

Insight: Regulatory

January 2014

MiFID II and MiFIR – one step closer

After an extended period of negotiations, the European Commission confirmed through a memorandum on 14 January 2014 that the European Parliament, the Council of the European Union and the European Commission have reached an agreement in principle on updated rules for markets in financial instruments.

In late 2011 the European Commission published its proposal to review the existing Markets in Financial Instruments Directive (2004/39/EC) ("MiFID") which provides the framework for regulating investment services in financial instruments provided by investment firms and credit institutions and trading venues (including a pre- and post-trade price transparency regime for equities). The reform package is comprised of a new Directive (referred to as MiFID II) and a directly applicable Regulation (referred to as MiFIR) (see our client alert of Nov 2011).

Whilst the finalised text is still being developed it is now much clearer what the timeline and next steps are:

1. Throughout 2014 ESMA is developing and will continue to develop the required level 2 measures.
2. The European Parliament is to consider MiFID II/ MiFIR proposals in plenary sessions scheduled for 10-13 March 2014.
3. Q3 2014 proposals come into force with an implementation period of at least 2 years.
4. Q3 2016 earliest date the new requirements will become applicable.

In its memorandum the European Commission set out the key agreements reached which include:

- (1) **Trading on regulated platforms** – the introduction of a trading obligation for shares and certain derivatives through a market structure framework which ensures that trading, wherever appropriate, takes place on regulated platforms.
- (2) **Authorisation requirements for trading platforms** – a requirement for investment firms operating certain trading platforms (which execute client orders in shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments on a multilateral basis) to seek authorisation either as a Multilateral Trading Facility (MTF), an Organised Trading Facility (OTF) or for non-equity instruments to trade on organised multilateral trading platforms.



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- (3) **New pre and post trade transparency for non-equity instruments** – increased equity market transparency and the establishment of a principle of pre- and post-trade transparency for non-equity instruments such as bonds and derivatives which are traded in one of the trading platforms mentioned in (2).
- (4) **Extended transparency regime** – extension of the current pre- and post-trade transparency regime to include non-equity instruments, that are traded in one of the trading platforms mentioned in (2), subject to transparency waivers for large orders, request for quote and voice trading.
- (5) **New reporting mechanism** – enhancing the effective consolidation and disclosure of trading data through the obligation for trading venues to make pre- and post-trade data available on a reasonable commercial basis and through the establishment of a consolidated tape mechanism for post-trade data. These rules are accompanied by the establishment of approved reporting mechanism (ARM) and authorised publication arrangement (APA) for trade reporting and publication.
- (6) **Extension of the reporting regime** – extending rules on reporting to include instruments traded in one of the trading platforms mentioned in (2) and new rules limiting positions in commodity derivatives. Competent authorities will be able to impose limits on positions in accordance with a methodology for calculation set by the European Securities and Markets Authority (ESMA).
- (7) **Access to clearing** – the introduction of a harmonised EU regime for non-discriminatory access to trading venues and central counterparties (CCPs).
- (8) **Limits on high frequency trading** – the imposition of trading controls for algorithmic trading activities including a requirement for all algorithmic traders to be properly regulated and to provide liquidity when pursuing a market-making strategy.
- (9) **Enhanced consumer protection** – strengthening organisational requirements, and conduct of business rules, particularly the obligation to provide more information to clients distinguishing independent from non-independent advice
- (10) **Access for third country firms** – harmonisation in the access requirements to EU markets for firms from non-EEA countries, based on an equivalence assessment of third country jurisdictions by the EU Commission.