

# Flash News

## Review of MiFID Directive

On 20 October, the European Commission published its review of MiFID which consists of an amended Level 1 Directive (2004/39/EC) and of a new Regulation (MiFIR). The changes are far reaching and quite controversial in their impact. With approximately one year of negotiations for the Level 1 text within the EU Parliament and the Council and with two years' transposition (of the Directive), MiFID will probably come into play at the beginning of 2015. As for level 2 measures, they will be developed during 2013/2014.

26 October 2011

### Impact on markets & trading

An important part of the reform purposes to improve the transparency (pre and post trade requirements), the robustness and the efficiency of market structures which have evolved significantly in recent years, (new trading venues, technological developments – algorithmic trading). The 2008 financial crisis gave added impetus to those calling for increased transparency of less regulated markets, (OTC derivatives markets), for which additional and cumbersome transaction and trade reporting requirements would now be implemented. These changes are connected with developments in the United States (Dodd Frank) and with other initiatives, for example the new European Market Infrastructure Regulation (EMIR) and the review of the Market Abuse Directive.

Financial services firms should now begin key strategic and operational planning and decision-making to anticipate increased costs on their products and operations and to capture advantages in an increasingly competitive environment.

### Impact on investor servicing firms & fund distribution

Although the EU Commission has been delegated to complete some of the proposed strengthening of investor protection rules, the draft Directive contains important changes to the MiFID firms providing advice and portfolio management services. The draft Directive also impacts the distribution of investment funds.

The first key change is the introduction the concept of "structured UCITS" as a complex investment product that could not be freely sold to retail investors but would require the distributor to assess the appropriateness of this new category of investment. Secondly, investment advisers will have to tell to investors what the extent of the investment advice provided is and whether it is independent or restricted. Lastly there would be a prohibition on independent advisers and portfolio managers from making or receiving third party payments in relation with these services.

As a result, product manufacturers and their distribution network will have to discuss how to manage the remuneration of the distribution chain, the nature and quality, together with the pricing of the services rendered to investors as well as the design of product information and reporting operating models. Although there are some differences, all these new provisions may indirectly produce comparable effects as those looked for in the UK with the Retail Distribution Review.

Luxembourg as an investment management and private banking market will be impacted and must anticipate the changes.

Investment services	Protection rules	Prior information to investors		Reporting to investors	Inducements
<b>Discretionary portfolio management</b>	Suitability test – No change	No change		▶ Periodic reporting on complex product	<b>PROHIBITED</b>
<b>Independent advice</b>		Inform if advice is independent & supported by a <b>broad market analysis</b> (documentation)	Inform if <b>continued assessment of suitability</b> is made	▶ <b>Report on suitability assessment</b> ▶ Periodic reporting on complex product	<b>PROHIBITED</b>
<b>Restricted advice</b>		Inform if advice is not independent based on restricted market analysis		▶ Periodic reporting on complex product	No change
<b>Execution, Reception and transmission of orders</b>	Appropriateness test - <b>Needed for structured UCITS</b> and structured products	No change		▶ Periodic reporting on complex product	No change

## How can we help?

PwC can support you to determine the impact of MiFID II on your business operations, highlight the key challenges and work with you to construct an efficient response to best position your firm in this new regulatory environment.

If you would like to know more please contact one of our regulatory experts below:

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