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DOMAĆE TRŽIŠTE KAPITALA I MIFID

Rezime

Zakon o tržištu kapitala koji je počeo da se primenjuje krajem 2011. godine u velikoj je meri usklađen sa Direktivom EU o finansijskim tržištima (MIFID). Tako je sama definicija investicionog društva i investicionih usluga preuzeta iz navedene direktive, a pored toga izvršeno je i usklađivanje sa osnovnim načelima ove direktive u pogledu opštih uslova za obavljanje delatnosti, kapitalnih zahteva za investiciona društva, obaveza investicionih društava za zaštitu klijenata, sprečavanje sukoba interesa i prijem i izvršenje naloga klijenata.

Ključne reči: MIFID, investiciono društvo, ovlašćena banka, brokersko-dilersko društvo, investicione usluge, investicione aktivnosti, kapitalni zahtevi, sukob interesa, prijem naloga, nalog sa limitom, zastupnici

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DOMESTIC CAPITAL MARKET AND MIFID

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Summary

The Law on Capital Market, which started to be implemented towards the end of 2011, is to a great extent harmonized with the EU Directive on Markets in Financial Instruments (MIFID). The very definitions of an investment firm and investment services were thus taken from the above Directive. Moreover, harmonization took place with the main postulates of this Directive in terms of general conditions for doing business; capital requirements for investment firms; obligations of investment firms when it comes to clients' protection; prevention of conflicts of interest; and reception and execution of clients' orders.

Key words: MIFID, investment firm, authorized bank, broker-dealer firm, investment services, investment activities, capital requirements, conflict of interest, reception of orders, limit order, tied agents.

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Uvod

Zakon o tržištu kapitala („Službeni glasnik RS“, broj 31/11 - u nastavku teksta: Zakon) stupio je na snagu 17. maja 2011. godine, a njegova primena počela je u novembru 2011. godine. Zakon je u velikoj meri usaglašen sa međunarodnim principima i standardima EU. Između ostalih, jedna od direktiva EU sa kojom je Zakon usklađivan je i Direktiva broj 2004/39/EC o tržištima finansijskih instrumenata-MIFID (Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC) koja predstavlja krovnu direktivu za oblast finansijskih tržišta.

MIFID

Direktiva o tržištima finansijskih instrumenata koja je doneta 2004. godine, postavlja regulatorni okvir za pružanje investicionih usluga u vezi sa finansijskim instrumentima od strane banaka i investicionih firmi, kao i za poslovanje regulisanih tržišta kojima upravljaju organizatori tržišta, sa odgovarajućim ovlašćenjima i obavezama nacionalnih regulatornih tela.

Sušтина MIFID-a je stvaranje integrisanog finansijskog tržišta na kome su investitori efektivno zaštićeni i na kome je očuvana efikasnost i jedinstvenost tržišta. Ne dozvoljava se mogućnost da država članica zahteva da se trgovanje finansijskim instrumentima odvija na posebnim berzama i omogućuje slobodnu konkurenciju širom Evrope između tradicionalnih berzi i alternativnih mesta za trgovanje. Kao rezultat uvođenja ove direktive, tržišta su se integrisala i smanjeni su troškovi trgovanja, kao posledica veće konkurencije između različitih mesta trgovanja i većeg izbora firmi koje pružaju investicione usluge i šire lepeze finansijskih instrumenata.

EU nastoji ostvariti ove ciljeve propisujući minimum zahteva za funkcionisanje finansijskih tržišta zemalja članica. U tom smislu, Direktiva o tržištima finansijskih instrumenata postavlja osnovne uslove pod kojima investicione firme

i banke mogu pružati specifične vrste usluga ili uspostavljati filijale u drugim državama članicama EU, a na osnovu dozvole izdate u matičnoj državi članici EU. Kako zbog sve većeg broja investitora koji su aktivni na finansijskim tržištima i sve veće kompleksnosti investicionih usluga i širenja lepeze finansijskih instrumenata, neophodno je bilo uspostaviti minimalni stepen harmonizacije propisa na jedinstvenom finansijskom tržištu EU. Harmonizacija propisa treba da omogućiti visok nivo zaštite investitora, kao i pružanje investicionih usluga na tržištu EU pod nadzorom matične države članice.

Stoga, MIFID uključuje investiciono savetovanje kao investicionu uslugu za koju je potrebno licenciranje, imajući u vidu sve veću zavisnost investitora od preporuka za ulaganje kapitala. Dalje, u listu finansijskih instrumenata MIFID uključuje i određene robne derivate, a koji su uporedivi sa tradicionalnim finansijskim instrumentima. MIFID uspostavlja razumljiv regulatorni okvir za izvršenje transakcija bez obzira o kom se metodi trgovanja radi, kao i za obezbeđenje što povoljnijeg izvršenja transakcije za investitora. MIFID prepoznaje i nove generacije sistema za trgovanje pored regulisanih tržišta, kao što je multilateralna trgovačka platforma (u daljem tekstu: MTP) te propisuje minimume zahteva za efikasno i redovno funkcionisanje MTP. MIFID definiše regulisano tržište i MTP kao organizovani sistem za trgovanje u koje ne uključuje bilateralne sisteme na kojima investicione firme trguju svakodnevno za svoj račun.

