



MiFID II

INVESTOR
PROTECTION

MARKET
STRUCTURE

TRANSACTION
REPORTING

TRANSPARENCY

REGULATIONS

MiFID II

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Introduction and background

The Markets in Financial Instruments Directive, MiFID has been applicable across the European Union since November 2007. It is a cornerstone of the EU's regulation of financial markets seeking to improve the competitiveness of EU financial markets by creating a single market for investment services and activities and to ensure a high degree of harmonised protection for investors in financial instruments.

MiFID II

Following the financial crisis of 2008, the European legislators have adopted an amendment to MiFID I, including a revised Directive and a new Regulation, together referred to as MiFID II. MiFID II takes into account the evolution of financial markets and addresses the weakness revealed by the implementation of MiFID I. MiFID II further extends the requirements of MiFID I, with the aim of making financial markets more efficient, resilient as well as transparent and to enhance investor protection. The implementation of these changes will have an effect on firms both within the EEA and globally.

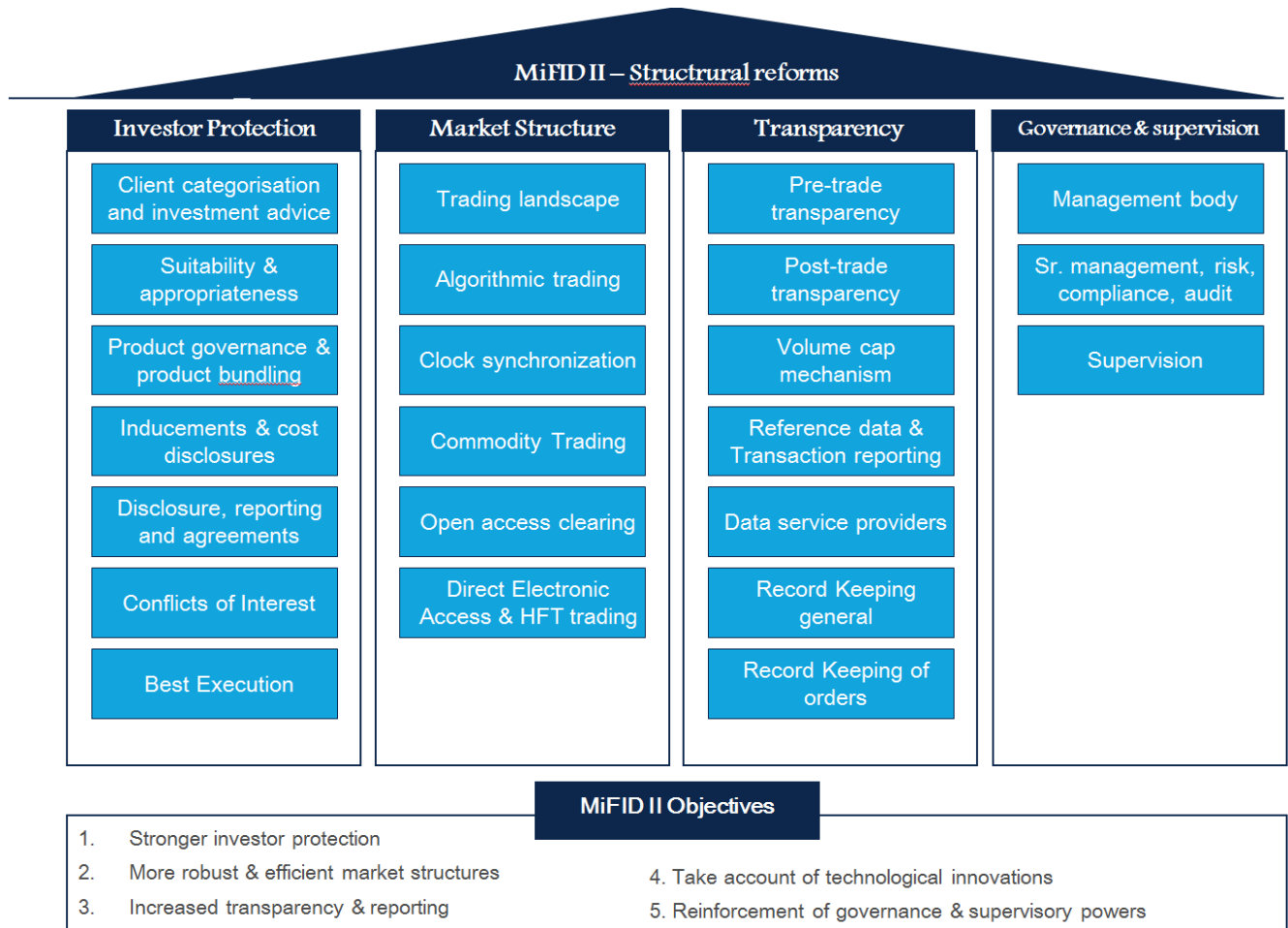
MiFID II results in a large number of requirements, both for NIBC Group (hereafter "NIBC") as well as for the external contacts of NIBC with its clients.

