

Markets in Financial Instruments Directive (“MiFID”)

15 Things You Need to Know

1. MiFID is being implemented in four stages or “Levels” – we are currently at the very end of Level 2 (i.e. implementing measures to flesh out the Level 1 Framework Directive through further Directives / Regulations by the EU Commission, after industry consultation).
2. MiFID is due to come into force in all Member States by 1 November 2007.
3. Home-state (as opposed to host-state) conduct of business rules will apply to investment business conducted on a cross-border basis.
4. The new client classification regime is significantly different from those currently in force throughout Europe (including the UK rules) and offers firms only limited concessions when dealing with market counterparties (e.g. firms will still be required to consider the suitability of any investment advice given to market counterparties).
5. The quantitative thresholds for becoming either a “professional client” or an “eligible counterparty” are higher than for the corresponding categories under the current UK rules (and the possibility to transfer/grandfather a pre-existing client’s classification may be limited or not available).
6. A new requirement to execute orders on terms most favourable to the client (i.e. best execution) will apply to equities markets, as well as OTC and fixed income markets for the first time.
7. Firms will need both to assess and provide “best execution” according to a series of weighted factors based on client, order and venue characteristics **and** provide/agree an execution policy with the client prior to executing any orders on its behalf.
8. Systematic internalisers will be subject to new pre-trade transparency requirement to publicise orders filled from their books that are smaller than “standard market size”.
9. Onerous and prescriptive conflict of interest management provisions will be implemented, including requirements to identify, manage and disclose conflicts of interest and maintain a conflicts of interest policy.
10. Records will need to be kept to demonstrate compliance with conduct of business requirements for five years.
11. Investment advice will be regulated under MiFID as a primary investment activity (as opposed to being an ancillary service) and will be “passportable” in its own right. Investment advice is defined broadly and may include implicit, as well as explicit, recommendations, and certain forms of sales advice.
12. Commodities will be a regulated investment product under MiFID and will be “passportable”.
13. MiFID is aimed very squarely at consumer protection and there are detailed provisions in it on a variety of retail matters – in particular in respect of client communications.
14. The FSA is currently in the process of consulting the industry on its proposed MiFID Level 3 rules. EU Member states will have to finalise their own rules by 31 January 2007 to allow the industry 9 months for implementation.
15. The MiFID lobbying process is on-going and it is important that we continue to be pro-active in consulting with the FSA vis-à-vis the implementation of its Level 3 measures.

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