



ADVISORY  
Industry Information

## MiFID II - Irish Implementation Update

July 2017

### Introduction

The Department of Finance (the "DOF") has in the past week produced a [feedback statement](#) (the "Statement") on the [public consultation](#) it previously ran on the Irish implementation of MiFID II.

As expected, the DOF's Statement has flagged that Ireland will be largely adopting a copy-out approach to the implementation of MiFID II. The Statement also helpfully sets out the DOF's decisions on the national discretions contained in MiFID II (see table below).

### Transposition Delay

The DOF has acknowledged in the Statement that it has missed the deadline of 3 July to publish transposing regulations for MiFID II, citing "a number of circumstances" that has led to this delay. The DOF has stated that transposing regulations will be completed "in the coming weeks".

This delay in publishing the transposing regulations will increase the pressure on Irish firms working towards MiFID II compliance. It will be important for all Irish firms to closely review these transposing regulations and ensure they are ready for the 3 January 2018 implementation deadline - which will not slip.

### Safe Harbour

In a positive move for Irish industry, and one that could prove very valuable in the event of a future "Hard Brexit", the DOF has decided to substantially maintain the current national regime for third country investment firms contained in Regulation 8 of SI 60/2007 (known as the "Safe Harbour").

The retention of the safe harbour was a big concern for industry as many Irish funds and firms are dependent on the access to third-country services and expertise allowed under the current safe harbour - in particular to the US (and potentially, the UK post-Brexit). Walkers have been actively engaged with the DOF through industry bodies to relay these concerns to the DOF.

The Statement does clarify that there will be some amendments to the scope of the Safe Harbour, including a carve-out for firms from "the FATF list of non-cooperative jurisdictions" and "whose home country is not a signatory to the IOSCO Multilateral Memorandum of Understanding concerning consultation and co-operation and the exchange of information".

Again, it will be necessary to review the transposing regulations on publication to ensure a full understanding of when the amended MiFID II 'safe harbour' will apply.

### Gold Plating

The only instance of 'gold plating' in the Irish transposition (i.e. requirements over and above those contained in MiFID II) will likely be around the holding of client assets. The existing domestic Irish regime based on the Central Bank of Ireland's Client Asset Regulations (S.I. No. 104/2015) which is separate from, but largely overlaps with, what is required by MiFID II is being retained. The DOF has indicated there will be a public consultation prior to 3 January 2018 to determine the final scope of this client asset regime.





### Key Decisions on National Discretions on MIFID II implementation

Article 3 - Optional exemptions	Financial Service Providers who meet the requirements set out in Article 3(1)(a)(b) and (c) of MiFID II will be exempt from the scope of MiFID II.  This decision is most relevant to firms that are authorised (and wish to continue to be authorised) under the Investment Intermediaries Act 1995 (the "IIA"). IIA firms (and their tied agents) should carefully review the transposing regulations and the imminent consequential amendments to the IIA.
Article 3 (2) - Investor Compensation Scheme	All investment firms (whether MiFID II or IIA authorised) will be covered by the Investor Compensation Scheme.
Article 24 (12) - Additional Investor Protection Requirements	The DOF has opted not to impose additional investor protection requirements "at this point in time".
Article 39(1) - Third Country Branches	The DOF will require a third country firm to establish and Irish branch when providing services to retail clients and elected up professional investors in Ireland.
Article 48 (9) Higher Fees Applying to Cancelled Orders	The DOF will allow regulated markets to impose higher fees for cancelled orders.
Article 67 (1) Competent Authority	The Central Bank of Ireland has been designated as the Irish national competent authority.
Client Asset Rules	See section on 'Gold-Plating'.

### Key Contacts

If you have any queries on the above or would like to discuss in more detail please do not hesitate to contact us or your regular Walkers contact



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