

FURTHER PIECES OF MIFID II PUZZLE FALL INTO PLACE

TECHNICAL STANDARDS BECOME EFFECTIVE

As 3 July 2017 gets closer, and January 2018 is also approaching rapidly, the regulators and the in-scope firms across Europe are well advanced in their efforts for transposing MiFID II.

The missing pieces of the regulatory puzzle are the majority of the 'Level 2' measures. These capture the regulatory technical standards (**RTS**) and the implementing technical standards (**ITS**) adopted by the European Commission. The pending RTS (565-592/2017) were published in the Official Journal of the European Union on 31 March 2017 and will enter into force as of 20 April 2017. The RTS and the ITS will become mandatory starting from the date of applicability of MiFID II and MiFIR thus giving further weight to 3 January 2018 as the implementation deadline.

IMPLEMENTATION CHALLENGES

The technical standards are binding requirements that will be directly applicable in all Member States, respectively will become part of national laws, and which deal with the technical particularities of the new regime with the aim of supplementing or implementing it. The Level 2 measures are adopted on the basis of drafts prepared by ESMA, following consultations with the market players, and set out tools for compliance with the key novelties that the MiFID II regime brings to the market:

- transparency (pre- and post-trade transparency)
- micro-structural topics
- organizational requirements for trading venues
- data publication and access
- transaction reporting
- post-trading
- commodity derivatives
- best execution.

Therefore, the fundamental questions concerning compliance with the RTS, as faced now by banks, investment firms, commodity traders and other affected entities, are not something that their heads of legal or compliance departments can answer. These are rather issues that the CEOs and CFOs should resolve: For which strategy shall we opt? Are we able to adapt our IT System with internal measures and at what cost? How do we budget such massive IT investments?

BROADENING THE SCOPE OF REGULATED TRADING

The rules contained in these standards will bring the majority of non-equity products, including bonds, which are not otherwise regulated by MiFID II into a regulatory regime. They will impact substantially OTC transactions; bringing them onto regulated platforms. The technical measures will also introduce changes to trading by setting out rules for best execution (RTS 27) and transaction reporting (RTS 22). These, along with the MiFID II prohibition on entering into 'title transfer collateral arrangements with retail clients for the purpose of securing or covering' their obligations (article 16 (10) of MiFID II) will define the new boundaries for repos. Repos were recently used by market players in CEE and SEE to attract clients as an alternative to saving deposits and the low interests offered by these.

TRANSPOSITION PROGRESS

Despite the proximity of the transposition deadline - and with certain exceptions, such as Austria, Poland, the Czech Republic and Romania - the publications of draft laws in implementation of MiFID II are still outstanding in many CEE and SEE Member States. Along with the binding RTS addressed above, the national transposition acts (if any) will have to be checked carefully against the directly applicable regulations defining the terms of MiFID II, particularly the Delegated Regulation No. 565/2017. Understandably, the combination of local implementation of legislation and the broad range of regulations which are EU harmonized and directly effective, is a puzzle that is difficult to solve.

WOLF THEISS is ready to help you solve the puzzle and to adapt your system to the MiFID II package.

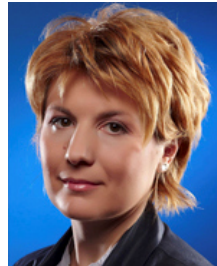
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