



MiFID2  
Investment Business Stakeholder  
Briefing & Discussion  
30<sup>th</sup> April 2015



Jersey Financial  
Services Commission



Agenda

- MiFID2 – what is it and why is it relevant to me?
- Results and analysis of Investment Business sensitivity survey
- JFSC questions and discussion

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## MiFID2 – what is it? - why is it of interest to me?

- Introduction

- A product of the September 2009 G20 meeting
- One of many EU regulatory reforms
- Applies to:
  - Investment Firms (very broad definition)
  - Market Operators
  - Data Reporting Services Providers
  - **Third Country Investment Firms**

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## MiFID2 – what is it? - why is it of interest to me?

- MiFID2 what is it?

- Succeeds the original MiFID
- Strengthens EU regulatory framework to:
  - Harmonise requirements
  - Address non-compliant behaviour
  - Reinforce investor confidence
- By increasing investor protection
- By increasing transparency in financial markets
- By strengthening the corporate governance of actors

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## MiFID2 – what is it? - why is it of interest to me?

- MiFID2 what is it?
  - Markets in Financial Instruments Directive
  - Structurally MiFID2 comprises of a
    - Directive (*new MiFID*) ~ 2014/65/EU; and a
    - Regulation (*MiFIR*) ~ (EU) No 600/2014

MiFID2 = *new* MiFID + MiFIR

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## MiFID2 – what is it? - why is it of interest to me?

- MiFID2 what is it?
  - It includes requirements to comply with parts of other Directives & Regulations
    - Capital Requirements Regulation (CRR)
    - Capital Requirements Directive (CRD IV)
    - European Markets Infrastructure Regulation (EMIR)
    - Market Abuse Regulation & Directive (MAR & MAD)
    - Transparency Directive (TD)

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MiFID2 – what is it?  
- why is it of interest to me?

- MiFID2 – the Jersey perspective
  - MiFID2 creates a harmonised regime for third country investment firms
  - Third country investment firms without a branch in the EU can service the business of ‘professional clients’ across the EU

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MiFID2 – what is it?  
- why is it of interest to me?

- What is the catch?
  - The third country regime must be equivalent
  - Investment firm must register with ESMA
  - ESMA due-diligence, accepts and puts investment firms on EU register (start to finish within 180 days)
  - Investment firms can then commence business with professional investors across the EU

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## MiFID2 – what is it? - why is it of interest to me?

- What about retail clients?
  - Access to retail clients carefully controlled – national regimes apply. Presence bias.
  - Unless Member State opts for MiFID Article 39 - introduces harmonised branch requirements
  - MiFID Article 42 - introduces reverse solicitation *'at client's own exclusive initiative'*

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## MiFID2 – what is it? - why is it of interest to me?

- How does this affect my UK clients?
  - HM Treasury consulting on putting MiFID2 into Law 'Transposition'
  - HM Treasury minded to continue with national regime (not opt into Article 39)
  - FSMA 2000 (Regulated Activities) Order 2001 Article 72 – Overseas persons
  - Decision finely balanced, industry and consumers could prefer Article 39 (18/06/15)

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## MiFID2 – what is it? - why is it of interest to me?

- What would equivalence look like?
  - Considers - Prudential and Business Conduct Framework (MiFIR, CRD IV and MiFID) (MiFIR Recital 41)
  - 'Consistent' regulatory framework, the substantial result of which is similar to EU requirements MiFIR Recital 44)
  - Has regard to the IOSCO objectives and principles of securities regulation (MiFIR Recital 41)
  - Conforms to the general regulatory goals and standards set out by the G20 in September 2009 (MiFIR Recital 41 & 44) (improving derivative markets transparency, mitigating systemic risk and protecting against market abuse)

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## MiFID2 – what is it? - why is it of interest to me?

- What would equivalence look like?
  - The UK approach includes mirroring '*as closely as possible the original wording of the Directive*'
  - A mammoth undertaking, but possibly the most credible
    - Interdependency of all of Jersey's financial service business on the FS(J)L
    - The FS(J)L (1998) precedes the original MiFID (2004) and MiFID2 (2014)

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## MiFID2 – what is it? - why is it of interest to me?

- Examples of mapping issues

- FS(J)L definitions of Investments (Schedule 1 – for investment business) and Securities (Schedule 6 – for market abuse), not as precise as MiFID Financial instruments (Annex I section C)
- FS(J)L definition of investment business (Article 2(2)) overlaps with 5 of the 9 definitions set out as MiFID Investment services and activities (Annex I section A), doesn't cover 4
- Client definitions IB Codes vs MiFID (Annex II)
  - Professional investor in Jersey less detailed, threshold of large undertaking significantly below Directive requirement.

