

BN10-01

Markets in Financial Instruments Directive (MiFID) Review

Executive summary

The European Commission's review of the effectiveness of MiFID began in April 2010 and is due to conclude with its recommendations to Parliament at the end of this year. MiFID was initially designed to bring efficiency to the European market through competition and to ensure high levels of investor protection were consistently achieved across national boundaries. The original objectives have been successfully met in many respects and whilst some improvements are required in key areas, much of the Directive does not require significant change – improvements are still achievable by better use of existing regulatory tools.

We welcome any comprehensive evidence based review (in accordance with the principles of good regulation) that will enable stakeholders to identify the scale and scope of the regulatory requirements that are not being met and encourages solutions that are practical and cost efficient.

The European capital markets have continued to be innovative in providing value added solutions to their many different users (each of whom have a variety of investment needs) and as a result the markets have developed a high degree of complexity and interconnectedness. In order to remain globally competitive regulators must continue to guard against imposing changes that reduce legitimate customer choice, drive up costs unnecessarily, create unintended consequences or increase systemic risk by reducing diversity.

Overview

MiFID came into effect on 1 November 2007 and allowed Regulated Markets, Multilateral Trading Facilities and Investment Firms to operate throughout the EU on the basis of authorisation in their home Member State. Although MiFID was equity focused in its initial implementation it was always designed to be capable of extension to non-equity markets which is now on the agenda.

MiFID introduced new and more extensive conduct of business requirements and internal organisational processes for all market participants and required significant expenditure by firms to ensure compliance.

The European Commission's review process requires assistance in the form of expert opinion, usually provided by the Committee of European Securities Regulators (CESR).

CESR has been asked to provide advice to the Commission in a large number of areas including equity pre trade transparency waivers, the systematic

internaliser regime, equity post-trade transparency, transparency extension to equity like instruments, the operation of broker crossing networks, transparency for non-equity markets, transaction reporting for OTC derivatives, data requirements for assessing best execution quality and venue selection, appropriateness tests for complex and non complex products, the operation of MiFID discretions (including telephone recording and tied agents) and cost and consolidation issues with transparency data.

Shortly, post-trade transparency for derivatives other than CDS, pre-trade transparency for non equity markets, oversight of commodity derivatives, classification of clients and underwriting are likely to be added to the work programme.

AFME's position

AFME welcomes the MiFID review, especially the clarity of regulatory objectives it should describe and the empirical data it can publish to support the actions it proposes.

Significant progress can be made at relatively modest cost by remaining focused on a few key areas :

- **Consistent national interpretation and implementation of existing MiFID requirements**
- **Improvements in post trade equity data - quality, transparency and cost**
- **Properly calibrated transparency (pre and post) in non-equity markets**
- **Continued calibration of proposals against the original MiFID competition objectives** to ensure that investor choice and product innovation is not unduly limited. Any move to “one size fits all” approach will not be beneficial in the long term economic growth and may well lead to an inherent increase in systemic risk.

We have been, and will continue to be, active in the MiFID debate working with all stakeholders to produce views and opinions on both strategy and detailed technical proposals.

Useful publications

On AFME's website

AFME Briefing Note BN10-02: MiFID Review – Equity Markets

AFME Briefing Note BN10-03: MiFID Review – Non-Equities Transparency

AFME Briefing Note BN10-04: MiFID Review – Transparency in Corporate, Covered and Government Bonds

AFME Briefing Note BN10-05: MiFID Review – Transparency in Credit Default Swaps

AFME Briefing Note BN10-06: MiFID Review – Transparency in Interest Rate Derivatives

AFME Briefing Note BN10-07: MiFID Review – Transparency in FX Derivatives

AFME Briefing Note BN10-08: MiFID Review – Transparency in Equity Derivatives

AFME Briefing Note BN10-09: MiFID Review – Transparency in Commodity Derivatives

The MiFID Review: A briefing for the European Commission and CESR on key themes in preparation for consultation on the MiFID review.

Client categorisation EFSA's view on the DG Markt's proposal to categorise any client as retail for very complex products

Micro-structural issues of the European equity markets - a response by the Association for Financial Markets in Europe and the British Bankers' Association

Responses to the following consultation papers:

CESR Technical advice to the European Commission in the context of the MiFID review - Transaction Reporting, June 2010

CESR Technical advice to the European Commission in the context of the MiFID review - Equity Markets, June 2010

CESR Technical advice to the European Commission in the context of the MiFID review - Investor Protection and Intermediaries, June 2010

CESR Technical advice to the European Commission in the context of the MiFID review - Non- equity markets transparency, June 2010

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