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Markets in Financial Instruments Directive → Planning for MiFID

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1. Visit www.mifid.ie to read about how MiFID will be implemented in Ireland. www.mifid.ie is Ireland's first website dedicated purely to Irish MiFID issues.
2. The Level 2 Directive and Regulation are expected to be confirmed in final form around 25/26 June 2006.
3. The date by which firms must comply with MiFID is 1st November 2007. In late May and early June 2006 some commentators suggested that slippage by European regulators (in implementing MiFID) might cause the implementation date to drop back to April 2008. At a conference held in London on 13 June 2006 the notion that the implementation date might be delayed was given little credibility by one influential European regulator. It is **Compliance Ireland's** opinion that firms should be preparing for a 1st November 2007 implementation date.
4. **Compliance Ireland** acknowledges that it has relied upon numerous UK FSA documents in preparing this paper. We appreciate the UK FSA's work in this area.

Section 1: An overview of MFID

- Who does MiFID affect?
- What does MiFID mean for those firms caught by its provisions?
- ISD v MiFID
- What do firms need to consider?

The Investment Services Directive (Directive 93/22/EEC) ("ISD") for long the regulatory centre piece for European investment business firms and financial markets, will be replaced by the Markets in Financial Instruments Directive ("MiFID") (Directive 2004/39/EC). In Ireland the Financial Regulator originally expected MiFID to be implemented by October 2006. However given the huge amount of work required from governments, regulators and, of course, regulated firms an October 2006 implementation date is unlikely. The UK FSA believes that MiFID is likely to apply from 1 November 2007.

1.1 Who does MiFID affect?

In general, MiFID will cover most if not all firms currently subject to the ISD, plus some that currently are not. It will include:

- investment banks;
- portfolio managers;
- stockbrokers and broker dealers;
- corporate finance firms;
- many futures and options firms; and
- some commodities firms.

But the position is not clear cut. For example retail banks and building societies will be subject to MiFID for some parts of their business such as, the sale of securities, or investment products which contain securities but not for others.

In Ireland little has been published by the Government or the Financial Regulator on the scope or impact of MiFID on Irish regulated firms. For further insight we need to look across the sea to the UK where the FSA suggests that following types of firms are likely to fall outside MiFID - although these firms are warned by the FSA that they are likely to be affected to some extent by local regulatory changes:

- operators of collective investment schemes when acting as such – for example, operators of hedge funds and private equity funds (a special regime applies to UCITS management companies);
- occupational pension scheme firms;
- life companies and friendly societies;
- financial advisers that do not hold client assets; and
- authorised professional firms.

1.2 What does MiFID mean for those firms caught by its provisions?

A number of senior executives and compliance officers of UK FSA regulated firms have likened the workload of implementing MiFID to that of N2. In short MiFID will lead to the harmonisation of authorisation, operating requirements and conduct of business rules for investment firms across Member States. MiFID will also introduce a comprehensive regulatory regime governing the execution of transactions in financial instruments.

MiFID is a major part of the European Union's Financial Services Action Plan (FSAP), which is designed to create a single market in financial services. MiFID comprises two levels of European legislation. 'Level 1', the Directive itself, was adopted in April 2004. In several areas, however, it makes provision for its requirements to be supplemented by 'technical implementing measures', so-called 'Level 2' legislation. The Commission's proposed Level 2 measures, developed on the basis of advice provided by the Committee of European Securities Regulators (CESR) in 2005, are the subject of continuing negotiation at European level in the European Securities Committee.

1.3 ISD v MiFID

One of the main purposes of the ISD was to give a 'passport' to investment firms to enable them to provide investment services on a cross-border basis or to establish a branch in another Member State, in each case on the basis of Home State authorisation. The ISD sets out some basic high-level provisions governing the organisational and conduct of business requirements that should apply to firms and is aimed at harmonising certain conditions governing the operation of regulated markets.

MiFID has the same basic purpose as the ISD but makes significant changes to the regulatory framework to reflect developments in financial services and markets since the ISD was implemented.

(a) Scope is wider ...

Firstly, MiFID widens the range of 'core' investment services and activities that can be passported. In addition to the services covered by the ISD, MiFID:

- upgrades advice that involves a personal recommendation to a core investment service that can be passported on a stand-alone basis;
- clarifies that operating a multilateral trading facility (MTF) is covered by the passport; and
- extends the scope of the passport to cover commodity derivatives, credit derivatives and financial contracts for differences for the first time.

