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# MiFID II: A drive towards greater investor protection

POLAND WILL SOON ADOPT AN EU DIRECTIVE THAT WILL INCREASE TRANSPARENCY ON THE INVESTMENT MARKET. INVESTMENT FIRMS WILL HAVE TO CHOOSE WHETHER THEY PROVIDE INVESTMENT ADVICE ON AN INDEPENDENT OR NON-INDEPENDENT BASIS AND WILL HAVE TO PRESENT A LOT MORE INFORMATION TO THEIR CLIENTS

**O**n May 15, 2014, the European Parliament adopted the Directive 2014/65/EU on markets in financial instruments (“MiFID II”). The directive will bring about fundamental changes to the investment services industry. One of the principal objectives of the MiFID II is to guarantee investors a uniformly high level of protection in relation to investment services. What are the most significant investor protection changes in MiFID II?

The basic novelty introduced by MiFID II in this area is the institution of “independent investment advice.” Generally, investment advice can be considered as “independent” if it meets the following requirements: (i) a sufficiently diverse and wide range of financial instruments available on the market must be assessed by the investment advisor; (ii) such financial instruments must not be provided solely by the investment firm itself or by entities with close links with the investment firm, or entities with close legal/economic relationships (such as contractual relationships) in so far that independence is at risk of being impaired; and (iii) the firm must not accept and retain fees, commissions or any monetary or non-monetary benefits paid or provided by any third party (e.g. product providers), with only minor non-monetary benefits being allowed.

MiFID II also imposes new requirements on investment firms to provide appropriate information in a timely manner to clients or potential clients in relation to the investment firm and its services, the financial

instruments and proposed investment strategies. In particular, investment firms will be required to inform clients about financial instruments, including the performance of the instrument in different market conditions, the risk associated with investments in financial instruments, the legal nature of financial instruments, guarantees and capital protection and the information whether or not their advice is provided on an independent basis. Moreover, information on all costs and associated charges, including charges related to investment and ancillary services, the cost of advice and the cost of financial instruments must be disclosed to investors.

To further protect investors, the directive prohibits firms remunerating or assessing the performance of staff in a way that conflicts with the firm’s duty to act in the best interests of their clients or which incentivizes staff to sell particular products or services. Given the above, we can say that upon its application, MiFID II will strengthen the protection of investors and increase clarity to clients as to the service they receive. MiFID II is required to be transposed into Polish law by July 3, 2017 and regulatory authorities and market participants need to comply with MiFID II by January 3, 2018. ●

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