

MiFID II marathon – another milestone is reached!

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In brief

The European Commission (EC) has reached another milestone in the MiFID II marathon by issuing further Level 2 measures on 25 April 2016. The EC is thereby setting the framework applicable to investment firms for organisational requirements and operating conditions related to client protection. As expected, the rules are largely based on the ESMA's Technical Advice (ESMA TA). However, as you'll read further on, there are some significant differences.

In detail

The recently published **MiFID II Delegated Regulation (MiFID II DR)** is not a carbon copy of the ESMA TA published in December 2014. However, the changes made by the EC confirm the potential far-reaching impacts of MiFID II on the business models of most market participants.

The main differences are:

Independent investment advice

The MiFID II DR has **modified the communication on the independent investment advice**, slightly increasing the level of detail required: independent advisors now actually have to comment on the factors taken into consideration in the selection process, such as costs, risks and complexity.

In addition, the MiFID II DR **doesn't provide the awaited clarifications on terms such as "adequately representative" or "proportionate to the scope"**, which are part of obligations for the selection process. Clarification will be provided in the future by EC or ESMA.

Suitability assessment

Based on the MiFID II DR, investment firms now have to **define a process to identify the representative account holder (contacting party/-ies)** for legal persons or joint accounts. As such, firms may no longer rely on a work-around solution, as the ESMA TA has initially suggested.

With regard to the reliability of information provided by clients, firms are no longer required to "undertake valid and reliable assessments of their clients' knowledge and experience and risk they are willing to take".

Reporting to clients

The MiFID II DR includes further detail to the **required content to disclose towards clients according to the type of investment services provided** (e.g. execution only, investment advice and discretionary portfolio management).

Information to clients

Generally, investment firms need to give clients, in a durable medium, information on financial instruments or costs and charges before providing the investment service (e.g. execution of orders). **Based on MiFID II DR, the existing exception within MiFID I permitting a delayed delivery of such information in case of distance communication (e.g. telephone) is no longer applicable.**

The illustration of the cumulative effect of costs on investment returns needs to be provided ex-ante as well as ex-post - and no longer only ex-ante, as suggested by the ESMA TA.

Algorithmic trading

The definition of algorithmic trading has been clarified to encompass any automated system, which makes decisions at any stage of the transaction process (i.e. initiating, generating, routing or executing orders or quotes) according to pre-determined parameters. Hence, **more trading systems will become subject to the specific algorithmic trading requirements.**

Systematic internaliser

When an investment firm qualifies as systematic internaliser for a bond or a structured product, that investment firm will now qualify as systemic internaliser for all bonds or structured products, respectively, issued by the same entity or group.

Commodities

The **definition on commodities has been clarified to include precious metals** (e.g. gold). Hence, derivatives related to precious metals will be subject to the commodity-related MiFID II obligations.

Currency derivatives

For the first time, the EC mentions that, for major currencies, a **FX spot transaction is a transaction with a settlement date of t+2**. This definition will be the basis for determining which FX transaction is subject to MiFID II and which is not (as spot transactions are not in scope of MiFID).

What's next? Stay Tuned!

Both the MiFID II DR and the Delegated Directive issued by the EC on 7 April 2016 have been submitted to the European Parliament and the Council and **will enter into force, if no objection is expressed within 3 months, in July 2016.**

Additionally, further Regulatory and Implementing Technical Standards (ITS and RTS) are to be finalised and will be the subject of future delegated or implementing regulations. The content of some of the RTS has been very contentious (e.g. transparency parameters for non-equity instruments).

How we can help

PwC can support you in assessing the impacts of MiFID II/MiFIR on your business and identifying the gaps. Our team of qualified professionals can also directly support or enhance your efforts to implement these requirements.

PwC will keep you informed of any updates regarding the MiFID II/MiFIR timeline.

Let's talk

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