Welcome to the MiFID II Masterclass Series

September 2016
MiFID II Implementation

Michael Hodson, Head of Investment Firms and Funds Division
8 September 2016
‘Decision to delay illustrates to the complexity of the changes ahead’

Transposition Deadline: 3 July 2017

Implementation Deadline: 3 January 2018
What’s New?

- Organised Trading Facility
- Structured Deposits
- New Trading and Reporting Requirements
- Organisational Requirements
- Product Intervention Powers
- Stricter Algorithmic and High Frequency Trading Rules
- Enhanced Conduct of Business and Investor Protection Rules
- Increased Supervisory and Enforcement Powers
Supervisory Powers

- Commodity Derivative Restrictions
- Request reduction in position/exposure size
- Require data traffic records
- Suspend the marketing/sale of financial instruments or structured deposits
Enforcement Powers

- Apply to both Natural and Legal Persons
- Augmented powers under the Administrative Sanctions Procedure
- Power to issue public statements in respect of breaches
- Withdrawal or suspension of authorisation
- Bans on members of the management body
32 new reporting requirements

CBI will notify ESMA of:

- Suspension or removal of financial instruments from a regulated market
- MTF/OTF infringing rules, carrying out disorderly trading or market abuse behaviour
- Firms reaching Systematic Internaliser threshold
- Imposition of Sanctions
MiFIR Art 39 – CBI will monitor the market for financial instruments which are sold in or from the Member State

General mandate – no guidance forthcoming from ESMA

Flexibility to conduct proportionate product monitoring

Power to prohibit/restrict the sale of products where serious concerns are raised.
Implementation Project – 50 staff across 8 divisions

Reviewed:

- MiFID II
- MiFIR (149 Articles)
- 42 RTS & ITS
- Production and Review of ESMA Guidelines

Ongoing engagement with Department of Finance regarding Transposing Regulations

Developments communicated through the Markets Update
Industry Engagement

- Ongoing Supervisory Engagement
- Transaction Reporting Roadshow
- Workshops on new authorisation types
- Working groups on areas of common concern
- Markets Update
What’s next?
MiFID II should be a key priority for every firm
Think how the changes will impact your firm
MiFID II - More than a compliance exercise
Deadline – 3 January 2018
Thank you
Questions?
MiFID II – Masterclass Series Session 1
8 September 2016

Joe Beashel
MiFID II

- Implementation delayed to **Wednesday 3 January 2018**
- Irish regulations required in July 2017
- Re-states old rules – makes changes to these and also has completely new provisions
- Every MiFID related process and procedure needs to be reviewed to ascertain whether even a small change is required
- Very many changes will require IT system changes
Regulatory Timeline
MiFID II is expected to apply within EU member states on January 3, 2017

- **2014**
  - **Regulatory framework**
  - Transposition period
  - July 2, 2014: MiFID II entry into force

- **2015**
  - **Delegated acts**
  - December 19, 2014: Publication of ESMA Final Technical Advice

- **2016**
  - **RTS**
    - Commission publishes Delegated Regulation
  - **ITS**
    - Commission publishes Implementing Regulation
  - **Regulatory framework**
    - National transposition

- **2017**
  - January 3, 2018: MiFID II applicable

- **2018**
  - **Delegated acts**
  - Guidelines on knowledge & competence
  - Guidelines on cross-selling
  - Guidelines on transaction reporting, reference data, order record keeping & clock synchronisation

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1) RTS = Regulatory Technical Standards; 2) ITS = Implementing Technical Standards; 2) publication expected by the end of Q1 2016
MiFID II Themes

MiFID 2 thematic areas...

- Trading & execution
- Market access & corporate governance
- Advisory process
- Offering & inducements
- Product governance

... and key topics covered

- Market access
- Corporate governance
- Safeguarding of client assets
- Phone recording
- (non-) independent advice
- Inducement transparency/reporting
- Remuneration
- Bundles of services/products
- Product approval & monitoring process
- Target market
- Product documentation
- Distribution governance
- Client classification & profiling
- Client information
- Suitability & appropriateness
- Client reporting
- Advisory minutes
- Market structures
- Best execution
- Algo- and high frequency trading
- Commodity derivatives
- Transaction reporting & recording

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Implementation Challenge

- A complex mix of hard rules and more general obligations

MiFID - Adequate – 48 times, Sufficient – 58 times, Reasonable 32 - times, Timely 7 - times, Proportionate/Disproportionate – 18 times

