

A Guide to  
MiFID  
Investment  
Services  
in Ireland

DILLON  EUSTACE

DUBLIN HONG KONG NEW YORK TOKYO



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## ▣ MIFID BACKGROUND

### *(i) Pan-European Regime for the Financial Services Industry*

Council Directive 2004/39/EC, the Markets in Financial Instruments Directive (“MiFID”) marked the introduction by the European Union of a new and broad ranging, pan-European regime for the financial services industry.

Replacing Council Directive 93/22/EEC, the Investment Services Directive (the “ISD”), MiFID represents one of the key elements of the EU’s Financial Services Action Plan, a set of EU legislation which was introduced with the objective of producing an effective single financial services market in the EU. MiFID develops and extends the scope of financial services regulation outlined in the ISD and introduces new and more extensive requirements to which firms have to adapt, in particular in relation to their conduct of business and internal organisation.

In general terms, MiFID builds upon the principles already set out in the ISD and most firms that were covered under ISD will continue to be covered under MiFID but in many cases the requirements placed upon them under MiFID are far more comprehensive than before.

Investment firms which provide investment services to third party clients or conduct, on a professional basis, investment activities in relation to certain financial instruments may be within the scope of MiFID.

Broadly speaking, the types of firm likely to fall within MiFID’s scope include:

- retail banks
- investment banks
- portfolio managers (excluding firms acting as managers of collective investment schemes)
- stockbrokers and broker-dealers
- many futures and options firms
- corporate finance firms
- wholesale market brokers
- operators of Regulated Markets and Multi-lateral Trading Facilities
- providers of custody services, and
- commodities and venture capital firms.

*(ii) Regulation of Investment Firms*

MiFID requires that member states of the EEA<sup>1</sup> (“Member States”) must license and regulate investment firms carrying out investment services in their jurisdiction.

It also establishes high-level organisational and conduct of business standards that apply to all investment firms. These standards include managing conflicts of interest, best execution, customer classification and suitability requirements for customers. It also includes pre-and post-trade transparency requirements for equity markets etc and extends the common regulatory system to “systematic internalisers” (i.e. a firm which acts as a mini-exchange by crossing orders it has on its books internally).

*(ii) Passporting*

MiFID also requires that Member States recognise investment firms licensed in other Member States and permit such investment firms to operate within their jurisdiction without imposing any further requirements on them.

Differing from the ISD which placed emphasis on mutual recognition between Member States, MiFID introduced the concept of maximum harmonisation which means that Member States cannot gold-plate the EU requirements by, for example, imposing harsher penalties for non-compliance. In addition, the MiFID Directive improved the operation of the ‘passport’ for investment firms by more clearly delineating the allocation of responsibilities between Home State and Host State for passported branches and generally clarifying some of the jurisdictional uncertainties that arose under the ISD.

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<sup>1</sup> European Economic Area (members comprised of EU member states, Iceland, Norway and Liechtenstein)

## ▣ APPLICATION OF MIFID IN IRELAND

### *(i) Irish MiFID Regulations*

MIFID has been transposed into Irish law by the European Communities (Markets in Financial Instruments) Regulations, 2007 as amended by the European Communities (Markets in Financial Instruments) (Amendment) Regulations, 2007 and by Section 5 of the Markets in Financial Instruments and Miscellaneous Provisions Act 2007 (the 'MiFID Regulations') with effect from 1 November, 2007.

### *(ii) Financial Regulator Authorisations*

Regulation 4 of the MiFID Regulations provides that the Central Bank and Financial Services Authority of Ireland (the "Financial Regulator") is the competent authority in Ireland for the purposes of MiFID.

The Financial Regulator is therefore responsible for the authorisation of entities under the MiFID Regulations. Such authorisation may be unconditional or subject to such conditions or requirements as the Financial Regulator sees fit.

### *(iii) Withdrawal/Suspension/Revocation of Authorisation*

The Financial Regulator also has the power to withdraw or suspend an authorisation in certain circumstances or apply to the High Court for an order revoking the authorisation of an investment firm.

