

MiFID II Delegated Directive published - More clarity on a complex matter!

13 April 2016

In brief

The first part of the long-awaited MiFID II Delegated Acts was at last published on 7 April 2016. The MiFID II Delegated Directive (MiFID II DD) brings most welcome clarity on some contentious investor protection issues, and confirms some key changes that firms need to accomplish in several important areas. The European Commission (EC) has opted to publish the secondary legislation in at least two tranches, a Directive with two regulations to follow (please see “What’s next?”).

In detail

The **MiFID II Delegated Directive (MiFID II DD)** does not represent a carbon copy of **ESMA’s December 2014 Technical Advice (ESMA TA)**. But in the vast majority of cases, the changes made by the European Commission are *not likely to be of material consequence* to most firms – though some will be important. Some of the **key differences** in comparison to ESMA’s Technical Advice are detailed below:

- **Inducements - Research:** EC has expanded the list of minor-non monetary benefits to include certain written material received from a third party. Importantly, amendments made through the MiFID II DD appear to relax the requirements on the operational arrangements regarding the collection of the research charge. This should open the door for Commission Sharing Agreements (CSAs), provided they are amended to meet new requirements, including increased transparency.
- **Inducements - Quality enhancement test:** EC has restated the criteria for the quality enhancement test in case of inducements, including the overarching principles of proportionality and recurrence between inducement payment and service received by the clients. This approach will trigger changes in the current set-up of distribution models, in particular for the trailer fees.
- **Product Governance - Distributor:** In contrast with ESMA’s TA, there is no explicit requirement for a distributor to enter into an agreement with a manufacturer non-subject to MiFID or its agent to comply with the duty to take all reasonable steps to obtain adequate and reliable information from the manufacturer.

In addition the MiFID II DD contains **additional information and clarifications** on matters such as scope and safe guarding of client assets.

What's next? Stay Tuned!

There are still some important pieces missing from the puzzle

First, we can expect the **Delegated Regulations**, which together with the published MiFID II DD, will form the entirety of the delegated acts (so-called Level II measures). The forthcoming Delegated Regulations focus on market topics (e.g. definition of types of derivatives; systematic internaliser determination).

Secondly, the **Regulatory Technical Standards (RTS)** are to be finalised. The content of some of the RTS has been very contentious (e.g. transparency parameters for non-equity instruments).

Once the Level 2 measures have been finalised at the EU level, local implementation by legislators and regulators will begin shortly.

How we can help

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

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

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Let's talk

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