(b) A greater degree of harmonisation...

Secondly, MiFID sets more detailed requirements governing the organisation and conduct of business of investment firms, and how regulated markets and MTFs operate. It also includes new pre-and post-trade transparency requirements for equity markets; the creation of a new regime for 'systematic internalisers' of retail order flow in liquid equities; and more extensive transaction reporting requirements.

(c) Doing business cross-border...

Thirdly, MiFID improves the operation of the 'passport' for investment firms by more clearly delineating the allocation of responsibility between home state and host state for passported branches and generally clarifying some of the jurisdictional uncertainties that arose under the ISD. For example, going forward, it is clear that a firm will be subject only to home state requirements under MiFID where it provides cross-border services from that state into another Member State. MiFID also more clearly recognises the concept of tied agents, who will be able to carry on some cross-border business under the passport of their principal.

(d) Capital Requirements Directive

Fourthly, most firms that fall within the scope of MiFID will also have to comply with the new Capital Requirements Directive (CRD) which will set requirements for the regulatory capital which a firm must hold. Those firms brought into regulation by MiFID will be subject to directive-based capital requirements for the first time. The CRD will commence on 1 January 2007; that is, before MiFID. It amends the Banking Consolidation Directive and the Capital Adequacy Directive. The UK FSA commenced consultation on implementation of these directives and plans to give guidance to firms it regulates in its forthcoming consultations to assist firms to determine the capital requirements relevant to them.

(e) Interaction with other regulators

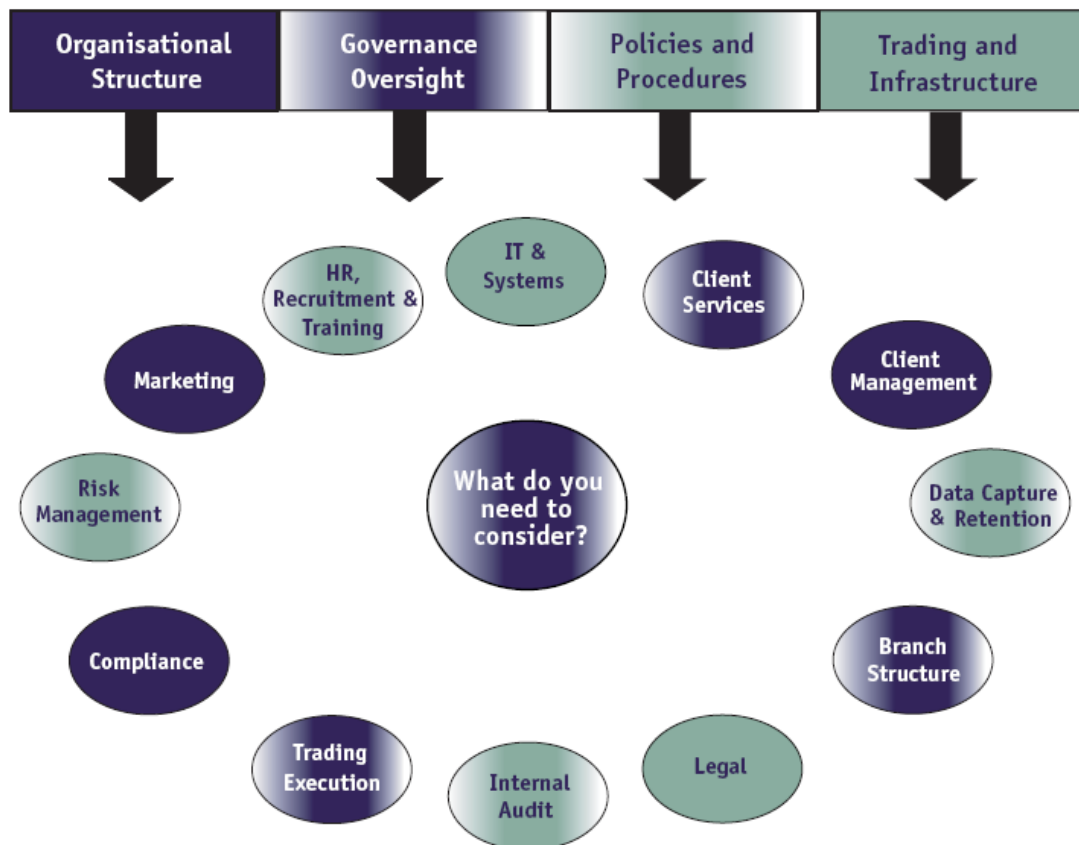
Fifthly, MiFID also increases the obligations on regulatory authorities to assist each other in enforcement

