MiFID II/ MiFIR – Overview

The recast of the Markets in Financial Instruments Directive (MiFID II) is the cornerstone of post-crisis European financial markets regulation. It deals with everything from market access over regulating high frequency trading to investor protection provision for retail clients. The key idea of MiFID II is to comply with all relevant G20 obligations and make financial markets in Europe safer, more transparent and more resilient.

Market Structure:

- Introduction of a new trading venue for non-equity instruments, the Organised Trading Facilities (OTF). The OTF will complement the existing categories of regulated markets (RMs) and multilateral trading facilities (MTFs).
- Introduction of a clear definition as well as a transparency regime for Systematic internalisers (SIs) capturing firms which deal outside of a trading venue on an organised, frequent, systematic and substantial basis.
- Introduction of a derivatives trading obligation on RM, MTF and OTF for derivatives that fall under the EMIR clearing obligation.
- Introduction of a trading obligation for shares.
- Introduction of SME Growth Markets as a new type of trading venue which is specifically tailored to the needs of small and mid-caps.
- Introduction of provisions that enable non-discriminatory access to benchmarks, indices, clearing houses and other critical market infrastructure.
- Obligation for trading venues to enter into agreements with market makers in order to ensure a sufficient level of liquidity at all time.

Organisational Requirements:

- Extension of corporate governance provisions introduced in the framework of CRD IV to investment firms.
- Product governance requirements for manufacturers as well as issues of financial products in order to make sure that all people involved in the process understand the products they are dealing with and only sell them to clients for which those products are suitable.
- Obligation for investment firms to clearly identify the target market, run a scenario analysis, establish a system for managing conflicts of interests and apply certain post-sale monitoring provisions.
- Provisions on remuneration policy and the treatment of inducements in order to minimise conflicts of interest and guarantee that investment managers act in the best interest of their clients.

Trading Controls:

- Introduction of circuit breakers to automatically stop trading in case price volatility goes beyond a certain level.
- Obligation for investment firms to inform national competent authorities about algorithmic trading strategies.
- Obligation for all trading venues to introduce a mechanism in order to limit the order-to-trade-ratio.
- Introduction of a uniform tick-size regime for shares and equity-like instruments clearly defining the smallest possible price changes.

Transparency Requirements

- Extension of MiFID I transparency regime to equity-like instruments such exchange traded funds, share certificates and extension of the transaction reporting requirements to MTFs and OTFs.
- Reduction of the exemption from pre-trade transparency requirements through waivers.
- Introduction of a consolidated tape by 2017, which shall contain all relevant trading data and shall be available free of charge 15 minutes after publication.
- Introduction of detailed provisions for consolidated tape providers.
- Introduction of detailed provisions for approved publication arrangements (APAs) in order to ensure the publication of high quality data.

Commodity Derivatives:

- Detailed provisions regarding which kind of product qualifies as a financial product and which do not thus being the reference point for various other pieces of EU financial markets legislation.
- Introduction of position limits for non-hedging purposes for commodity derivatives and a strong role for ESMA in setting up and supervising those limits.
- Obligation for trading venues, which trade commodity derivatives, to have in place position management systems.
- Obligation for trading venues to report aggregate data regarding positions in commodity derivatives or emission allowances.

Investor Protection:

- Obligation for financial advisers to gather information on clients' risk profile and introduction of suitability and appropriateness checks in order to make sure that investors are only sold such products that they understand and that are suitable for their specific investment strategy.
- Introduction of a "best execution" regime for retail clients taking into account all relevant factors such as cost and expenses.
- Obligation for investment firms to safeguard their clients' assets.
- Strict provisions for independent advisers, who will not be allowed to take any inducements, fees, commissions or other non-minor non-monetary benefits.
- Limitations on the range of products that can be sold as execution-only products.
- Introduction of transaction reporting and recordkeeping obligations for electronic communication between the investment firm and the client. Those records need to be made available to the national competent authorities upon request.
- Introduction of a last-resort intervention powers for national competent authorities to scrutinise risky/dangerous products and take them off the market if needed.

Third Country Regime:

- Introduction of a harmonised regime for granting access to the EU market
- Introduction of a requirement for third country investment firms to establish a branch in an EU Member State when services for retail clients are offered.