### *(iv) Register of Authorised Investment Firms*

The Financial Regulator is required to maintain a publicly accessible register of authorised investment firms and investment firms authorised in other Member States passporting into Ireland. This register appears on the Financial Regulator's website.

### *(v) Who is Affected?*

Investment firms offering financial services to clients or customers located within the EEA are potentially affected by the MiFID Directive, either directly or indirectly.

(vi) *Acting as an Investment Firm in Ireland*

Regulation 7(1) of the MiFID Regulations provides that any party that proposes to act as an investment firm (or claim to be an investment firm or represent itself to be an investment firm) in Ireland must be either:

- authorised by the Financial Regulator in Ireland to do so, or
- authorised to do so under the MiFID Directive by the competent authority in another Member State.

## ▣ DOES YOUR BUSINESS COME WITHIN THE SCOPE OF THE MIFID REGIME?

*(i) Are you acting or proposing to act as an “Investment Firm”?*

If your regular occupation or business is the provision of one or more investment services to third parties on a professional basis, or the activity of dealing on own account on a professional basis, relating to financial instruments then you will be considered an investment firm for the purposes of the MiFID Regulations.

The definition of investment firm is set out in Regulation 3(1) of the MiFID Regulations. The key elements of this definition are examined in more detail below.

*(ii) Are you providing or do you propose to provide “Investment Services”?*

The investment services covered by the MiFID Regulations are as follows:

- the reception and transmission of orders in relation to one or more financial instruments
- execution of orders on behalf of clients
- dealing on own account, meaning the activity of trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments
- portfolio management
- investment advice
- underwriting of financial instruments or placing of financial instruments on a firm commitment basis
- placing of financial instruments without a firm commitment basis
- operation of multilateral trading facilities

*(iii) What “Financial Instruments” are covered?*

For MiFID to apply, the investment services provided have to relate to one or more of the following financial instruments:

- transferable securities
- money-market instruments
- units in collective investment undertakings
- derivative contracts that relate to securities, currencies, interest rates, yields, other derivative instruments, financial indices which may be settled physically or in cash
- derivative contracts relating to commodities that may be settled in cash other than on default or other termination event
- derivative contracts relating to commodities that can be physically settled if traded on a regulated market and/or multilateral trading facility (MTF)
- derivative contracts relating to commodities, physically settled, but not for commercial purposes which have characteristics of other derivative financial instruments having regard to whether they are cleared and settled through recognised clearing houses or are subject to margin calls
- derivative instruments for the transfer of credit risk
- financial contracts for differences
- derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash as well as derivative contracts relating to assets, rights, obligations, indices etc.

*(iv) Are the services to be provided “on a professional basis”?*

MiFID applies when you are providing investment services relating to financial instruments to third parties on a professional basis.

Unfortunately, there is no Irish guidance as to what is meant by providing services “on a professional basis”. UK FSA guidance indicates that one needs to consider the overall commercial nature and scale of the activity but we consider that a commonsense approach is needed.

*(v) What is covered by “Investment Advice”?*

The provision of investment advice is an investment service under the MiFID Regulations and covers the provision of personal recommendations to a client in respect of one or more transactions relating to financial instruments. It does not include recommendations issued exclusively through distribution channels or to the public.

Detailed definitions of “investment advice” and “personal recommendations” are set out in Regulation 3(1) of the MiFID Regulations.

*(vi) Are you automatically exempt if providing such services “on your own account”?*

Any entity which carries out own account dealing on its own behalf may fall within the scope of the MiFID Regulations unless one of the exemptions apply.

*(vii) Is your business exempt?*

Regulation 5 of the MiFID Regulations exempts a variety of entities from the requirement to obtain authorisation under the MiFID Regulations, (insurers, entities who provide services exclusively to group entities, administrators of employee participation schemes, investment funds and pension funds and their managers and depositories, various public bodies etc.)

There are other exemptions for investment firms which carry on own account dealing activities (provided not a market maker or dealing outside a regulated market or a MTF in certain circumstances) and other exemptions specific to persons whose main business consists of dealing on own account in commodities and/or commodity derivatives.

