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MiFID II

On 20 October 2011, the European Commission published its proposed changes to the Markets in Financial Instruments Directive (MiFID), which has been in force since 1 November 2007. The proposal consists of a directive and a regulation collectively referred to as MiFID II. In the wake of the financial crisis and in order to address technological developments and new trading venues, improvements of MiFID has been deemed necessary.

On 20 October 2011, the European Commission published its proposed changes to the Markets in Financial Instruments Directive (Directive 2004/39/EC) (MiFID[1]) (as amended), which has been in force since 1 November 2007. The proposal consists of a directive and a regulation collectively referred to as MiFID II, aiming to provide for more efficient, resilient and transparent financial markets in Europe. Whereas the directive will be implemented in each respective member state, the regulation will have direct effect without further legislative measures.

MiFID was enacted in order to improve investor protection and promote cross-border market access within the European Union. MiFID regulates the provision of investment services in financial instruments by banks and investment firms as well as the operation of stock exchanges and common trading facilities. In Sweden, MiFID has been implemented through the Securities and Exchange Act (Sw: lag (2007:528) om värdepappersmarknaden) and adhering regulations issued by the Swedish Financial Supervisory Authority (Sw: Finansinspektionen). In the wake of the 2008 financial crisis and in order to address technological developments and new trading venues and products, changes to and improvements of MiFID has been deemed appropriate and necessary.

MiFID II introduces a new category of trading venue in addition to the already covered Multilateral Trading Facilities and regulated markets – Organized Trading Facilities (OTFs). The introduction of OTFs widens the scope of the applicability of MiFID and ensures that all trading venues abide by the same transparency rules. An increased level of transparency on the financial markets is one of the key objectives of the proposed changes and MiFID II extends the pre- and post trade transparency requirements to include not only shares but bonds, structured finance products and derivatives. Standardarised derivatives will also be required to be traded on exchanges or other organised trading venues.

There are a number of amendments proposed by MiFID II targeting technological innovations such as algorithmic and high frequency trading activities. Companies engaging in algorithmic and high frequency trading will have to obtain a license and they will be required to have structures in place to limit the specific risks connected with these types of trading activities.

[1] MiFID consists of a framework Directive, an Implementing Directive (Directive 2006/73/EC) and an Implementing Regulation (Regulation No 1287/2006).

The Commission aims to provide for stronger investor protection by introducing stricter rules and requirements for portfolio managers and investment advisors. Under MiFID II, independent advisors and portfolio managers will be prohibited from making or receiving third-party payments. A number of new rules on corporate governance are also introduced.

MiFID II also provides for reinforced supervisory powers. Supervisors will, in coordination with the European Securities and Markets Authority and under defined circumstances, be able to ban specific products, services and practices where they threaten investor protection, financial stability or the orderly functioning of the markets.

MiFID II is now negotiated by the European Parliament and the Council before being adopted. Although uncertain, MiFID II is expected to enter into force at the beginning of 2015.

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