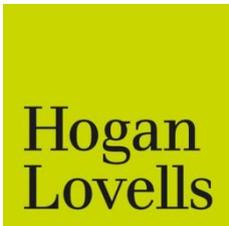


MiFID II

Reporting to clients

January 2017



Hogan
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Key Points

- A requirement for quarterly reports in relation to client holdings and portfolio management.
- Extension of the requirements currently applicable to retail client business to professional client business on the same basis as to that with retail clients and (to some extent) to eligible counterparty business.
- Obligations to report losses above a 10% threshold.
- Additional obligations on the information that clients should receive in relation to their holdings, including the ownership status, value and illiquidity of assets.

Reporting to clients

Article 19(8) of the MiFID I Directive contains high level obligations requiring firms to provide adequate reports to clients on the service provided, including costs information. Under MiFID I, further detailed provisions are contained in Articles 40 to 43 of the MiFID Implementing Directive.

The high level obligations in MiFID I will be changed to some extent by the MiFID II Directive. The more detailed requirements are contained in Section 4 of the MiFID II Delegated Regulation,¹ in Articles 59 to 63, which will replace the existing provisions in the MiFID Implementing Directive.

The main changes being introduced by MiFID II are as set out below.

Periodic communications

The high-level obligation (at Article 25(6) of the MiFID II Directive) will be amended to require firms to ensure that reports should include "periodic communications to clients, taking into account the type and the complexity of financial

instruments involved and the nature of the service to be provided to the client".

Application to eligible counterparty business

The high-level obligation to report will now also apply to business with eligible counterparties (see Article 30(1) of the MiFID II Directive). However, ESMA has confirmed that eligible counterparties will be able to "request different calibration of reporting requirements and to adapt the content and timing of reports to their needs" by entering into an agreement with the firm to that effect.²

Application to professional client business

The obligations at Articles 40 to 43 of the MiFID Implementing Directive currently set out obligations in respect of reports on the execution of orders and portfolio management. These obligations will be extended so that they apply to professional clients in the same way as they apply to retail clients.³

Fair and balanced review of portfolio management

Where a firm is providing a report to a professional or retail client in relation to portfolio management, the report should include a fair and balanced review of the activities undertaken and the performance of the portfolio during the relevant period.⁴

Quarterly reporting in respect of portfolio management

Firms will be required to provide a report on portfolio management to clients quarterly (rather than the current requirement of every 6 months), unless:

- the firm has an online or equivalent valuation system which allows the client to review the portfolio; and
- the firm has evidence showing that the client has actually viewed it within the last quarter.⁵

¹ Commission Delegated Regulation (EU) of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (the "**MiFID II Delegated Regulation**").

² ESMA, Final Report: Technical Advice to the Commission on MiFID II and MiFIR, 19 December 2014 (ESMA/2014/1569) (the "**Technical Advice**"), Chapter 2.20.

³ Article 61, MiFID II Delegated Regulation.

⁴ Article 60(2), MiFID II Delegated Regulation.

⁵ Article 60(3), MiFID II Delegated Regulation.

Quarterly reporting on holdings

Firms will be under an obligation to provide a client with a statement of holdings every quarter, and more frequently at a reasonable commercial cost if the client requests. Such statements should include:

- a clear indication of the assets or funds that are subject to the MiFID regime and those that are not (such as those subject to a title transfer collateral agreement);
- a clear indication of any assets that are affected by "some peculiarity in their ownership status", for example due to some security interest; and
- the market or estimate value of the financial instruments, when available. If no market price is provided, then a statement should be given that this indicates a lack of liquidity. The valuation should be given on a best efforts basis.⁶

Reporting on losses

Firms must report to clients if the overall value of the portfolio at the beginning of the reporting period depreciates by 10% and thereafter by further multiples of 10%. Where the client has leveraged financial instruments or contingent liability transactions, the firm must report to the client if the initial value of the instrument depreciates by 10% and thereafter by further multiples of 10%.⁷

Charges information

The MiFID II Delegated Regulation requires that client reports contain the total amount of commissions and expenses charged.⁸

The ESMA Technical Advice reminds firms that where they are giving client costs and charges information they will need to bear in mind its Technical Advice on the disclosure of costs and charges (please see our separate briefing note on Information to Clients on Costs and Charges).

Timescales for implementation

The MiFID II Directive and the Markets in Financial Instruments Regulation ("**MiFIR**")

came into force on 3 July 2014, and most of their provisions will come into effect in member states from 3 January 2018. Member states have until 3 July 2017 to transpose the MiFID II Directive into national law.

The changes to the MiFID Implementing Directive will be made by the European Commission by way of the MiFID II Delegated Regulation, which will become effective by 3 January 2018. The Delegated Regulation will have direct effect in Member States, and so the Member States will not need to implement these changes into national law.

⁶ Article 63, MiFID II Delegated Regulation.

⁷ Article 62, MiFID II Delegated Regulation.

⁸ Articles 59(4)(m) and 60(2)(d), MiFID II Delegated Regulation.

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