Importantly, note that Regulation 5(3) of the MiFID Regulations also exempts investment firms that meet the following three criteria:

- they are not allowed to hold clients’ funds or securities and therefore are not allowed at any time to place themselves in debit with their clients

- they are not allowed to provide any investment service except as follows: (i) receiving and transmitting orders in transferable securities and units in collective investment undertakings; (ii) providing investment advice in relation to those securities and units, and
- they are only transmitting those orders to certain specified entities.

*(vii) Is your business “operating within the State”?*

If you are not “operating within the State” or deemed to be “operating within the State” you do not need an Irish authorisation or to effect a passport notification.

Under Regulation 8(1) of the MiFID Regulations, an investment firm shall not be regarded as operating within the State, if–

- the investment firm has no branch in the State
- the investment firm’s head or registered office is: (i) in a state other than a Member State, or (ii) in a Member State outside the State, and the investment firm does not provide any investment services in respect of which it is required to be authorised in its home Member State for the purposes of the MiFID Directive, or
- the investment firm is authorised in a Member State outside the State, under the MiFID Directive, but provides only investment services of a kind for which authorisation under the MiFID Directive is not available during the provision of the investment services.

Importantly, Regulation 8(2) clarifies that notwithstanding paragraph (1), an investment firm, for the purposes of Regulation 7, shall be regarded as operating within the State if the investment firm provides investment services to individuals in the State who do not themselves provide one or more investment services on a professional basis.

*(ix) Do you provide or intend to provide any of the “Ancillary Services”?*

Where an investment firm is authorised to carry out investment services, it can also apply for its authorisation to cover the following ancillary services (authorisation under the MiFID Regulations cannot be granted solely for ancillary services) :

- safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management
- granting credits or loans to an investor to allow the investor to execute a transaction in one or more financial instruments, where the investment firm granting the credit or loan is involved in the transaction
- advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings
- foreign exchange services where these are connected to the provision of investment services
- investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments, and
- services relating to underwriting.

## ▣ IS AUTHORISATION UNDER THE MiFID REGULATIONS IN IRELAND THE CORRECT OPTION?

### *(i) Initial 4 Step Check*

The following steps should be taken by an investment firm to determine if its business is within the scope of the MiFID Regulations and, if so, what actions this may require.

Step 1 – Determine whether the investment firm requires authorisation under the MiFID Regulations?

Step 2 – Determine if the presence in Ireland requires authorisation by the Financial Regulator or if the business can passport its authorisation from another Member State.

Step 3 – If authorisation is to be sought in Ireland, the investment firm should consider the Financial Regulator's authorisation requirements fully to ensure that these can be met.

Step 4 – As part of this process, the investment firm should also consider the ongoing operational and conduct of business requirements that will be imposed to ensure that these can be adhered to.

An investment firm should not proceed to make an application for authorisation under the MiFID Regulations until it has given full consideration to each of the steps above.

It may be the case that a firm will be deemed to be carrying out an IIA service only and not a MiFID service (e.g. acting as a deposit broker or deposit agent).

### *(ii) Investment Intermediaries Act may still apply*

Whilst MiFID replaced and repealed the provisions of the ISD, the Investment Intermediaries Act, 1995 as amended (the "IIA"), which implemented the ISD into domestic Irish legislation, has not been repealed. A firm therefore has to consider the potential application of both the MiFID Regulations and the IIA to its business.

A different regulatory regime will apply to a firm depending on whether it offers an IIA service or a MiFID service and it is most important to note that the definitions of "investment

services” and “financial instruments” under the MiFID Regulations are of “investment business services” and “investment instruments” under the IIA.

If your business involves the provision of “investment business services” or provision of services relating to “investment instruments” under the IIA, you may need to obtain authorisation as an investment business firm under section 10 of the IIA.

*(iii) MiFID/IIA Hybrid*

If your business involves the provision of investment services under the MiFID Regulations and also covers investment business services and / or investment instruments under the IIA, it will be necessary to seek authorisation under the MiFID Regulations with a specific extension to cover the additional IIA investment business services/investment instruments. Such an authorisation is referred to as a “hybrid” authorisation.