What does it mean for NIBC clients?

MiFID II affects the way that NIBC does business with its clients. Where MiFID I already required the categorisation of clients reflecting the various investor profiles; MiFID II has extended most of the investor protection requirements to apply to all categories of clients. MiFID II also requires NIBC to ensure that all information, including marketing communications provided to clients or potential clients – is fair, clear and not misleading and that marketing communications are clearly Identified as such, therefore ensuring better client protection.

The following paragraphs provide more detail on the various topics in which MiFID II impacts clients.

Overview MiFID II topics



Investor protection

Client categorisation & impact

Under MiFID I a client classification regime has already been introduced, distinguishing three client categories: Retail Clients, Professional Clients and Eligible Counterparties (hereafter “ECP’s”).

The reasoning behind the categorisation of clients is the acknowledgement that different types of clients should be afforded a different level of investor protection and be provided with appropriate information about the investment firm’s products and investment services.

- Most clients of NIBC are categorised as Professional clients. A Professional client is a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs;
- Part of these Professional clients are recognised by NIBC as *per se* ECP’s. When providing certain services to ECP’s, NIBC is not obliged to comply with a number of rules aimed at protecting investors (a number of conduct of business rules, best execution and client order-handling requirements);
Other than the entities mentioned above as *per se* ECP’s, MiFID II enables NIBC to also recognise as ECP certain undertakings, provided that they meet pre-determined proportionate requirements, including quantitative thresholds. NIBC should obtain the express confirmation from the prospective ECP that it agrees to be treated as an ‘ECP’;
- A client who is not categorised as a Professional client or ECP, is categorised as a Retail client. These clients will receive the highest form of protection. Stricter information requirements exist both from NIBC to the client and vice versa. A client categorisation will be carried out by NIBC for each of its clients, who will subsequently be informed about such categorisation.

Assessment of client’s knowledge

Depending on what investment service will be provided, MiFID II introduced a harmonised set of rules for a suitability test (*toetsing van de geschiktheid*) and an appropriateness test (*toetsing van de passendheid*).

The suitability test requires information about the client’s knowledge and experience, financial situation and investment objectives and is mandatory when investment services of investment advice or portfolio management are provided. As NIBC doesn’t provide investment advice and portfolio management services (with exception of activities in the UK), no suitability tests are needed.

In case of other investment services, the appropriateness test is applicable. When testing appropriateness, information about knowledge and experience of the client is sufficient to make a decision on provision of services. In relation to Professional clients and ECPs, the knowledge and experience can be assumed to be present in the appropriateness test.

Please note that ancillary services, e.g. corporate finance advice, do not require suitability and appropriateness testing.

Cost disclosure

Disclosure of the information on costs and associated charges, aim at improving the ability of NIBC’s clients to assess the financial instruments that are offered to them.

Under MiFID II, NIBC will disclose the following information to its clients:

- Information on all costs and associated charges, relating to both investment and ancillary services provided, including the costs (if any) relating to the financial instruments, the method of payment and details of any third-party payments;
- All costs and charges should be aggregated so the client understands the overall cost.

Under specific conditions there is a possibility to agree with Professional and ECP clients to limit the detail of information; please contact your NIBC contact person should you wish to discuss possibilities.

Inducements

Inducements are fees, commissions or other non-monetary benefits that NIBC pays to or receives from a third party (other than its client) in relation to the provision of investment services to clients. NIBC is required to act fairly and professionally in accordance with the interests of its client.

With the entry into force of MiFID I, rules regarding inducements were already introduced. MiFID II aims to strengthen the current MiFID I requirements for third party payments and benefits.