1.4 What do firms need to consider?

As noted above, Irish firms have received little information from the Government and the Financial Regulator on how they should start to prepare for MiFID in order to be ready for the likely implementation deadline of 2007. It is clear however that responsibility for MiFID's implementation lies with firms' senior management who should fully understand the issues and organisational challenges their firms face. The diagram below created by the UK FSA highlights the typical functional impacts that MiFID is likely to have.

Organisational structure, governance oversight, policies and procedures and trading and infrastructure are of critical importance, but MiFID will have an impact on many other functions in firms. Reviewing these in a thorough way will help identify the business issues that your firm will need to address.

NB: Diagram below is copyright of the UK Financial Services Authority



Section 2: The Challenges

- ➔ Organisational Requirements
- ➔ Conduct of Business
- ➔ Markets and Transparency
- ➔ Cross-border business, branching and passporting

2.1 Organisational Requirements

Firms authorised in Ireland and other Member States will need to meet new operational requirements at the time they are authorised and thereafter on a continuing basis. The

organisational requirements will apply on a home state basis, meaning that they will apply to an Irish authorised firm's business, including any business into another jurisdiction, whether the firm is providing services on a cross-border basis from its Irish base or using a branch to provide services.

These operational requirements are likely to cover:

- compliance arrangements, including measures governing personal transactions;
- internal systems and controls, particularly in relation to:
 - business continuity;
 - staff;
 - risk assessment, management and mitigation;
 - internal audit;
 - administrative and accounting procedures; and
 - IT systems and processing.
- outsourcing of 'critical and important' functions and investment services;
- record-keeping, particularly in relation to transactions undertaken for clients;
- management of conflicts of interest to prevent the interests of clients being adversely affected; and
- safeguarding of client financial instruments or money held by the firm.

What will you need to consider?

Much of the detail in these operational requirements will be subject to the final Level 2 measures. However, it is already clear that firms will need to consider, in particular:

- the efficiency and effectiveness of their arrangements for compliance and risk management;
- the general integrity of their systems and controls (including internal audit and business continuity management); and
- their arrangements for identifying conflicts of interest and the resilience of the organisational arrangements used to manage them (likely to be a significant area of change for many firms).

There is likely to be an increased focus on the 'functional independence' of compliance and risk management controls. As a consequence, firms will need to review the adequacy of their:

- internal organisation;
- reporting lines; and
- allocation of senior management responsibility.

MiFID is likely to introduce new requirements to be satisfied in the outsourcing of 'critical and important' functions (and, possibly, investment services). Firms will need to ensure that all existing outsourced arrangements meet the relevant requirements as finally agreed in Level 2.

Who will the requirements affect?

The organisational requirements will apply to:

- all investment firms within MiFID scope;
- all credit institutions doing MiFID business;
- UCITS management firms (insofar as they engage in discretionary portfolio management, investment advice or safekeeping of units in collective investment schemes); and
- firms or market operators running MTFs.

In the absence of any soon to be released consultation on MiFID by the (Irish) Financial Regulator, more information on systems and controls will be gleaned from the UK FSA's consultation and discussion papers planned for 2006.

The CRD also contains (high-level) requirements for systems and controls. Given the substantial overlap between firms subject to MiFID and the CRD, the UK FSA has decided to develop a 'common platform' of systems and controls requirements – that is, one set of requirements which implement both directives, so far as practicable.

2.2 Conduct of Business

2.2.1 Client Classification

The client classification regime is the starting point for many of the conduct of business changes that will affect firms arising from MiFID. MiFID:

- (i) distinguishes between three types of client: **retail client, professional client and eligible counterparty (ECP)**.
- (ii) provides some flexibility for clients to move between categories to obtain more, or less, regulatory protection.
- (iii) affords different levels of regulatory protection to each different category of client. For example, MiFID will impose more obligations on firms when doing business with professional clients. The UK FSA points out that the approach to regulating business with ECPs will not necessarily be the same as the 'light touch' which exists under FSA market counterparty rules; for example, a firm will not be able to provide investment advice to an ECP without complying with the relevant conduct of business requirements.