## AUTHORISATION UNDER THE MIFID REGULATIONS - APPLICATION PROCEDURE

### *(i) Preliminary Meeting with the Financial Regulator*

The Financial Regulator requires each proposed investment firm meets with them at a preliminary stage to discuss their business and the proposal to seek authorisation, essentially to review, at a high level, the 4 steps outlined above. The Appendix lists the normal agenda items for the preliminary meeting with the Financial Regulator. Only on satisfying the Financial Regulator's preliminary enquiries can the application proceed.

### *(ii) Next Step - Documents Submission*

The application process requires the following documentation to be submitted to the Financial Regulator:

- completed Application Form (standard form)
- detailed Business Plan
- drafts of all policies and procedures manuals
- certified copy of Memorandum and Articles of Association or equivalent
- Individual Questionnaire duly completed and signed by each director and key individuals (ie. senior managers)
- full ownership (direct and indirect) details, group structure chart (highlighting all regulated group entities) and accounts of all entities in ownership chain
- audited annual accounts for the previous 3 years (or since establishment, if less than 3 years in existence)
- quarterly management accounts since the last audited accounts (highlighting all regulated group entities).

*(iii) Application Form and Business Plan*

The Application Form and Business Plan submitted to the Financial Regulator need to provide full and sufficient details about the firm and its business to enable the Financial Regulator to make a determination as to whether the investment firm meets the conditions for authorisation, discussed in more detail below.

This must also include details on officers responsible for compliance, finance, anti-money laundering and internal audit.

*(vi) Draft Policies and Procedures Manuals*

Draft Policies and Procedures Manuals will need to be submitted to the Financial Regulator for review evidencing how the firm proposes to manage its business in compliance with the ongoing organisational and conduct of business requirements, discussed in more detail below.

*(v) Timing*

The process for authorisation will usually take between 4 and 6 months from the date of original submission of complete application.

Better prepared, more detailed submission documents tend to reduce the timing of authorisation process.

## ▣ CONDITIONS FOR AUTHORISATION

### *(i) Constitution*

The proposed investment firm must be constituted in one of the following forms:

- a company incorporated by statute or under the Companies Acts 1963 to 2006
- a company incorporated outside Ireland
- a company made under Royal Charter
- constituted under a partnership agreement as an unincorporated body of persons
- an industrial provident society, or
- a sole trader.

Normally, a private limited liability company is the chosen vehicle.

### *(ii) Capacity to Provide Investment Services*

The proposed investment firm's constitutional documents must give the investment firm sufficient capacity to conduct investment services.

### *(iii) Sufficient Capital*

The proposed investment firm must have sufficient capital in line with the Capital Requirements Directive.

### *(iv) Probity and Competence of Directors/Managers*

The Financial Regulator must be satisfied as to the probity and competence of each of the directors and senior managers of the proposed investment firm (persons must be of sufficiently good repute and sufficiently experienced).

Detailed questionnaires must be completed and submitted to the Financial Regulator seeking prior approval for directors and senior managers.

(v) *Suitability of Qualifying Shareholders*

The Financial Regulator must be satisfied as to the suitability of each of the qualifying shareholders of the proposed investment firm. Full details need to be provided, including group structure charts, details of all regulated entities in group, accounts for all entities in ownership chain and evidence showing ownership of each entity in that chain.

(vi) *Structure, Skill, Staffing*

The Financial Regulator must be satisfied as to the organisational structure and management skills of the proposed investment firm and that adequate levels of staff and expertise will be employed to carry out the investment firm's proposed activities.

Further organisational requirements are set out in Regulation 33 of the MiFID Regulations.

## PASSPORTING PROVISIONS

### *(i) Passporting into Ireland of Authorised Investment Services*

An investment firm authorised in another Member State may provide, within Ireland, investment services and any ancillary services, if the services are permitted under the investment firm's authorisation in its home Member State.

### *(ii) Passporting into other Member States*

An Irish investment firm authorised to provide investment and ancillary services in Ireland can passport into other Member States.

### *(iii) No Branch*

An investment firm providing services on a cross border basis (without the establishment of a branch) need only comply with the conduct of business rules of its home Member State.