Generally, where certain requirements are satisfied - MiFID II permits investment firms to accept inducements in connection with the provision of its services to professional clients. In principle, inducements from third-parties may be received by NIBC if necessary to render the investment service to its clients or if such inducement is considered to 'enhance the quality of the investment service'. No Inducements (at all) are permitted with respect to the provision of investment services to non-professional clients. For further information, we refer to our MiFID II conflicts of interest policy to be published on the NIBC website as of January 2018.

MiFID II product unbundling for Research

- To maximize transparency and accountability MiFID II sets requirements to unbundle payments for investment research from trading commissions. By forcing brokers to price and charge for services separately, MiFID II additionally aims to enhance best execution and research;
- Buy-side firms, especially those providing independent investment advice and portfolio management, will have to justify their choice of research services and demonstrate the value it provides. They will have to set research funds and set-up ways of research payment;
- NIBC Research - and the wider ESN network - as sell-side firm is also impacted. There are a number of implications for the set-up, distribution and pricing of Research from January 2018 onwards.

Independent advisers and portfolio managers can only receive research and sales if both are paid for either:

- Directly out of their own resources (hard dollar / P&L); or
- Through a client funded Research Payment Account (RPA).

NIBC Research covers the business activities to provide and distribute research reports, organize corporate access and provide other research related activities for relations. Should you require more information on Research at NIBC, please contact your NIBC Research contact.

Best Execution

The best execution requirements are at the core of MiFID II, protecting the client by ensuring that firms are acting to reach the best result for their clients. Where under MiFID firms had to take all reasonable steps to obtain the best results for their clients, under MiFID II the wording is now stricter and requires that all sufficient steps need to be taken. 'Best possible result' will be defined by NIBC in its order execution policy and multiple factors such as price, cost and speed and likelihood of execution when processing orders shall be taken into account. For further information, we refer to our MiFID II compliant best execution policy to be published on the NIBC website before January 2018.

Product Governance

The regulatory framework of MiFID II includes new requirements in terms of product governance. Where NIBC acts as the manufacturer or distributor of financial products, the framework of MiFID II states the following:

- The establishment of dedicated organisational arrangements (internal governance, experienced staff);
- The establishment of an internal validation process for each financial instrument;
- The determination of an identified target market for end clients;
- The consideration of the charging structure proposed for each financial instrument;
- The implementation of a strategy for distribution that is compatible with the identified target markets;
- An reporting on information obligation between manufacturers and distributors on products;
- The regular review of each financial instrument to ensure that it remains consistent with the needs, characteristics and objectives of the target market.

At the same time, NIBC will implement and maintain procedures and measures ensuring that the production of financial instruments is carried out in compliance with the requirements regarding the management of conflicts of interests, including remuneration. NIBC ensures that the manufactured and distributed financial instruments do not adversely affect market integrity.

Conflict of Interest

Managing conflicts of interest is also part of providing the best possible service to clients. This is, among others, secured through the segregation of duties and responsibilities for employees who potentially have conflicting roles within NIBC. If a conflict of interest is unavoidable, NIBC will inform the client in writing and in a timely manner. MiFID I already contained general provisions relating to conflicts of interest. The provisions from MiFID I will be carried forward. However, because of the particular risks posed by underwriting and placing activities by an investment firm to its clients, MiFID II will also introduce rules requiring more rigorous arrangements and greater disclosure in relation to conflicts of interest arising in these scenarios. Underwriting and Placing activities may give rise to potential conflicts of interest, particularly between an investment firm and its client that is issuing securities (the "issuer-client"). Further conflicts may arise between the firm and its issuer-client and any other clients of the firm that are also issuing their own securities or are investing in the issuer-client's securities. For further information, we refer to our MiFID II conflicts of interest policy to be published on the NIBC website as of January 2018.

Record keeping

For purposes of client protection, the framework of MiFID II includes the obligation to record communications between NIBC and its clients for all services provided, activities carried out and sales activities.

Therefore, NIBC will record all records of phone conversation and electronic communications related to at least: the transactions made within the framework of own-account trading and the provision of services linked with the reception, transmission and execution of client orders, even where these conversations and communications do not lead to the conclusion of such transactions or to the provision of services related to client orders.

The content of one-on-one conversations with clients is considered as equivalent to an order placement via the phone as soon as it is recorded in writing within a report or notes. These records must be kept for 5 years (or 7 years upon request by the competent national authorities).