What will you need to consider?

Many firms will need to examine their existing classifications and possibly change the classification of some of their clients. To the extent that their business processes and systems need to take account of classification decisions, firms may need to amend these processes and systems as well as their client documentation.

Under MiFID, both ECPs and professional clients will be able to request regulatory protection either generally, on a trade-by-trade basis, or in relation to a 'particular investment service or transaction, or types of transaction or product'. Firms will need to consider how they would administer such a system. Clients may fall into different categories in respect of different products or services.

MiFID also contains transitional provisions which allow firms to continue treating professional clients as such, provided certain conditions are satisfied.

Who will the requirements affect?

The client classification requirements will affect all MiFID-scope firms. However, the impact is likely to vary, depending on the nature of the firm's business and the size and breadth of its existing client base. For example, it is likely to be less severe for a firm that deals only with private individuals.

2.2.2 Marketing

Implementation of the MiFID requirements on 'marketing communications' relating to MiFID instruments or services is likely to have an impact on the existing financial promotions regime. The Level 1 provisions require a firm to ensure that all information – including marketing communications provided to clients or potential clients – is fair, clear and not misleading and to ensure that marketing communications are clearly identifiable as such. This will be supplemented by further requirements at Level 2.

What will you need to consider?

Firms will need to review their financial promotions and marketing functions, particularly to consider whether their procedures for approving financial promotions will satisfy the expectations of the new regime.

Who will the requirements affect?

The proposals will be relevant to all firms – both MiFID and non-MiFID scope firms – that promoted their investment products and services to retail investors. This will include, for example, life insurance companies and other current 'non-ISC' investment firms.

2.2.3 Information about the firm and its services

MiFID will establish requirements governing information about the firm and its services that must be provided to a client, whether retail or professional, including:

- the nature and detail of the information that must be provided;
- when it must be given;

- the form in which it must be provided; and
- when it must be updated.

What will you need to consider?

Firms will need to consider the adequacy of:

- procedures for capturing and generating required information and for getting it into the relevant form in relation to the services offered by the firm to its clients;
- existing mechanisms for delivering information to the range of clients with whom they do business, and the circumstances in which it will be required; and
- procedures for updating information to clients.

Who will the requirements affect?

Firms will also have to consider whether, in the period running up to MiFID implementation, they should start to give existing clients additional information on the basis of the above requirements.

2.2.4 Client Agreements

MiFID requires firms to keep a record of the document or documents agreed with their clients effectively covering the terms on which they provide investment services. It is not clear at this stage whether there will be specific requirements on the content and conclusion of client agreements at Level 2.

What will you need to consider?

There are likely to be a number of specific information provision, notification and consent requirements deriving from both the Level 1 and the Level 2 provisions. Where firms usually incorporate such provisions in client agreements, it would be advisable to plan for a review of the agreement content and consider amendments for existing clients. Additionally, in the light of the finalised Level 2 text, firms may need to revise their agreements or terms of business for all clients acquired after the date on which MiFID is implemented.

Who will the requirements affect?

The MiFID requirements will apply to MiFID-scope business carried on by MiFID firms, with (possibly) more extensive requirements for business with retail clients.

2.2.5 Suitability and knowing your customer

Like the current Irish rules, MiFID contains 'know your customer' and suitability requirements which apply when a firm provides investment advice and discretionary portfolio management. These are broadly similar to current requirements, but the MiFID requirements will apply to both retail and (in more limited form) professional clients. **This area will also impact upon the (Irish) Financial Regulator's final Consumer Protection Code [Ed – expected release date 25 July 2006 for implementation on 1st August 2006].**

What will you need to consider?

In order to be able to meet their new requirements firms will need to review:

- the comprehensiveness and adequacy of procedures for capturing and recording 'know your client' information and providing it as appropriate to the individuals who provide advice or make discretionary management decisions;
- the adequacy of arrangements for ensuring suitable recommendations are given and investment management decisions taken;
- whether current standardised fact-finding processes captures all the information required by MiFID; and
- their arrangements for business with professional clients.