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## MiFID2 – what is it? - why is it of interest to me?

- Examples of mapping issues

- Threshold of elective professional client much lower in Jersey
- Other examples are:
  - Best execution
  - Suitability
  - Conflicts of interest
  - Remuneration

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## MiFID2 – what is it? - why is it of interest to me?

- One final statement
  - Article 14 MiFID2 requires investment firms to be members of an investor compensation scheme. Not found in Jersey for IB.
- In summary
  - One of the reasons why MiFID2 is considerably longer than its original is that it is far more prescriptive in the requirements it places on investment firms on how they are organised and how they treat their clients.

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## Results and analysis of Investment Business sensitivity to MiFID2 survey

- The situation
  - Our analysis indicates that the IB sector and Fund Services Business sector (where advice is given to EU entities) fall into the scope of MiFID2
  - Our count of affected registered entities is 90 IB firms and a small number of FSB firms

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## Results and analysis of Investment Business sensitivity to MiFID2 survey

- Our task
  - Is to discover the sensitivity of these registered persons to MiFID2 through their connections with EU investors
  - We need to work together to form an opinion as to whether Jersey should seek equivalence to MiFID2 in order to protect existing business and/or to source new opportunities

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## Results and analysis of Investment Business sensitivity to MiFID2 survey

- Launch of IB MiFID2 sensitivity survey via SurveyMonkey end November 2014
  - 10 questions asked of IBs, great response rate, 43 out of 90
  - High level of responses permitted the use of 90% and 95% confidence intervals to guide our conclusions
  - Results collated and analysed

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## Results and analysis of Investment Business sensitivity to MiFID2 survey

- Analysis
  - Percentage of UK retail clients to total IB clients: 18.4%
  - Percentage of other EU retail clients to total IB clients: 7.3%
  - Percentage of UK and other EU professional clients to total IB clients: 0.4% + 0.2% = 0.6%
  - Potential total percentage of clients within scope of the Directive: 26.3%

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## Results and analysis of Investment Business sensitivity to MiFID2 survey

- Analysis
  - Significance of IB revenues to total revenue of registered person
  - IB is:
    - ≥75% of my business: 46.5%
    - >50% <75% of my business: 11.6%
    - >10% <50% of my business: 14.0%
    - ≤10% of my business: 27.9%

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## Results and analysis of Investment Business sensitivity to MiFID2 survey

- Analysis

- Percentage of respondent revenues that come from UK and other EU clients?

Revenues	UK	Other EU
<10%	53.5%	79.1%
10% to 25%	25.6%	20.9%
25% to 50%	16.3%	–
50% to 75%	4.7%	–

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## Results and analysis of Investment Business sensitivity to MiFID2 survey

- Analysis

- What percentage of respondents have a branch in the EU or are a subsidiary of an EU investment firm or bank?
- Branch: 11.6%
- EU subsidiary: 18.6%
- Non-EU subsidiary in EU: 7.0%
- Hence, approximately 37% of respondents will comply with MiFID2 somewhere in their network

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## Results and analysis of Investment Business sensitivity to MiFID2 survey

- Analysis
  - IB firms segmented ( $S_x$ ) for analysis into four groups according to relative significance of IB revenues:
    - $S_1$ , IB  $\geq 75\%$  of revenue (high dependence);
    - $S_2$ , IB  $< 75\% \geq 50\%$  of revenue;
    - $S_3$ , IB  $< 50\% \geq 10\%$  of revenue; &
    - $S_4$ , IB  $< 10\%$  of revenue (low dependence)

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## Results and analysis of Investment Business sensitivity to MiFID2 survey

- Analysis of  $S_3$  and  $S_4$  (sample size 6 and 12)
  - 72% of all IB clients, 22% of all EU clients
  - IB revenue a minority of overall revenue, consequently firms must offer a diverse (*at least one other*) range of financial services
  - Have the highest sensitivity MiFID2 clients:
    - $S_3$ , 32% (24% UK)
    - $S_4$ , 30% (16% UK)
  - Just under 50% have a business unit that will have to comply with MiFID2

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## Results and analysis of Investment Business sensitivity to MiFID2 survey

- **Analysis of  $S_1$  (sample size 20)**
  - 20% of all IB clients, 4% of all EU clients
  - IB revenue is the most important component of overall revenue
  - Have the 2<sup>nd</sup> highest sensitivity MiFID2 clients:
    - $S_1$ , 20% (14% UK)
  - Just under 40% have a business unit that will have to comply with MiFID2

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## Results and analysis of Investment Business sensitivity to MiFID2 survey

