



Review of the Markets in Financial Instruments Directive (MiFID). March 2011

The public consultation on the review of the Markets in Financial Instruments Directive (MiFID), carried out by the European Commission (EC) between December 2010 and February 2011, is part of the structural reforms arising from the financial crisis and responds to the new market reality that has evolved rapidly.

This consultation, which benefited from CESR's technical advice (now ESMA) and is in line with G20 principles, includes the following important objectives and contents.

Response to the development of securities markets

With its consultation, the EC intends to regulate the new trading facilities, technological applications and methods of execution which exist today or may emerge in the future, in order to preserve the orderly and efficient functioning of markets, to help level the playing field between all trading systems and investment firms, and to improve investor confidence.

In accordance with the G20 targets, it tries to tackle under-regulated and opaque aspects of the financial system, by improving organisation, transparency and oversight, especially with regard to instruments traded over the counter (OTC). The Commission indicates that these amendments to MiFID would be complementary to those included in the EC proposal on OTC derivatives, central counterparties and trade repositories.

To this end, the EC suggests creating a new regulatory framework for all transactions made outside regulated markets, multilateral trading facilities (MTFs) and systematic internalisers, so that other forms of organised trading are included in the new definition of "organised trading facilities". The Commission also sought views on whether those "organised trading facilities" should be converted to multilateral trading facilities when they reach a specific threshold.

The EC proposes to align the organisational requirements of regulated markets and multilateral trading facilities as well as coordinate their market surveillance obligations.

Improvements to transparency

In this public consultation the EC proposes to improve pre- and post-trade transparency requirements in equity markets. Initially, pre-trade transparency waivers will be continued, although with some changes to ensure a coherent and consistent application, and to give ESMA the role of monitoring their use. As for post-trade transparency, reporting in real time will be reduced from three minutes to one minute.

Most noteworthy is the proposal on extending the equity transparency regime to the trading of other instruments, with the necessary amendments required by their specific differences. All bonds and structured products with a prospectus, or admitted to trading on a regulated market or MTF, as well as all derivatives eligible for central clearing, would be subject to pre-trading transparency requirements and post-trading rules, but this system would be based on certain thresholds or delays based on transaction size.

The EC proposes centralization and disclosure of data consolidation for both orders and transactions of a financial instrument subject to the post-trade transparency requirements.

Regulation of commodity derivative markets

Also in line with the G20 goals, measures are foreseen to improve the supervision and transparency of commodity derivative markets. To this end, the EC consultation sought views on its proposals to set out reporting obligations for traded positions and to authorise financial supervisors to monitor and intervene at any time in the trading to preserve the integrity and orderly functioning of the market.

Improvement of investor protection and provision of investment services

In order to strengthen the framework for the provision of investment services, the EC proposes to extend the scope of the MiFID to all products, services and institutions which are currently not covered (such as structured deposits), to improve the conditions of provision of investment advice and to reinforce the obligation to inform clients, mainly with complex products. The organisational requirements of investment firms are also reinforced through the involvement of senior management in the design of distribution policies and the adoption of specific internal controls.

The consultation considers the implementation of a liability principle of investment firms towards their clients, which will facilitate damage claims in cases of infringement of MiFID rules.

Improvement of supervision

The consultation document includes improving the supervisory powers and sanctions that Member States have to make available to their competent authorities, and it aligns them with those of the regulation on market abuse.

The EC also proposes the possibility of banning certain activities, products or practices when they could have serious and continuing adverse effects on investors or on the normal operation and integrity of the financial markets or the stability of all or part of the financial system.

In the area of derivatives, including commodities, the EC proposes that competent authorities should have effective and harmonised powers to request any investor information about the reasons of the position on the derivative product and about the positions that require guarantee and, considering the case, to limit them.

Transaction reporting in all financial instruments is also reviewed in this consultation, with three objectives: to match the information with the objectives of the regulation on market abuse, to harmonise the different types of transactions and contents that must be reported to supervisors, and to eliminate duplicities that will arise when reporting to trade repositories.

After analysing the answers to this consultation, the European Commission will present its regulatory proposal in May 2011, with the aim of approving the new Level 1 Directive in 2012.

To read about this initiative, please follow this link:

http://ec.europa.eu/internal_market/securities/isd/mifid_en.htm