### *(iv) Branch*

When operating on a branch basis, the organisational requirements of its home Member State regulation will continue to apply but it will also be required to comply with the conduct of business rules of its host Member State for activities within the host Member State.

The passporting regime under the MiFID Regulations is set out in Part 9 of the MiFID Regulations.

## ONGOING ORGANISATIONAL REQUIREMENTS

The MiFID Regulations apply high-level organisational and conduct of business standards to all investment firms. The organisational requirements include the following:

### *(i) General Compliance Procedures*

The firm must establish adequate policies and procedures sufficient to ensure its compliance with its obligations.

### *(ii) Conflicts of Interest Procedures*

The firm must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to identify potential conflicts of interest and take steps to prevent these conflicts adversely affecting the interests of its clients.

If a conflict of interest cannot be prevented, the investment firm must disclose the nature and/or sources the conflict of interest to the client before undertaking the business.

### *(iii) Business Continuity Procedures*

The firm must ensure continuity and regularity in the performance of investment services and activities by implementing and carrying out appropriate and proportionate systems, resources and procedures.

### *(iv) Operational Risk Control Procedures*

The firm must take reasonable steps to avoid undue additional operational risk when relying on third parties for the performance of certain operational functions.

### *(v) Outsourcing Procedures*

The firm must ensure that any outsourcing of important operational functions is not undertaken in such a way as to impair materially: (i) the quality of the firm's internal control, or (ii) the ability of the Financial Regulator to monitor the firm's compliance with all of the investment firm's obligations.

Where a firm outsources critical or important operational functions or any investment services or activities, the firm remains fully responsible for discharging all of the firm's obligations under the MiFID Regulations.

*(vi) Administrative and Accounting Procedures and Systems Control Procedures*

The firm must have in place and use (i) sound administrative and accounting procedures and internal control mechanisms, (ii) effective risk assessment procedures, and (iii) effective control and safeguard arrangements for information processing systems.

*(vii) Record Retention Procedures*

The firm must keep records of all services and transactions undertaken and ensure that the records are sufficient to enable the Financial Regulator to monitor the firm's compliance with the MiFID Regulations and, in particular, to ascertain whether the firm is complying with its obligations with respect to clients or potential clients. This requirement will also apply to passporting entities with branches in Ireland.

*(viii) Procedures for Safekeeping of Financial Instruments held on behalf of clients*

When holding financial instruments belonging to clients, the firm must make adequate arrangements to (i) safeguard clients' ownership rights, especially in the event of the firm's insolvency, and (ii) prevent the use of a client's instruments on own account, except with the client's express consent.

*(ix) Procedures for Safekeeping of client money*

When holding funds belonging to clients, the firm must make adequate arrangements to safeguard the clients' rights and, except in the case of credit institutions, prevent the use of client funds for the investment firm's own account.

*(x) Business, Procedures, Internal Controls and Reporting*

Each firm must establish, implement and maintain:

- decision-making procedures and an organisational structure relevant for its business
- internal control mechanisms to ensure compliance with these procedures

- records of the business and internal organisation
- security and confidentiality procedures to safeguard this information

*(xi) Monitoring and Evaluating Systems Control Mechanisms*

Regulation 35 of the MiFID Regulations requires that firms must monitor and evaluate the adequacy and effectiveness of their systems and internal controls on a regular basis and take appropriate measures to address deficiencies. This must include maintaining a permanent, independently operating compliance function.

*(xii) Risk Management Function*

A firm is required under Regulation 36 to establish, implement and maintain adequate risk management policies and procedures, to adopt processes and arrangements to manage those risks and to monitor compliance with those risk policies and procedures.

An independent risk management function is envisaged where it is proportionate and appropriate in light of the nature, scale and complexity of the investment firm's business.

*(xiii) Internal Audit Function*

Regulation 37 envisages that a separate internal audit function be established and maintained where it is proportionate and appropriate in light of the nature, scale and complexity of the investment firm's business.

*(xiv) Reports to Senior Management*

Regulation 37 also requires reports on internal controls and risk management to be provided to senior management on a frequent basis (and at least annually).

