

MiFID

After implementation, was it really worth it?

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So, November 1st has passed and MiFID has now been implemented. Was all of the effort worth it?

Well, to use a 'Year 2000' analogy, no planes fell out of the sky, not even in those firms who refused to acknowledge MiFID at all and have still not taken any steps to comply with the new requirements. But the changes introduced to the UK regime because of MiFID were never going to have that type of consequence.

It would be wrong to simply look at some of the individual changed requirements in order to determine the worth of MiFID and the efforts made in implementing it. It is a political reality that the UK, and the financial services markets within it, are fundamentally linked to the EU. It is also a political reality that integration across EU member states, in all aspects of life, is a long held prize ever since the Treaty of Rome was signed. The real worth of MiFID can only be measured by placing some value on this greatest of Brussels' prizes. But that's a debate too big for this article, and, if I haven't alienated all readers already, a debate that many will care less about than the more immediate impact on their own business.

More trees have been slain in printing articles about MiFID than I care to imagine. Opinions have ranged from a monstrous EU imposed blight on our business sovereignty, to the most radical opening of cross-border opportunities since loaves came precut. I cannot see either extreme properly reflecting reality. No-one has been able to demonstrate to me anything in MiFID that stops a firm continuing to operate its business according to sound commercial judgements; and at the other extreme no hedge fund manager has been able to demonstrate to me the increased business it expects to undertake because of MiFID. The impacts that the post MiFID regime will create are more subtle and, I argue, more positive.

Taking just three of the key issues:

Best execution

I still speak to some fund managers who argue that their clients are only interested in the absolute return and best execution doesn't matter to them. I have to disagree. Provide any client with the choice of a return of 14% or 15% and they'll all flock in the same direction. Maybe a full percentage difference is not realistic, but the point is valid. Best Execution obligations will create more competition, reduce costs and must therefore drive execution efficiency. That is good news for clients, and good news for performance fees.

Two interesting questions to ask yourself are: How many brokers have tried to categorise you as an

eligible counterparty in order to avoid the best execution obligation? And how many managers do you know that have agreed to be treated as an eligible counterparty, thereby giving up best execution protections?

The truth is that the combined power of the market place to demand improved efficiency would never have the same impact as a regulatory requirement. But, that improved efficiency will only become real if managers now check the obligation is being provided and challenge brokers over their execution and costs.

SYSC arrangements

A little trickier, at first, to defend as pre-MiFID there were plenty of high level requirements regarding how firms should ensure they manage themselves. I hear many opinions that the post MiFID regulations have simply created a paper chase around that. As a regulatory consultant I come across a very high number of firms and see as many different approaches to organising and running a hedge fund manager. I enjoy seeing these differences as I am an absolute advocate that one size does not fit all.

However, at the extreme, some firms still operate on the basis of a star trader calling all of the investment shots and the business managing itself around them with little central oversight or control. It is the firms that operate without good controls and oversight that face the highest risk of a serious problem occurring. We are all working hard to promote our industry to counter some ill-informed press commentary. It only takes one failure for us to see sensationalist press stories suggesting hedge fund managers are a close relative of the devil. So we should welcome efforts that make it clearer to any laggards the steps they need to take to manage their business well.

But that does not mean that well controlled firms are being asked to do more to meet the new MiFID requirements. The best controlled firms have not had to change their governance and control arrangements, indeed the best controlled firms are still operating to standards higher than the regulatory minimums. So again, I welcome the increased focus of management arrangements required by the new regulations and believe they can only have a positive impact on our industry.

Market transparency

At the most fundamental level, the new MiFID regulations have introduced clearer pre-trade transparency when dealing with a Systematic Internaliser, and have enhanced post trade transparency when transacting shares away from a regulated market or MTF.

It's hard to argue against trade transparency. We all want to see efficient market, information that provides increased disclosure and transparency and contributes directly to market efficiency. The requirements under MiFID for this information to be published in 'real-time' can only be of benefit to managers in giving them the ability to quickly analyse and understand market activity and price movements.

Another significant contribution to a market's efficiency is its cleanliness. We have already seen the FSA publicly admonishing itself for its failure to demonstrably oversee any real improvement in market cleanliness since it got its powers. In turn, the FSA has said that it will widen its investigation into the anti market-abuse and insider dealing controls in hedge fund managers. Whatever the merits of this action, the more transparent a market, the more obvious inappropriate behaviour becomes; and in turn the less frequent. So transparent markets de-facto reduce concerns about activity and are therefore an integral part in the shared fight to ensure that markets remain demonstrably clean.

And, as to additional transaction reporting requirements for investment managers; OK, perhaps I'll concede that point!

Consistency and integration

I imagine that some readers will consider the points I have made above and challenge my thinking by citing the revised record keeping requirements, disclosure requirements, financial promotions changes etc, and asking what the worth in those is. I do concede that for some of these detailed changes it may be harder to put an individual cost benefit case together, but, in reality those changes have not been huge and do not fundamentally change the way in which we do business. If I take you back to my opening comments, the primary objective here has been about EU integration and consistent treatment for all firms across the EU zone. Let's hope that the EU zone regulators ensure this is achieved by being as diligent as I think we all know the FSA has. I can see no downside in a more level playing field for UK firms.

So, am I a fan of MiFID? If its implementation provides us with greater efficiency, reduced costs, stronger controls, improved transparency, and levels the playing field across jurisdictions, it is hard not to be, whatever our views on the value of the EU. **THFJ**

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