



LET'S TALK ABOUT...

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MiFID

This is the beginning of a cycle of articles aimed at briefly illustrating some domestic and international legal and normative issues which affect the areas of private banking, wealth and portfolio managements. The first topic we consider is MiFID, the acronym of "Markets in Financial Instruments Directive", a set of directives which were enacted in the EEA-European Economic Area, that is European Union member states plus Norway, Iceland and Liechtenstein, since November 2007.

Its goals are the harmonization of the international framework, more integration for European capital markets and, first of all, enhanced investors' protection, as it applies to portfolio managers, advisors and executors of clients' orders. MiFID sets standard in many areas, from reporting to clients' classification, conflicts of interests and transactions' handling and executions...

Switzerland is not an EEA member state, so that it would not be formally subject to such rules, but that does not exclude many implications of MiFID for the Swiss based financial actors.

Some critical issues related to MiFID operating conditions and required authorizations may be cross-border operations aimed at acquiring new clients or servicing the already existing ones, or civil liability exposures in supplying services to EEA clients.

In fact MiFID imposes specific authorizations, to be issued by National authorities not only for the activity of portfolio management, but also advising and transmission of orders, within a very complex framework, each member state having its own rules. A very critical issue is the one about clients in the EEA who may bring a legal claim against Swiss financial institutions not to a Swiss court, but to their local courts, according to the so called Lugano Convention.

MiFID also consider the suitability between proposed products, their complexity and the types of clients, so emphasizing the concept of KYC, "know your client", not just in terms of formal compliance, but also appropriateness of proposed products and instruments, adequate and complete communication, transparency and definition of suitable benchmarks in order to assess the investment return. - *GLT*

The views expressed are not necessarily those of the Swiss Association of Asset Managers