*(xv) Complaints Procedures*

A firm is required under Regulation 38 to maintain effective and transparent procedures for the reasonable and prompt handling of complaints and keep records of such complaints and their resolution.

## □ CONDUCT OF BUSINESS REQUIREMENTS

The MiFID Regulations contain certain conduct of business requirements which apply to the activities of an investment firm which include:

### *(i) Client Classification*

All clients must be classified as either; (i) retail clients; (ii) professional clients; or (iii) eligible counterparties and must receive specific information depending on such classification.

Clients must receive prior notification of the nature and degree of risk involved, details of fees and expenses etc and subsequent information about the status of execution of the instruction and must also receive regular statements and reports on the products and services acquired via the investment firm.

Retail Clients: By default, clients who are neither eligible counterparties nor professional clients are considered to be retail clients. This means most natural persons. Retail clients enjoy the highest level of protection.

Professional clients: These are large businesses which conform to criteria of size in terms of their balance sheet, turnover and/or share capital. The definition of “professional client” is set out in Schedule 2 to the MiFID Regulations. Obligations to such clients in terms of information are, consequently, limited.

Eligible Counterparties (“ECPs”): These are professional clients (e.g. investment companies, credit institutions, pension funds, central banks, etc.) who operate in the financial sector. The definition of “ECPs” is set out in Regulation 3 to the MiFID Regulations. Certain obligations concerning information provision, best execution requirements, prompt, fair and expeditious execution of client orders etc will not apply to transactions with ECPs.

An investment firm is required (under Regulation 81(1)(b)) to notify clients about the right to request a different categorisation in certain circumstances and about any limitations on the level of client protection that different categorisations would entail.

### *(ii) Best Execution*

Investment firms must take reasonable steps when executing orders to ensure the best possible result for their clients, taking account of price, cost, speed, likelihood of execution

and settlement, size, nature and any other consideration relevant to the execution of an order.

Investment firms must establish and implement an 'order execution policy' that will ensure the best possible result for the client. This policy must include information on different venues where the investment firm executes its client orders and the factors affecting the choice of the venue. Firms must also provide appropriate information to their clients on the order execution policy and are required to obtain the prior consent of their clients to the execution policy.

If the order is executed outside a regulated market or an MTF, the investment firm must inform their clients of this possibility in the policy. Prior 'express' consent must be obtained by the investment firm before proceeding to execute orders outside a regulated market or an MTF. This consent may be obtained in the form of an agreement or in respect of an individual transaction.

A firm will need to monitor the effectiveness of its order execution arrangements including execution venues and execution policy to achieve best execution opposed to any alternatives at least on an annual basis. Firms are required to advise customers of any material changes to their order execution policy or arrangements.

### *(iii) Execution-Only Services*

If an investment firm is only providing execution-only services and/or the reception and transmission of client orders, it will not be required to assess the suitability of the product or service if it relates to certain instruments, namely: shares admitted to trading on a regulated market (includes equivalent markets outside the EU); money market instruments, bonds, or securitized debt (excluding bonds or securitized debt that embed a derivative); and non-complex financial instruments.

Execution-only services can be provided only at the initiative of the client. The client must be clearly informed that as there is no requirement to assess the suitability of the instrument or service offered, the client will not benefit from the full conduct of business rules. The firm must also warn the client that it has not assessed the suitability of the product/service.

The firm must also ensure that it complies with the conflict of interest rules set out in Regulation 74 and 75 when providing execution-only services.

### *(iv) Client Order Handling*

Investment firms are required to take all reasonable steps to obtain, when executing orders, the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order.

*Order Allocation Policy* - This is required to ensure the fair allocation of aggregated orders and transactions and to address how the volume and price of orders relates to how they will be allocated in each case.

This policy must:

- provide for the prompt, fair and expeditious execution of client orders by that investment firm, and
- provide for the execution of comparable client orders in accordance with the time of their receipt by the investment firm.

## CAPITAL REQUIREMENTS

Capital requirements will differ depending on the size of the investment firm and the extent of its business. The minimum level of capital that will need to be maintained for each investment firm will be determined based on the risks associated with the investment firm's business.

