



ADVISORY
Industry Information

Irish MiFID II implementing legislation now published

Sept 2017

Introduction

The European Union (Markets in Financial Instruments) Regulations 2017 ([S.I. 375/2017](#)) (the “MiFID II Regulations”) have now been signed into Irish law and will come into operation on 3 January 2018.

The MiFID II Regulations transpose Directive 2014/65/EU on Markets in Financial Instruments, along with elements of Regulation 600/2014/EU, the Markets in Financial Instruments Regulation, together, for the purposes of this briefing (“MiFID II”).

The delay in publishing the MiFID II Regulations (which should have been published by 3 July) will increase pressure on impacted firms to ensure that they are fully compliant with all aspects of the MiFID II Regulations prior to 3 January 2018.

Content of the MiFID II Regulations

The Department of Finance has previously indicated to the market in its national discretions [feedback statement](#) that Ireland will be largely adopting a copy-out approach when implementing MiFID II. Our previous client briefing on this feedback statement is available [here](#).

Notwithstanding this helpful approach of generally avoiding additional requirements or ‘gold plating’ when implementing MiFID II, there remain a number of areas where Ireland has elected to exercise national discretions that require some additional close attention. These include:

(a) “Safe Harbour”.

The MiFID II Regulations replicate, in a somewhat limited format, the existing “Safe Harbour” contained in the current Irish legislation that implements MiFID I.

In brief summary, this means that third country firms (i.e. firms from outside the EEA) that do not have any branch in Ireland will not be regarded as operating in Ireland (and therefore not subject to licencing or conduct of business requirements under the MiFID II Regulations) where they only provides services to professional clients and/or eligible counterparties.

This is a helpful development, particularly to offset some of the disruption risk of a “hard” or no-deal Brexit. Walkers and other industry participants were closely engaged with the Department of Finance on prior to the publication of the MiFID II Regulations on this specific point of implementation.

Our client briefing that specifically deals with the amendments to the scope of the safe harbour is [available here](#).



(b) Client Assets:

One area that Ireland will go over and above the requirements imposed by MiFID II is in relation to the imposition of client asset protections. In this regard, the Department of Finance has indicated that Ireland's current client asset protection regime will be amended in order to take into account the new regulatory regime being introduced by MiFID II.

In this regard, the Central Bank of Ireland has issued a consultation paper available [here](#) that is open until 27 September 2017 to discuss these amendments.

(c) Amendments to existing domestic legislation:

In order to ensure harmonisation between Ireland's domestic-only Investment Intermediaries Act 1995 ("IIA") regime, the Central Bank of Ireland's Consumer Protection Code [has been amended](#) to ensure customers of IIA authorised firms will provide investor protections similar to those required under the MiFID II Regulations.

Next Steps

Now that the MiFID II Regulations have been published, all Irish-authorized investment firms, and credit institutions providing investment services/activities, should closely review the MiFID II Regulations and incorporate the content and definitions contained therein into their MiFID II implementation projects. These firms should have sufficient resources earmarked for between now and year-end to ensure that these firms are fully MiFID II compliant as of 3 January 2018.

It would be prudent for unregulated firms operating in the investment space and/or non-EEA firms operating on a cross-border basis into Ireland to also closely review the content of the MiFID II Regulations. Unregulated firms should ensure that the increased scope and regulatory perimeter of MiFID II does not give rise to licencing or other requirements where no such requirements previously existed under MiFID I.

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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