

Investment Services and Markets in Financial Instruments in the EU

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Screening process
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Legal Framework

- Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (Investment Services Directive – ISD)
 - In force until November 2007
- Directive 2004/39/EC of 30 April 2004 on markets in financial instruments (MiFID)
 - Transposition deadline – 1. February 2007
 - Application deadline – 1. November 2007

What is the MiFID?

- Establishes the legal framework governing investment services and financial markets in Europe
- Replaces the outdated ISD
 - Passport does not work well enough
 - Investor protection needs to be updated to attract (retail) investors to capital markets
 - « Concentration rule »: barrier to the emergence of an integrated and competitive trading infrastructure
 - New services (investment advice) and financial instruments (derivatives) need to be covered

What is the MiFID (2)

- A Lamfalussy Directive
 - Level 1 – MiFID
 - Co-decision Directive adopted by the Council and the European Parliament
 - Sets out the framework principles
 - Level 2 - Draft Implementing Regulation and Draft Implementing Directive
 - Launched in February and not yet finalised, subject to change
 - Currently - formal comitology phase - European Securities Committee & European Parliament
 - Adoption of expected June/July 2006
 - Level 1 and Level 2 - form a single set of rules

MiFID goals

- Create a true Single Market in which services can be provided freely and instruments traded across borders
- Promote the emergence of an efficient, transparent and integrated financial trading infrastructure
- Establish a high level of investor protection and confidence
- Strengthen enforcement and supervisory cooperation

MiFID guiding principles

- Home country authorisation and supervision
- Open competition in the provision of services and marketplace functions
- Proportionate response to demonstrable risks to investor protection and orderly functioning of markets

Main elements

- Abolishment of the concentration rule
- Condition for authorisation of firms and for regulated markets
- Investor protection requirements
- Transparency rules for regulated markets, MTFs and systematic internaliser
- Record keeping and transaction reporting obligations for firms
- Co-operation and exchange of information between competent authorities

Abolishment of the concentration rule

- ISD allowed MS to require firms the routing of client orders to national exchanges – «concentration rule» (FR,IT,ES)
- MiFID establishes competition and a level-playing field among execution venues – Regulated Markets, MTFs, and Systematic internalisers
- Condition: increased pre - and post trade transparency requirements and best execution obligation

Conditions for authorisation of investment firms

- Compliance with the Investor Compensation Scheme Directive (Directive 97/7/EEC) (Art.11) and the Capital Adequacy Directive (Directive 93/6/EEC) (Art. 12)
- Conflicts of interest and personal transactions provisions (Art. 13(3) and (2))
- Requirements for outsourcing (Art.13(5) 1 sub-paragraph)
- Effective organisational and administrative arrangements and procedures – compliance, internal control, risk management function, etc. (Art. 13(5) 2 sub-paragraph)
- Arrangements or safeguarding of client funds and financial instruments (Art. 13(7) and (8))

Conditions for authorisation of regulated markets

- Authorisation and applicable law (Art. 36)
- Organisational requirements (Art. 39)
- Requirements to the management of the RM (Art. 37) and persons with significant influence over it (Art. 38)
- Requirements to the admission of financial instruments to trading (Art. 40 and 41)

Investor protection

- Client categorisation (Art. 4(1) 11) and 12, Art. 24 and Annex II)
- Conduct of business rules
 - Obligation to act in client's best interest (Art. 19(1))
 - Information requirements (Art. 19(2) and (3))
 - Suitability and appropriateness test (Art. 19(4) and (5))
- Best execution obligation (Art. 21)
- Client order handling (Art. 22)

Transparency rules

- Unique transparency regime for shares
- Pre-trade transparency for regulated markets (Art. 44) and MTFs (Art. 29)
- Post-trade transparency for regulated markets (Art. 45), MTFs (Art. 30) and investment firms (Art. 28)
- Pre-trade transparency for systematic internalisers (Art. 27)

Systematic Internalisation (Article 27)

- Systematic internaliser (SI): deals on own account by executing client orders on an organised, systematic, and frequent basis
- SI required to publish firm quotes for “liquid” shares and only in relation to orders of up to the ‘standard market size’
- Some elements to be specified at Level 2 (the elements of the definition of SI, liquid shares, standard markets size, etc)

Record keeping and transaction reporting

- Obligation to keep record of the services provided to clients (Art. 13(6)) and the executed transactions (Art. 25(2))
- Obligation to report transactions to the competent authorities (Art. 25(3) and (4))
 - Investment firms must report details of transactions (only buy/sell) in any financial instrument admitted to trading on a regulated market to its competent authority
 - Details of the reporting requirements set at Level 2

Co-operation and exchange of information

- Obligations of competent authorities to co-operate (Art. 56 and 57)
- Obligations of competent authorities to exchange information (Art. 58 to 62)
 - Competent authorities must exchange part of the received transaction reports (see previous slide)
 - Details of exchange of information set at Level 2
- Co-operation with third countries (Art. 63)

Thank you for your attention!

More information?

[http://europa.eu.int/comm/internal_market/
securities/isd/index_en.htm](http://europa.eu.int/comm/internal_market/securities/isd/index_en.htm)

Questions?

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