trading that may contribute to a disorderly market or involve market abuse;

6. Stronger investor protection is achieved by introducing better organisational requirements, such as client asset protection or product governance, which also strengthen the role of management bodies. The new regime also provides for strengthened conduct rules such as an extended scope for the appropriateness tests and reinforced information to clients. Independent advice is clearly distinguished from non-independent advice and limitations are imposed on the receipt of commissions (inducements). MiFID II also introduces harmonised powers and conditions for ESMA to prohibit or restrict the marketing and distribution of certain financial instruments in well-defined circumstances and similar powers for the European Banking Authority (EBA) in the case of structured deposits;
7. The agreement strengthens the existing regime to ensure effective and harmonised administrative sanctions. The use of criminal sanctions is framed so as to ensure the cooperation between authorities and the transparency of sanctions. A harmonised system of strengthened cooperation will improve the effective detection of breaches of MIFID;
8. A harmonised regime for granting access to EU markets for firms from third countries is based on an equivalence assessment of third-country jurisdictions by the Commission. The regime applies only to the cross-border provision of investment services and activities provided to professional and eligible counterparties. For a transitional period of three years and pending equivalence decisions by the Commission, national third-country regimes continue to apply;

Following the vote in plenary, MiFID II must be formally adopted by the Council. The publication of the new rules in the Official Journal of the European Union is foreseen for the second quarter of 2014 with entry into application 30 months later. The MFSA will keep the industry updated on any further developments. FAQs on MiFID II can be accessed from the following link: [http://europa.eu/rapid/press-release MEMO-14-305 en.htm](http://europa.eu/rapid/press-release_MEMO-14-305_en.htm)

Contacts

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