MiFIR - Adequate – 9 times, Sufficient – 14 times, Reasonable 23 - times, Timely 4 - times, Proportionate/Disproportionate – 11 times

- These concepts are often not well defined

- As with MiFID I Irish regulations will follow EU measures very closely
Implementation – Dept of Finance Consultation

- Deadline for replies is 21 September (Wednesday)
- Overlap with Insurance Distribution Directive
- Exemption for firms “otherwise regulated”
  - Covers IIA firms which do not hold client money and offer more limited services and instruments than a full MiFID firm. Must be subject to “analogous requirements” to MiFID II
  - Some MiFID II requirements are not covered – roles and responsibility of management body – rules on independent advisers accepting fees – recording calls and rules on appointment of tied agents
“Otherwise Regulated” Exemption

- Exemption will be retained but request for details on which rules need to be amended to ensure “analogous” treatment.
- This will have quite a significant impact in the domestic non-MiFID investment community.
- In the same category there is a new exemption for firms which provide hedging for clients that are electricity and/or gas undertakings or operators of emissions trading – “Strongly minded not to exercise this discretion”
Investor Compensation Scheme

- There is a discretion to allow firms to take out PI Cover instead of contributing to Investor Compensation Scheme.
- Proposal is to retain current rule that all investment firms must contribute to investor compensation scheme.
Discretion to Add Extra Conduct Rules

- MiFID discretion to impose additional conduct of business requirements where “objectively justified” “proportionate” and “to address specific risks to investor protection” – can cover remuneration for investment advice and portfolio management
- Insurance Distribution Directive (IDD) allows limitation or prohibition on fees or other benefits in relation to insurance distribution. Also prohibit or restrict fees for insurance advice
- Broadly similar provisions though not identical
Discretion to Add Extra Conduct Rules

- Question asked: “…do you consider that there should be level playing field rules in relation to the distribution of, and advice on, functionally equivalent retail investment products?

- Unlike MiFID under IDD:
  - No ban for independent advisers to receive inducements
  - No set requirements about universe of investments which are needed to qualify as independent
  - No “service quality enhancement test” which is a pre-condition in the context of conflict of interest rules as they affect remuneration and non-monetary benefits.
Discretion to Add Extra Conduct Rules

- 2 approaches suggested:
  - Not exercise the discretion now but delegate power to the Central Bank to issue regulations or
  - Request the Central Bank to conduct a detailed assessment in advance of any decision on whether or how to exercise the national discretions. Such an assessment to use the following criteria
    - The development of EU legislation and factors that gave rise to recent changes
    - The experience of other Member States that have made changes beyond EU law
Discretion to Add New Conduct Rules

- Whether current remuneration arrangements best address barriers which discourage retail investors from seeking advice
- The desirability of level playing field rules for financial advice for functionally equivalent products and different types of adviser
- The delineation between financial advice and guidance
- Wider trends in relation to non-advisory sales
- Opportunities and challenges from new technology for advice
- Other issues the CBI considers relevant
Client Order Handling

- Article 28(2) – for a client limit order for shares…not immediately executed under prevailing market conditions, firms are required, unless the client expressly instructs otherwise, to take measures to facilitate the earliest possible execution of that order by making it public…Member States may decide that investment firms comply with that obligation by transmitting that client limit order to a trading venue…”
- This reflects the current arrangement and the intention is to continue this practice
Third Country Firms

- MiFID allows (but does not require) Member States to require a third country firm intending to provide MiFID services / activities to retail or elective professional clients to establish a branch.

- Questions asked are what are the investor protection concerns if there was no branch requirement and how have other Member States dealt with this where they do not propose to require a branch locally.

- Branches of third country firms which are located here will be subject to MiFID II.
Other Discretions

- Higher fees for cancelled orders – yes will be included
- Who will be competent authority – CBI (obviously!)
- Criminal Sanctions – these to be extended
- Admin Sanctions – proposal to increase these to match those provided for under general admin sanction regime
Senior Management Responsibility

- Delegated Regulation C(2016)(2398) organisational requirements
- Article 25 – senior management and board must ensure compliance with MiFID by periodic review
- “The allocation of significant functions among senior managers shall clearly establish who is responsible for overseeing and maintaining the firm’s [MiFID] organisational requirements”
- Regular reports (compliance, risk, internal audit) to include “whether … remedial measures have been taken…”
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Q&A