

The EU Financial Instruments Directive

The EU Commission has long felt it necessary to regulate and harmonize the financial services sector across the member states of the EU. The first steps were taken by the Commission's Financial Services Action Plan which set the ball rolling for a complete overhaul in this sector.

The Markets in Financial Instruments Directive – or as it is more commonly known the MiFID – was agreed unanimously by the Member States. And for good reason. Once implemented by all the Member States, the Directive will strengthen the EU economy by creating a single market for financial services in Europe.

The EU Directive sets out a comprehensive regulatory regime which covers investment services and financial markets in Europe. It contains measures relating to the performance of investment firms, intended mainly to change and improve their organization. It seeks to ensure a high level of integrity, competence and soundness among investment firms and entities across the EU.

The Directive's main aim is to address the relationship between the consumer and the investment firm. There will be an improvement on the services offered to consumers of investment services insofar as firms offering these services will have to conform to new high standards of performance. These standards are intended to safeguard consumers who will ultimately benefit from a more policed system. More importantly, having a harmonized system will mean that consumers will enjoy the same level of protection anywhere in the EU because all investment firms will be subject to the same standards.

Greater competition amongst investment firms will act as an indirect investor protector. Besides, competition will help guarantee a wider choice of products and services for consumers to invest in. From equities, to bonds, to funds, consumers will be more confident in investing their money and able to maximize the returns on their savings.

A number of direct technical measures, intended to regulate the conduct of businesses involved in this sphere of activity, were introduced. Firms are now required to handle client orders promptly and properly. When dealing with their client's instructions investment firms must collect sufficient information to ensure that they provide a service tailor-made to meet the specific demands and circumstances of each client.

Strict limits are imposed on the way investment firms can induce consumers into purchasing their services. Firms will be bound by a 'best execution obligation' which obliges them to act diligently in their performance in order to deliver the best possible result for their clients. The emphasis is on the fiduciary duty owed by investment firms towards their clients, a duty to always put their client's interests first.

The information disseminated by investment firms is also subject to strict controls. The Directive seeks to ensure that consumers are given concise accurate information that is easily understandable. Such information must not mislead consumers by emphasizing the benefits of an investment scheme without also giving a fair picture of its potential risks. Moreover, the Directive obliges investment firms who advertise their past

performance to include a clear warning that past performance or its results are not a clear indicator of future performance.

Implementation of these new technical measures will mean that investment firms will have to put in place the appropriate technology and/or deploy new staff. Businesses will inevitably incur compliance costs. However, these costs will be counterbalanced by the resultant benefits achieved by the Directive, which will help build an integrated EU financial market, break down borders and create a level playing-field between operators in all the Member States.

The new Directive must be implemented in the Member States by November this year.

© *Josette Grech 2007*