

THE MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE REPRESENTS ONE OF THE MOST FUNDAMENTAL CHANGES EVER SEEN IN ANY MAJOR FINANCIAL MARKET, YET THE INDUSTRY IS STILL NOT FULLY PREPARED FOR ITS IMPACT. HOWEVER, BANKS ARE STARTING TO LOOK AT THE POST-IMPLEMENTATION BENEFITS MiFID MAY BRING. GUIDO RAVOET OF THE EUROPEAN BANKING FEDERATION TALKS COSTS AND BENEFITS WITH **JIM BANKS**.

# MiFID'S MIXED BLESSINGS



## MiFID CONCERNS

- Timing: in a period of dramatic regulatory change
- Cost: heavy investment in processes required
- Complexity: reorganisation required
- Unfair advantage: not all countries are 'jumping together'

## HOW TO BENEFIT FROM MiFID

- Companies that can process data quickly will gain an advantage
- Compliance data can be changed into business intelligence
- Compliance costs should ultimately fall, as there will no longer be duplicate systems for multiple jurisdictions

across borders within the EU, using service providers located in any member state, in order to increase competition among European players and ensure that trading centres are competing on equal terms.

Key to its success is the removal of barriers to investment firms using the EU passport created under the ISD. Just as important, however, is its focus on developing the right level of investor

protection across European jurisdictions.

Those who developed the content of the directive hope that it will result in a deeper and more integrated pan-European capital market that will run more efficiently. This, they believe, will lower the cost of capital, promote growth and better position Europe in the increasingly competitive global financial marketplace.

### Time trial

One of the key concerns has been the timing of MiFID's implementation, coming as it does amidst a heady period of regulatory change. Among

**T**he implementation of the Markets in Financial Instruments Directive (MiFID) is widely seen as the most far-reaching reform ever to be applied to a mature financial market. It brings up to date the regulations covering the activity of investment banks, the first attempt at which resulted in the drafting of the Investment Services Directive (ISD).

MiFID attempts to enhance the ISD and is the keystone for the wider implementation of the Financial Services Action Plan (FSAP). Its goal is to allow for investment

many legislative changes, the industry has had to adjust to new guidelines on market abuse, new international accounting standards and tighter corporate governance requirements. A wholesale change like MiFID, therefore, appears to complicate an already complex compliance agenda.

'MiFID affects how you interact with the client, and it is the cornerstone piece of legislation in the Financial Services Action Plan, so perhaps the other 42 measures could have been better coordinated around MiFID,' remarks Guido Ravoet, secretary-general of the European Banking Federation (FBE). 'It is accompanied, for instance, by the Capital Requirements Directive, which is a similarly revolutionary change in regard to prudential matters.'

The FBE's stance on MiFID is that the problem of its timing has been exacerbated by delays in the publication of detail of the directive's requirements, which put banks on the back foot in terms of identifying the changes to systems and processes that they would need to make to be compliant. Though MiFID has been on the cards for some time, the industry feels that it has had a relatively short time to make meaningful preparations. The deadline of November 2007 is fast approaching.

'Only now are banks gearing up to implement the directive as details have only come out recently,' says Ravoet. 'The process of consultation has been encouraging, and there has been much lobbying for an extension, which has resulted in deadlines for compliance being nine months longer, but even then the deadline is tight. No bank will say it is going to be late implementing MiFID, but there are those that feel it will be difficult to meet the deadline.'

'MiFID will only work if there is a workable European passport. We must eliminate gold-plating.'  
– Guido Ravoet

### Unfair advantage

Some of the delay in the transposition of MiFID into local legislation among member states could stem from the potential advantage of gold-plating – a habit Luxembourg, among others, has shown in the past. A state that waits for its neighbours to implement first can, where possible, create a local regime that offers comparative benefits in order to attract more investment activity.

So far, for example, only Germany has implemented MiFID, so it currently has a stricter regime than the rest of the EU, which may put it, albeit temporarily, at a competitive disadvantage. The FBE believes that clarification on implementation is vital, and it is expressing its concern over the timing of MiFID, the potential for gold-plating and the need for a pan-European approach to implementation.

### Cost and complexity

Beyond these many concerns, perhaps the greatest fear surrounding MiFID has been the potential cost of compliance, with the industry required to invest heavily in process reorganisation and technology infrastructure. However, this picture is also clouded, and a clear, transparent estimate of costs has so far proved elusive.

'At this stage, everyone is looking at the downside – the costs,' says Ravoet. 'However, the smart players are looking at the advantages and they are keen on MiFID. Banks are looking at discontinuing products and services that might be uneconomic under MiFID, but there is no consensus on the costs vs the benefits.' This trade-off between investment and potential advantage will depend significantly on the opportunities that banks can identify, which will in turn depend on their relative starting points in terms of technology and the structure of their business.

However, while the FBE notes that its member organisations see cost of implementation as a major worry in regard to MiFID, it also observes that the figures about which many technology vendors and media commentators make so much noise may, in fact, be exaggerated. Some analysts believe that the transition could cost the industry around €1.5bn, with estimated spend by individual banks in the region of €15m for IT and €17m for new processes. The cost, of course, will be significant, but the FBE warns against believing the most inflated estimates that have surfaced.

'Some IT consultants have inflated the projected costs in order to panic the market into action,' says Ravoet. 'The level of panic varies from bank to bank, but it is true that we are in a gloomy period now, where the focus is on cost, but as a federation we are optimistic. We are beyond arguing the benefits, we are now at the practical implementation stage.'

### Clarification and commitment

The FBE is keen to ensure that the Committee of European Securities Regulators' (CESR) recommendations on implementation guidelines are based on commonality, with states across Europe bound to the same code. The belief is that this alone will provide the level playing field the regulators seek, enabling investment banks to compete on the same terms, regardless of which European jurisdiction they operate in. It will, furthermore, encourage states to

transpose the new regulations in a timely fashion and eliminate the advantages of delaying the implementation of MiFID. 'MiFID will only work if there is a workable European passport. We must eliminate gold-plating,' says Ravoet.

There are signs that lobbying on this issue could be successful. Certainly, the banks that constitute the FBE's membership have had positive things to say about the regulators so far, despite the criticisms that have been aimed at MiFID and its implementation. There is still some uncertainty about how MiFID will pan out when implemented at a local level, but the FBE has confidence that the needs of the pan-European banking industry will be respected by CESR as it works on the detail of its implementation guidance.

Even after implementation the FBE expects to see many reviews of the directive, the scope of which could eventually be widened to cover all financial instruments, so MiFID should be seen as an issue for the long-term. The FBE is now looking further beyond implementation so see how MiFID will affect markets in ten years' time. In advocating this visionary thinking, the FBE is setting the tone for the banking industry, which would do well to take a long-term view of regulatory change. FBA