- **Analysis of  $S_2$  (sample size 6)**
  - 9% of all IB clients, >1% of all EU clients
  - IB revenue is moderately important of overall revenue
  - Have the lowest sensitivity MiFID2 clients:
    - $S_2$ , 2% (nearly all UK)
  - Just under 1 in 6 (17%) have a business unit that will have to comply with MiFID2

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## Results and analysis of Investment Business sensitivity to MiFID2 survey

- **Conclusions**

- 26% of IB clients are resident in the EU, with the vast majority (70%) being resident in the UK
- $S_3$  and  $S_4$  have the highest percentage exposure to EU clients, have the largest portion of all IB clients, are the least dependent on IB revenues and nearly 50% have a business unit complying with MiFID2
- $S_1$  is the most dependent on IB revenues, has a significant proportion of EU clients and nearly 40% have a business unit complying with MiFID2

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## JFSC questions and discussion

Questions for you

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## JFSC questions and discussion

- Has your business been adversely affected by the UK's introduction of RDR?
  - Relevant consideration:
    - If your UK and other EU clients are introduced to you by UK firms, via commercially favourable arrangement such as a commission rebate, or other compensation arrangement, has this changed with the introduction of RDR (Dec 2012)?

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## JFSC questions and discussion

- The UK is minded to continue its national regime and not opt into *new* MiFID Article 39. Would you support this proposal? (By 18 June)
  - Relevant considerations:
    - Third country access to UK controlled by the Overseas Persons exclusion ('with' or 'through' and 'legitimate approach')
    - MiFID2 Article 24 forbids: the payment, or receipt, of third party commissions, when giving independent advice or portfolio management; and absolute transparency for all costs and charges

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## JFSC questions and discussion

- The EU passport for professional investors - Do you think Jersey can use this opportunity?
  - Relevant considerations:
    - MiFIR introduces a new opportunity for third country investment firms to passport their services to professional clients throughout the EU, with or without a branch
    - Do you have professional client offering?
      - Note: MiFID2 professional clients are 'generally' authorised or regulated to operate in the financial markets

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## JFSC questions and discussion

- Do you find any particular problems with implementing the Jersey regulatory regime, when compared with EU regimes?
  - Relevant considerations:
    - The structure of Jersey's financial services law originates from 1998
    - Definitions do not map with the EU's, and many are absent
    - MiFID2's large undertaking threshold for professional investors is significantly higher than Jersey's

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## JFSC questions and discussion

- Could MiFID2's new standards of investor protection put Jersey firms at a disadvantage?
  - Relevant considerations:
    - The IB sensitivity survey discovered that 41.4% of all IB clients were in the category 'RoW' - not Jersey, not UK, not other EU (see Q7 in hand out)
    - MiFID2 requires investment firms to act in the 'best' interests of their clients. Advice must be suitable and appropriate. Obligation to sell products identified for the need of a specific client type identified by product manufacturer. Suitability statement. Complete transparency on all costs and charges. No third party commissions (paid or received).

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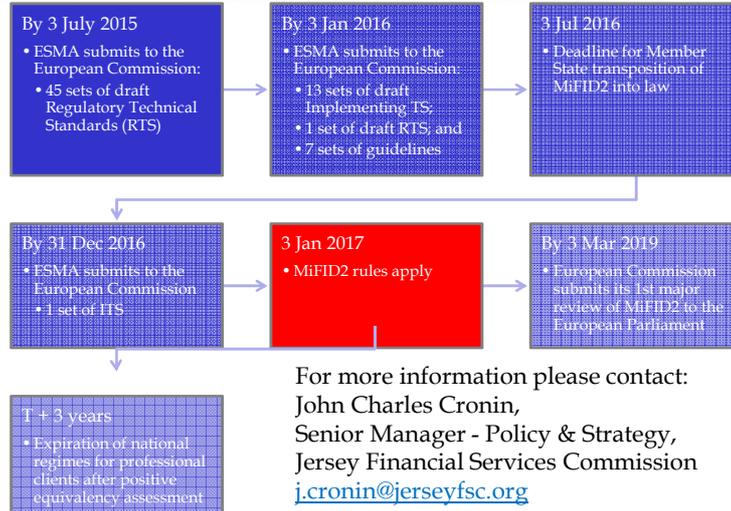
## JFSC questions and discussion

- What should the JFSC do?
  - Relevant considerations:
    - The Commission's guiding principles
      - the reduction of the risk to the public of financial loss due to dishonesty, incompetence or malpractice by or the financial unsoundness of persons carrying on the business of financial services in or from within Jersey;
      - the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
      - the best economic interests of Jersey; and
      - the need to counter financial crime both in Jersey and elsewhere.

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# MiFID2 timeline



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