Who will the requirements affect?

The MiFID requirements will apply to all MiFID-scope firms providing investment advice and portfolio management to retail or professional clients. This topic will no doubt be considered in further detail by the (Irish) Financial Regulator as it finalises its Consumer Protection Code in the areas of factfinds and suitability requirements for retail clients of both MiFID and non-MiFID firms.

2.2.6 Appropriateness and execution-only services

Under MiFID, an execution-only service can be provided only where:

- it relates to 'non-complex' instruments – including shares admitted to trading on a regulated market (or equivalent third country market), money market instruments, bonds

- and other securitised debt (but excluding bonds that embed a derivative) and UCITS (and possibly others, depending on the final Level 2 measures);
- it consists only of execution of orders and/or the reception and transmission of orders;
- it is provided at the initiative of the client; and
- the client is warned by the firm that the firm has not assessed suitability.

For other investment products, MiFID introduces a new requirement for firms to obtain information from clients about their relevant knowledge and experience, and assess whether the service is appropriate for that client. If the firm assesses the product or service to be inappropriate it must warn the client of that; if the client does not provide sufficient information then the firm must warn the client it has not been able to carry out the assessment. This is not a test of suitability (which applies only to the provision of investment advice and portfolio management). Appropriateness therefore does not relate to the making of a personal recommendation.

The application of this requirement to business done with professional clients is still subject to discussion at Level 2. An important distinction between suitability and appropriateness is that suitability requires a consideration of a client's financial situation and investment objectives (as well as knowledge and experience), whereas appropriateness focuses just on a client's knowledge and experience.

What will you need to consider?

Firms providing relevant services will need to assess and decide the basis on which to provide them post-MiFID, and whether this entails any organisational or other business change.

Firms offering services under the appropriateness test will need to:

- consider the adequacy of systems for obtaining information from clients and for setting and operating controls over client activity; and
- develop systems and procedures for assessing appropriateness and carrying forward the outcomes in the ways required by MiFID.

Firms offering services on an execution-only basis will need to:

- assess the adequacy of procedures for making the assessments implied by MiFID (or, ensuring the conditions are met) and providing the required warnings.

Who will the requirements affect?

The appropriateness requirements will primarily affect firms that provide 'execution-only' dealing services in more 'complex' financial instruments for retail clients. Covered warrants, options and contracts for differences are among the investments traded by retail customers that may need to be considered. Certain disclosure requirements and restrictions on certain forms of solicitation will apply for firms that wish to provide business on an execution-only basis.

2.2.7 Best Execution

Under MiFID an investment business firm will be required to take all reasonable steps to obtain the best possible result for its clients including taking into account relevant considerations such as price, cost, speed and the likelihood of execution and settlement when executing orders.

In doing so, the firm must:

- establish and implement effective arrangements and an 'order execution' policy designed to obtain the best possible results in executing client orders;
- disclose 'appropriate information' to clients about its 'order execution' arrangements and policy, including the execution venues it uses;
- obtain prior client consent to its policy;
- monitor the effectiveness of its execution arrangements and policy, and update them as necessary; and
- at their clients' request, demonstrate that their orders have been executed according to the firm's policy.

What will you need to consider?

Firms will need to **develop an execution policy**, or review any existing policy, and obtain client consent to the policy before undertaking any transactions.

The policy will need to cover selection of execution venues that will enable the firm to secure the best results for clients on a consistent basis and firms will need to keep that selection under review.

Firms will need to consider how they will monitor execution performance by the venues included in their policy, and their processes for determining which execution venues to use. They will need to consider the extent to which their existing trading strategies enable them to deliver on these obligations. This could have systems impacts for some firms and generate wider demand for data relating to executions.

Who will the requirements affect?

The best execution requirements will apply to an investment business firm (all brokers and broker-dealers) executing client orders in both wholesale and retail markets and to all MiFID financial instruments. They are also likely to apply to portfolio managers and order receivers and transmitters.

2.2.8 Customer order handling

MiFID requires investment firms to execute client orders promptly, fairly and expeditiously and follows the general thrust of existing Irish rules.

