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THE GHOST OF HAMLET'S FATHER: MIFID II STEPS AWAY, BUT STAYS

Horatio, Hamlet, and the Ghost (Artist: Henry Fuseli, 1789)

It has been a long time since our attention, along with the whole European financial society, for the first time focused on the development steps, implementation measures and consequences of the MiFID II. Anticipating the upcoming challenges, we were following the guidelines, recommendations and clarifications that keep coming as the project takes shape in wording.

In the creators' minds, the new breed of the existing Directive is to become a much more complex regulatory project making dramatic changes in the market functioning on different levels: introduction of new reporting obligations aiming at greater transparency; application of higher supervisory standards to financial instruments and market participants; creation of new trading facilities in order to systemize and control the trading activity.

The actual legislative adoption of the MiFID II rulings was planned to come into force from January 2016 and complete within the year. At the very beginning it became quite clear that the process would be anything but a plain sailing and the set targets and the announced timeline are uneasy to put into practice on time. So it happened. When it came down to implementation, the European national regulators realized that they were simply not ready to go ahead. They are running out of time to complete their understanding of some of the important parts of implementation of the new law. In mid-January the regulators requested the European Commission to consider a one-year delay to the commencement of the v2 MiFID implementation. However, there is a wide-spread opinion that one year is not enough too — the markets will still not be ready.

THE COMPLIANCE COSTS

The tougher MiFID II requirements impact various parts of the operating activity not only of the supervised entities, but the way things are done by the supervisors themselves. The developed Directive imposes much closer monitoring and complex control procedures obliging the authorities to dive deeply into the business processes of financial institutions, which have stayed outside their scope before. Management structure, best execution practices, daily operations and position limits have been mostly set at the discretion of the market participants with occasional supervision. Not anymore. The near real-time reporting obligation and strict service quality control will increase operational load for both the reporting parties and the regulators. Moreover, access to the EU financial markets from outside is also to be intensely governed by the local financial authorities, which will lead to their extended involvement. Some estimates indicate a surge of the compliance costs within the EU by 90% over the present level. Needless to point, it will inevitably lift the cost base to just everyone who would turn to the markets as a means to invest or to borrow.

THE MARKET STRUCTURE

The crucial part of the MiFID II is intended to reach beyond the internal processes and to alter the very core of the financial business principles. That will change the number and the types of the market participants, their activity and relations. As a closed interconnected system financial markets are very sensitive to such changes, and usually protect themselves by the drying up the liquidity. Unfortunately, for now we do not have the sufficient clarity as to how the existing models of financial service providers must transform themselves to live on and survive in the new environment of MiFID II.

It is most likely that the EC will amend the launch date and the financial system will have at least a one-year breather, but the ghost of Hamlet's father will stay. We shall keep you undated.

Compliance Team