Regulatory News Alert

MiFID II / MiFIR's third country access:
New reporting requirements introduced

4 February 2020

Context and objectives

On 31 January 2020, the European Securities and Markets Authority (ESMA) published a consultation on draft technical standards on the provision of investment services and activities in the Union by third country firms under Directive 2014/65/EU on markets in financial instruments (MiFID II) and Regulation 600/2014 on markets in financial instruments (MiFIR).

These technical standards specify the content and format requirements for information that third country firms have to provide to ESMA and the Member State competent authorities (where the branch is established) in order to provide services throughout the European Union.

Legal basis for the proposed amendments

Regulation 2019/2033 on the prudential requirements of investment firms (“IFR”) introduces changes to, inter alia, the existing MiFIR regime for third country firms that intend to provide investment services and activities to eligible counterparties and per se professional clients.

Furthermore, Directive 2019/2034 on the prudential supervision of investment firms (IFD) amends MiFID II requirements for third country firms’ provision of investment services and activities to retail clients and professional clients within the meaning of Section II of Annex II of MiFID II.

Changes for third country firms providing investment services to eligible counterparties and per se professional clients (without any establishment in the Union)

Currently, a third country firm applying for the provision of investment services or activities throughout the Union under Article 46 of MiFIR should be registered in the ESMA register where certain conditions are met (among others, adoption of an equivalence decision by the European Commission).

The IFR introduced additional requirements for third country firms to report granular information on such services and activities to ESMA, on an annual basis, and to provide ESMA with access to relevant data.
Changes for third country firms providing investment services to retail clients and professional clients through a branch

The IFD amends MiFID II in order to introduce new obligations for third country firms where a Member State requires such firms to establish a branch in their jurisdiction to provide investment services to retail clients and professional clients (as it is the case in Luxembourg).

In this context, the branch of a third country firm should report annually to the competent authorities of the Member State where it is established. It should provide information about, inter alia, the scale and scope of the services carried out by the branch, a detailed description of the investor protection arrangements, risk management policy and governance arrangements, including key function holders for the activities of the branch.

Next Steps

ESMA will consider the responses it receives to this consultation paper in Q2 2020 and expects to publish the draft technical standards and send the final report to the European Commission for endorsement in Q3 2020.

How can Deloitte help?

Deloitte’s specialists and dedicated services will help you design and implement your business strategy in light of the future evolution of the regulatory framework and market trends. We can help you master the high complexity of requirements in a multi-jurisdictional environment with our cross-border advisory services.

Deloitte helps you with its RegWatch service to stay ahead of the regulatory curve to better manage and plan for upcoming regulations.
Your contacts

Simon Ramos
Partner – IM Advisory & Consulting Leader
Tel: +352 45145 2702
siramos@deloitte.lu

Xavier Zaegele
Partner – Financial Industry Solutions
Tel: +352 45145 2748
xzaegel@deloitte.lu

Kevin Demeyer
Director – Strategy, Regulatory & Corporate Finance
Tel: +352 45145 3808
kdemeyer@deloitte.lu

Marijana Vukusic
Manager – Regulatory & Consulting
Tel: +352 45145 2311
mvuksic@deloitte.lu

Pascal Martino
Partner – Banking Leader
Tel: +352 45145 2119
pamartino@deloitte.lu

Benoit Sauvage
Director – RegWatch, Strategy & Consulting
Tel: +352 45145 4220
bsauvage@deloitte.lu

Natacha Dats
Senior Manager – Strategy, Regulatory & Corporate Finance
Tel: +352 45145 4227
nadats@deloitte.lu

Deloitte Luxembourg
20 Boulevard de Kockelscheuer
L-1821 Luxembourg

Tel: +352 451 451
Fax: +352 451 452 401
www.deloitte.lu

Deloitte is a multidisciplinary service organisation which is subject to certain regulatory and professional restrictions on the types of services we can provide to our clients, particularly where an audit relationship exists, as independence issues and other conflicts of interest may arise. Any services we commit to deliver to you will comply fully with applicable restrictions.

Due to the constant changes and amendments to Luxembourg legislation, Deloitte cannot assume any liability for the content of this leaflet. It shall only serve as general information and shall not replace the need to consult your Deloitte advisor.

About Deloitte Touche Tohmatsu Limited:
Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/lu/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Deloitte provides audit, tax, consulting and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and deep local expertise to help clients succeed wherever they operate. Deloitte has in the region of 200,000 professionals, all committed to becoming the standard of excellence.

© 2020 Deloitte General Services
Designed and produced by MarCom at Deloitte Luxembourg