Among other things, the Level 2 measures are likely to require investment firms to:

- ensure that orders executed on behalf of clients are promptly and accurately recorded and allocated;
- allocate aggregated orders promptly, accurately and fairly;
- refrain from front running;
- ensure that any client assets received in settlement of an executed order are promptly and correctly delivered to the account of each relevant client; and
- make public client limit orders that are not immediately executed under prevailing market conditions.

Most of these requirements are broadly similar to existing Irish (and UK) conduct of business rules. However firms should consider the details of their contracts with clients and the venues they would use to make limit orders public. These requirements will apply to all brokers and dealers when executing client orders in any MiFID financial instrument. They are also likely to apply to portfolio managers and order receivers and transmitters, such as introducing brokers.

2.1.9 Reporting information to clients

MiFID requires a firm to provide to its clients adequate information on the service provided. In particular it sets out requirements to ensure that clients are promptly advised of the essential details of a transaction and receive a regular statement with essential information on their investment portfolio.

What will you need to consider?

The main difference is that the flexibility under existing Irish rules for private customers to vary the content or frequency of contract notes for reporting on transactions and periodic information for portfolio management is not replicated in MiFID. Those firms that use this flexibility to provide bespoke reports to their clients are advised to review their practices, and may need to make changes to reporting systems.

Who will the requirements affect?

These requirements apply to all firms when they carry on MiFID business, although detailed requirements are likely to apply only to retail clients. They are generally similar to existing conduct of business rules.

2.3 Markets and transparency

2.3.1 Pre- and post-trade transparency

MiFID introduces comprehensive pre- and post-trade transparency regimes for trading in shares on the three main types of execution venues:

- Regulated Markets (RMs) – these include stock exchanges such as the Irish Stock Exchange (and in the UK the London Stock Exchange and virt-X);

- Multilateral Trading Facilities (MTFs) – these cover alternative execution venues (currently referred to as alternative trading systems); and
- Over the Counter (OTC) – OTC trading refers to trades undertaken by firms outside a RM or MTF, including those acting as systematic internalisers.

2.3.1(a) Pre-trade transparency

Regulated Markets and MTFs

MiFID will introduce more extensive pre-trade transparency requirements, particularly for trades below specified size thresholds and for trades that take place outside the order book. MiFID requirements for MTFs (which are identical to those for RMs) are very similar to what currently applies to ATSS.

Systematic internalisation

MiFID introduces a completely new transparency regime for investment firms that are systematic internalisers in shares. MiFID defines a systematic internaliser as an investment firm which – on an organised, frequent and systematic basis – deals on own account by executing client orders outside an RM or MTF. Implementing measures regarding the definition of systematic internalisers are currently being developed at Level 2. Systematic internalisers must provide firm bid or offer quotes in 'liquid' shares on a continuous basis. Subject to certain waivers (see below) their quotes must represent a binding price for trades up to certain thresholds (defined as 'standard market size').

Systematic internalisers have no obligation to quote in all liquid shares; they can quote for a subset of liquid shares and this subset can change over time. The list of liquid shares will be defined on the basis of criteria to be set out in the Level 2 measures. Systematic internalisers will be permitted to execute orders from professional clients at prices other than the quoted prices in certain circumstances (e.g. if the order is larger than a threshold determined in the Level 2 measures).

The following activities will not be subject to the quoting obligations:

- dealing above 'standard market size';
- dealing in non-liquid shares; and
- dealing in other asset classes (e.g. bonds).

What will you need to consider?

RMs and MTFs will have to consider what modifications they need to make to their rules and trading systems to comply with the MiFID requirements. They will need to consider in particular the requirements relating to trading below the pretrade block thresholds (which will apply across the EU) and changes they need to make to ensure that the use of request for quote systems fall within the new regulations.

Exchange and MTF members/participants will have to assess whether – and how – the new obligations impact on their business models; they may also have to change their system to meet the new MiFID requirements. Firms executing trades outside RMs or MTFs will have to decide whether any part of what they currently do fits the definition of 'systematic internalisers' under MiFID and, if so, whether the quoting obligations apply to them. Compliance with the pre-trade obligations may involve the development of a new business model as well as significant system changes.

Who will the requirements affect?

The new requirements directly affect RMs, MTFs and those firms that are deemed to be systematic internalisers in liquid shares. Indirectly, the way in which these bodies respond to the new requirements will impact on all other firms in meeting their best execution obligations.