The concerning client will be informed about the recording of communications, including phone conversations prior to the provision of investment services and activities, where such services are related to the reception, transmission and execution of client orders.

As client you are entitled to request that the records related to you are transmitted to you.

Market structure and Transparency

- MiFID II increases equity market transparency by significantly restricting the scope for dark pool trading;
- MiFID II applies new pre- and post-trade transparency requirements to trading in fixed income instruments and derivatives. The extent of requirements will be determined by reference to deemed liquidity of the instrument type;
- MiFID II widens the scope of obligations in relation to transaction reports made to regulators for market abuse monitoring purposes (wider scope of transactions, extension to include orders which were passed to a broker for execution, extension of the level of detail required in the reports).

Pre-trade transparency

Pre-trade transparency is part of the general MiFID II transparency requirements. Pre-trade disclosure concerns the details of pre-trade data, such as quotes of expected costs prior to sale to be communicated via telephone, cost information sheet, or Key Information Document (KID). All of which records will be retained.

Post-trade transparency

Post-trade transparency is also part of the general MiFID II transparency requirements. Post-trade disclosure concerns the details of orders submitted to and transactions conducted on a trading venue, either a regulated market, a multilateral trading facility or organized trading facility.

As investment firm under MiFID II, NIBC must make public information about volume, price and time of execution through an Approved Publication Arrangements (APA).

Transaction reporting

In essence, transaction reporting is the mechanism by which investment firms provide reports to regulators, containing trade details of each transaction they execute, no later than close of business the following day. Transaction reporting under MiFID was primarily an issue for sell-side firms, such as brokers and dealers, who report transactions for their clients.

| | MiFID I | MiFID II |
|-------------------------|---|---|
| Reportable products | Equities and some equity exchange traded derivatives | Virtually all instruments traded on European venues, including non-EU derivative instruments that relate to an EU security or index |
| Venues | All products traded on European regulated markets (RMs) and organised trading facilities (OTFs) | All products traded on European RMs, OTFs and multilateral trading facilities (MTFs) |
| Data fields | 24 data fields | 65 data fields (new data required includes detailed data to identify buyer and seller including traders and decision makers, more detailed information on the traded instruments and a number of indicators that put a trade in a specific context such as the use of waivers or short selling) |
| Reportable transactions | Purchase and selling of instruments | Reportable transactions include increases and decreases of notional amounts and the exercise of options, warrants or convertibles |

As investment firm under MiFID II, NIBC meets the transaction reporting requirements as listed.

Legal Entity Identifier (LEI)

The Legal Entity Identifier (LEI) was introduced as part of an initiative to establish a global reference data system in which every legal entity or structure that is party to a financial transaction is uniquely identified. An LEI is a unique 20 character ISO identifier for a legal entity that participates in a financial transaction. Once a legal entity obtains an LEI code, the code stays with the legal entity permanently.

In the context of transaction reporting, MiFID II requires NIBC to only process market transactions with counterparties identifiable by their Legal Entity Identifier (LEI).

Information on obtaining an LEI

ISDA and GFMA have published FAQs relating to the LEI requirement which can be accessed [here](#). In order to obtain an LEI, please contact any [LEI issuer](#). For clients in the Netherlands, please refer to the [KVK website](#) (Chamber of Commerce). Each legal entity will be required to maintain an LEI by recertifying the LEI on an annual basis.

Who will be required to obtain an LEI?

Implementation of upcoming EU regulations will require clients of investment firms to obtain an LEI even if they:

- Are not an EU entity;
- Are not operating or domiciled in the EEA;
- Are not directly subject to EU regulations;
- Are not the reporting counterparty;
- Had no previous obligation to obtain an LEI.

Additionally, an LEI must relate to a unique legal entity, which means that funds and sub-funds cannot share an LEI and that each sub-fund must obtain its own LEI.

Questions?

Should you have any questions in relation to this brochure, please do not hesitate to contact us on MiFIDII@nibc.com, or contact your usual NIBC contact.

Glossary

Abbreviations

- APA: Approved Publication Arrangement
- ECP: Eligible Counterparty
- EEA: European Economic Area
- EMIR: European Markets Infrastructure Regulation
- ESMA: European Securities and Markets Authority
- KID: Key Information Document
- LEI: Legal Entity Identifier
- MiFID: Markets in Financial Instrument Directive
- MTF: Multilateral Trading Facility
- OTC: Over the Counter
- OTF: Organised Trading Facility