Each investment firm is required to formulate an Internal Capital Adequacy Assessment Process (ICAAP) as a means of determining an adequate level of capital required to cover the business's risks.

The Financial Regulator distinguishes between "small, non-complex firms" and "large and/or complex firms" when assessing and applying capital requirements.

The Financial Regulator has outlined guideline criteria to identify which category is appropriate for investment firms. The criteria under which an investment firm will be considered large/complex includes: (i) if it is authorised to trade for its own account; (ii) if it is authorised to underwrite issues on a firm commitment basis; (iii) if it uses models to determine regulatory capital; (iv) if it describes itself as large or complex; (v) if it has a significant presence in the local market and/or has large international activities; or (vi) if it is a member of the Irish Stock Exchange. Firms that fall outside this criteria would generally be considered to be small, non-complex firms.

Small, non-complex firms will be required to prepare an ICAAP on the basis of the Financial Regulator's ICAAP Questionnaire. Large and/or complex firms will be required to prepare an ICAAP on the basis of the Financial Regulator's ICAAP Portal.

The ICAAP Portal requires a more detailed and sophisticated level of risk calculation appropriate for more complex businesses. In practice, it will typically require an investment firm to maintain a higher level of capital to cover risk than that required for small, non-complex firms under the ICAAP Questionnaire.

## ▣ HOW CAN DILLON EUSTACE ASSIST?

### *(i) Our Experience*

Dillon Eustace's Financial Services Department acts for asset managers and advisers, broker/dealers, investment banks, fund administrators, CFD providers and spread betting firms, pension consultancies, placing agents and intermediaries looking to use Ireland as a strategic base from which to serve a wider European client base or seeking to export their European based business to Ireland.

### *(ii) Recent Transactions*

Recent transactions include advising clients on authorisations under the MiFID Regulations, converting existing authorisations to authorisations under the MiFID Regulations as well as advising on the applicability of exemptions and foreign branch passporting provisions, advising domestic asset managers on implementing conduct of business procedures compliant with the MiFID Regulations, including best execution and conflicts of interest procedures. We have also recently advised spread betting firms on the application of the MiFID Regulations to their business.

### *(iii) Services*

The Financial Services Department can advise on all aspects of the MiFID Regulations and its application to investment firms providing investment services in Ireland such as:

- the establishment and authorisation of new investment business in Ireland – including advising on high level strategic matters, scope and application of the MiFID Regulations, co-ordination of application for authorisation including assistance/guidance in completion of the Application Form and Business Plan, advice on implementation of policies and procedures for compliance with ongoing organisational and conduct of business requirements;
- cross-border passporting;
- capitalisation and capital adequacy requirements;
- drafting/reviewing all contracts, terms of business, policies and procedures manuals etc.;

- liaising with the Financial Regulator on client's behalf on all aspect of MiFID-related business and applications for authorisation;
- ongoing legal, regulatory and tax advice.

## APPENDIX

The preliminary meeting with the Financial Regulator will normally cover :

-  Introduction to firm
-  Group Structure (if applicable)
-  Shareholders
-  Proposed
  -  Investment (Business) Services
  -  Ancillary Services (if applicable)
  -  (Investment) Financial Instruments
- and
-  Breakdown of activities:
  -  MiFID Services
  -  MiFID Ancillary Services
  -  IIA
  -  Other
-  Clients
-  Directors
-  Staffing
-  Minimum Competency Requirements
-  Outsourcing (if applicable)
-  Consumer Protection Code
-  Auditors
-  Financial Information
-  Business Continuity Arrangements
-  Procedures and processes in place vis-à-vis security, integrity and confidentiality of information.
-  Conflicts of Interest
-  Execution Policy (if applicable)
-  Order Allocation Policy (if applicable)
-  Complaints Procedures
-  Books and Records
-  Retention of Records

- ▣ Regulatory Background (reference Section 10 of the application form)
- ▣ CRD
- ▣ Tied Agent(s) (if applicable)
- ▣ Proposed Passporting (if applicable)
- ▣ Any other relevant information

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