2.3.1(b) Post-trade transparency

MiFID extends the scope of post-trade transparency requirements from RMs to MTFs and investment firms trading outside RMs or MTFs. All trading venues will have to make public specified information about completed transactions in shares as close to real time as possible (with delays for large risk trades) and on a reasonable and non-discriminatory commercial basis. Investment firms can choose the disclosure channel – RM, MTF, third-party or proprietary

arrangements – through which they make the details of each transaction public. The information will have to be checked for accuracy and meet the other criteria described above.

What will you need to consider?

RMs, MTFs and investment firms will need to consider their internal controls for applying the new block trading provisions. Investment firms that trade outside a RM or MTF will need to consider the method by which they publish details of their trades and the steps they will need to take to ensure the accuracy and timeliness of publication.

Who will the requirements affect?

The new post-trade transparency requirements will affect providers and users of equity trade data – RMs, MTFs, their members and firms trading OTC (buy-side and sell-side firms), as well as equity trade data disseminators.

2.3.2 Transaction reporting

MiFID transaction reporting requirements will shift the reporting emphasis to the competent authority of the home/host state of the firm and not to the competent authority of the regulated markets on which the instrument is traded. Transaction reporting refers to post-trade reporting to regulators and does not refer to the publication of trades. Following MiFID implementation the transaction reporting obligations of some firms will be affected because (while current reporting requirements extend to debt and equity related products) MiFID requires transaction reports for any instrument admitted to trading on a regulated market – including commodity instruments admitted to trading on exchange.

What will you need to consider?

MiFID may have a significant impact on commodities firms which will now have to report transactions in any instruments traded on those commodities exchanges that are regulated markets. Irish authorised firms which currently submit transaction reports to non-Irish EU exchanges will have to decide how they will report transactions to Irish authorities once MiFID is implemented. Under MiFID, trades on non-EU exchanges will still need to be transaction reported by firms if the subject instrument is also traded on a regulated market in the EU.

Who will the requirements affect?

Irish-based firms that undertake business only in Irish-traded instruments that are not commodity linked will be least affected. All Irish based firms will have to ensure, post-MiFID, that existing transaction reporting arrangements cover all the relevant instruments and are received by the relevant authority, which in the case of all Irish-based activities will be the Irish Stock Exchange.

2.4 Cross-border business, branching and passporting

Currently, firms that are authorised in one Member State can provide ISD services in other Member States either cross-border or through a branch without having to be authorised separately in each Member State in which they wish to do business – this is known as the ‘passport’. MiFID extends the range of activities and instruments covered by the passport and clarifies the home/host supervision of passported firms. In particular, MiFID:

- upgrades advice that involves a personal recommendation to a core investment service that can be passported on a stand-alone basis;
- clarifies that operating an MTF is covered by the passport; and
- extends the scope of the passport to cover commodity derivatives, credit derivatives and financial contracts for differences for the first time.

Under MiFID, a passported firm’s home state regulator has supervisory responsibility for both conduct of business requirements and organisational requirements, except in some circumstances where the relevant host state regulator takes responsibility for conduct of business requirements. So, where a firm provides services on a purely cross-border basis only home state requirements will apply. Where a firm establishes a branch in another Member State, under MiFID the branch must comply with home state requirements relating to organisational requirements. And it must comply with host state requirements on conduct of business insofar as its activities are within host state territory. Where a passported branch provides services outside the territory of its host state, only home state requirements should apply.

Use of tied agents: MiFID introduces a discretionary tied agent regime and sets out obligations for investment firms if they decide to use tied agents. This regime is largely similar to the current

Irish regime. Tied agents will be able to provide certain activities cross-border and to establish branches in other Member States under the passport of their principal. MiFID provides a way for firms to provide some services through the use of tied agents (by allowing them to use tied agents to provide cross-border services and establish branches).

What will you need to consider?

Firms may need to review how they currently conduct business throughout the EU, how this business is structured, and whether any change to their arrangements is desirable. The requirements will affect Irish-regulated firms that fall within MiFID's scope and that decide to make use of the passport to conduct business across Europe, including through the use of tied agents.

Who will the requirements affect?

The requirements will affect Irish regulated firms that fall within MiFID's scope and that decide to make use of the passport to conduct business across Europe, including through the use of tied agents.

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