

Flash News

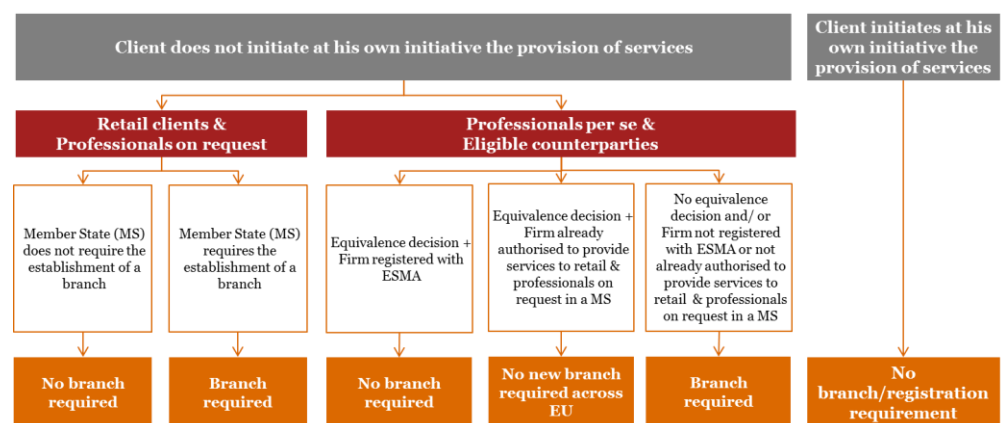
Access to European Union: the final MiFID II/MiFIR draft technical standard for third country firms released

10 July 2015

MiFID II and MiFIR set out a new framework for granting third country firms that provide investment services and activities access to the European Union (EU). On 29 June 2015, ESMA published a final report on the draft Regulatory Technical Standard (RTS) to specify what information third country firms intending to provide services to professional clients and eligible counterparties within the EU will have to communicate to ESMA in their application for registration.

New MiFID II and MiFIR framework on third country firms

MiFID II and MiFIR create a new framework for granting third country firms (firms outside the EU) access to the EU to provide investment services and activities.



This framework, applicable as of 3 January 2017, is based on a differentiated approach, depending on the type of clients the third-country firm expects to serve:

- The provision of services to retail clients and professionals on request might require the firm to establish a branch in each EU country where it wishes to operate. Bilateral agreements between EU member states and third countries will continue at the discretion of each Member State.
- The provision of services to professional clients per se and eligible counterparties does not require the firm to establish a branch, provided that the European Commission issues an equivalence decision on the legal and supervisory framework of the third country and that the firm registers with ESMA.

If the Commission has already issued an equivalence decision for the country where the firm intending to provide services to professional clients per se and eligible counterparties is established and if the firm is already authorised to provide the same services and activities to retail clients and professionals on request in a Member State, then establishing a new branch is not compulsory.

When an EU-based client requests, at his own exclusive initiative, the provision of an investment service or activity by the third country firm, then the latter is neither required to establish a branch, nor to register with ESMA.

MiFID II definitions

Professional clients: clients who “possess the experience, knowledge and expertise to make [their] own investment decisions and properly assess the risk that [they] incur”.

Professionals per se: Regulated or authorised entities, large undertakings (meeting 2 of the following 3 criteria: balance sheet total \geq EUR 20 M, Net turnover \geq EUR 40 M, Own funds \geq EUR 2 M), national and regional governments including public bodies that manage public debt, central banks, international and supranational institutions, other institutional investors whose main activity is to invest in financial instruments including entities dedicated to the securitisation of assets or other financing transactions.

Professionals on request: Clients other than professionals per se, including public sector bodies, local public authorities, municipalities and private individual investors, who waive some of the protections afforded by the conduct of business rules.

Eligible counterparties: Investment firms, credit institutions, insurance companies, UCITS and their management companies, pension funds and their management, other authorised or regulated financial institutions, national governments and their corresponding offices including public bodies that deal with public debt, central banks and supranational organisations.

Information necessary for the registration with ESMA

The final draft RTS details what information a third country firm intending to provide services to professional clients per se and eligible counterparties will have to provide to ESMA, when submitting its application for registration. The firms will have to give information on the investment services, activities and ancillary services it intends to provide in the EU, but also on those it is authorised to provide in their country of origin. The latter will have to be proved through a declaration issued by the competent institution in the third country.

Third country firms will have to provide the information and any other accompanying documents in English. If the accompanying documents have been written in a different language, they will have to provide a certified translation into English.

How we can help

PwC can support you in dealing with the impacts of MiFID II and MiFIR. We can help your teams better understand the new requirements to gain access to the EU market. Our qualified professionals can also directly support or strengthen your teams in the compliance with these requirements.

For more information, please contact:

Olivier Carré	MiFID II Leader	+352 49 48 48 4174	olivier.carre@lu.pwc.com
Emmanuelle Caruel-Henniaux	Regulatory Banking Leader	+352 49 48 48 2111	emmanuelle.henniaux@lu.pwc.com
Cécile Liégeois	Regulatory & Compliance Advisory Partner	+352 49 48 48 2245	cecile.liegeois@lu.pwc.com
Jörg Ackermann	Financial Services Consulting Partner	+352 49 48 48 4131	jorg.ackermann@lu.pwc.com
Lionel Nicolas	Financial Services Consulting Partner	+352 49 48 48 4172	lionel.nicolas@lu.pwc.com

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