MiFID/MiFIR Initial Insights
24 October 2011
Introduction
Agenda

1. Introduction – Rick Watson, AFME
2. The Proposed Legislation: features and process – Gerry Cross, AFME
3. Market Structure issues – Danielle Ballardie, Director, Head of EMEA Liquidity Strategy, BarCap; and James Kotsomitis, AFME
4. Pre and Post-Trade transparency and obligation issues – Ashlin Kohler, Director, EMEA G10 Rates eCommerce, Citi; and James Kotsomitis, AFME
5. Third country regime and other compliance issues – Angela Teke, AFME and Chris Bates, Partner, Clifford Chance
6. Q & A
7. Conclusion
The Proposed Legislation: Key features

Regulation & Directive

- Differences
- Contents

Level 1 & Level 2

- Differences & implications
- Delegated Acts or Implementing Acts
- Technical standards
- Examples from the proposals
PLEASE NOTE THAT ALL THESE DATES ARE BEST ESTIMATES BASED ON EXPECTED DEVELOPMENTS AND ARE SUBJECT TO CHANGE
Market Structure - Key Issues (I)

OTF Regime - moving OTC trading to regulated venues
  • Transparency
  • Discretion over access and matching of orders
  • Use of proprietary capital

Algorithmic Trading – ensuring orderly markets
  • Regulatory oversight of HFT firms (Authorisation / Direct Market Access)
  • Disclosure of algorithms to regulators
  • Continuous operation of algorithms
Market Data – Reducing cost, addressing quality

- Regulation of collection and publishing of trade data
- Making data available on ‘reasonable commercial basis’
- European Consolidated Tape

Open Access - Competition between infrastructure providers

- Access for trading venues to CCPs
- Access for CCPs to trading venues
- Open access to benchmarks on non-discriminatory basis
Pre-trade transparency requirements

Post-MiFID II, trading must happen on a trading venue (RM, MTF, OTF) or, other than for derivatives, via a systematic internaliser.

Highlights

• Continuous quoting obligation for trading venues
  • Waivers apply
  • ESMA approval

• Firm quoting obligation for SIs
  • Obligation to provide firm quote below a specific size to all clients at previous published condition
  • Public disclosure of firm quotes below a specific size
Post trade transparency requirements

Highlights

- Obligation to publish *real-time* trade information – SIs, trading venues
  - Deferred publication is permitted based on size and ‘type’
  - Omission of volumes is permitted

- Regular recalibration of deferred publication criteria is not considered
  - Excludes consideration for liquidity profile and trading activity
  - A model accommodating rapid changes in liquidity profiles is essential
Third country regime

• Third country Regime: Provision of services by non-EU firms
• Harmonised framework replaces current national regimes
• New Commission preliminary equivalence assessment of third country legal and jurisdictional frameworks (MiFID/MiFIR/CAD)
  NB: reciprocal recognition of prudential framework
• MiFIR: provision of certain services to ECPs (without branch)
• MIFID2: provision of investment services/activities through a branch (required for retail business). EU rules apply.
• Exception for unsolicited business
• Transitional provisions (4 years)
• Practical considerations and implications for firms/what could change under the new regime?
Other Issues:

- Product intervention powers: ESMA (temporary) and competent authorities
- Changes to Client Classification regime and Conduct of Business requirements
- Inducements
- Telephone/electronic communications: 3-year retention requirement and provision of records to clients upon request
Conclusion
The Association for Financial Markets in Europe advocates stable, competitive and sustainable European financial markets, which support economic growth and benefit society.

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