MIFID se stara o zaštiti vlasništva investitora, bilo da se radi o novčanim sredstvima ili finansijskim instrumentima klijenata, propisujući obavezu odvojenog držanja klijentovih sredstava i finansijskih instrumenata od imovine investicione firme. Međutim, to ne bi trebalo da onemogućiti investicionu firmu da obavlja posao u svoje ime a za račun klijenta, kada to zahteva sama priroda transakcije uz saglasnost investitora.

Sa širenjem obima usluga koje investicione firme obavljaju istovremeno, povećava se i mogućnost sukoba interesa investicione firme sa interesima klijenata, te se stoga propisuju pravila koja bi trebala da obezbede da takav sukob interesa ne ugrozi interese klijenta.

Jedan od ciljeva donošenja ove direktive je

Introduction

The Law on Capital Market (“Official Gazette of the RS”, no. 31/11 – hereafter to be referred to as: the Law) came into effect on 17 May 2011, and its implementation started in November 2011. The Law is largely harmonized with the international principles and EU standards. Among others, one of the EU Directives with which the Law was harmonized is the Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on Markets in Financial Instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, i.e. MIFID, the main directive in the field of financial markets.

MIFID

The Directive on Markets in Financial Instruments, adopted in 2004, establishes a regulatory framework for providing investment services in respect of financial instruments by banks and investment firms, and for the functioning of regulated markets governed by market makers, with respective powers and duties of the national regulatory bodies.

The essence of MIFID is the creation of an integrated financial market where all investors are effectively protected and where market efficiency and uniqueness have been preserved. There is no possibility for a member state to demand the trade in financial instruments to be conducted in separate stock exchanges. Instead, the Directive enables free competition across Europe among traditional stock exchanges and alternative trading points. As a result of this Directive’s implementation, markets have been integrated, thus reducing the trading costs, due to the increased competition among various trading points, a wider range of firms providing investment services and a broader assortment of financial instruments.

The EU has been striving to achieve these goals by prescribing the minimum requirements for the functioning of financial markets in the member states. To this end, the Directive on Markets in Financial Instruments defines the main preconditions for investment firms and

banks to provide specific types of services or to establish subsidiaries in other EU member states, based on the license issued in the parent EU member state. Due to the increasing number of investors active in the financial markets and the increasing complexity of investment services, accompanied by the expanding assortment of financial instruments, it is necessary to establish the minimal level of harmonization of regulations in the uniform EU financial market. Harmonization of regulations should enable a high level of investors’ protection, and provide investment services at the EU market under the supervision of the home member state.

Therefore, MIFID introduces investment advice as an investment service which requires authorization, bearing in mind the increasing dependence of investors on capital investment recommendations. Furthermore, MIFID expands the list of financial instruments by adding certain commodity derivatives, comparable with traditional financial instruments. MIFID thus establishes a comprehensive regulatory framework for conducting transactions, regardless of the trading method, in order to provide the investors with as favourable transaction as possible. In addition to the regulated markets, MIFID also recognizes new generations of trading systems, such as the multilateral trading facility (hereafter to be referred to as: MTF), prescribing the minimal requirements for the efficient and regular MTF functioning. MIFID defines the regulated market and MTF as an organized trading system which does not include bilateral systems within which investment firms perform everyday trading operations for their own account.

MIFID deals with the protection of investors’ assets, both in terms of monetary funds and clients’ financial instruments, prescribing the obligation of holding the clients’ funds and financial instruments separately from the investment firm’s assets. However, this should not prevent the investment firm from conducting operations in its own name for its client’s account, when the very nature of the concerned transaction calls for this, with the investor’s consent.

The expanded scope of services that investment firms can conduct simultaneously also increases the possibility of a conflict of

bolja zaštita investitora, pa se stoga propisuju različite kategorije investitora kao što su profesionalni investitori i mali klijenti, za koje se propisuju različite obaveze investicionih firmi. Zahteva se i izvršavanje transakcija po principu koji je najpovoljniji za klijenta. Ovaj princip ne podrazumeva samo najbolju cenu, nego i najmanji trošak, brzinu izvršenja transakcije, kao i verovatnoću da će transakcija biti izvršena.

Jedan od ciljeva je i postizanje uslova fer konkurencije, te MIFID propisuje obavezu uspostavljanja mogućnosti poređenja postignutih cena finansijskih instrumenata kojima se trguje na različitim sistemima za trgovanje (regulisana tržišta, MTP ili kod posrednika). Propisuje se obaveza objavljivanja podataka o cenama postignutim na navedenim tržištima. Zemlje članice EU su u obavezi da uklone sve prepreke za konsolidaciju bitnih informacija i njihovo objavljivanje na nivou cele EU.

Kako bi se obezbedilo glatko funkcionisanje tržišta kapitala, MIFID uspostavlja zajednička pravila za objavljivanje detalja o izvršenim transakcijama, kao i obelodanjivanje bitnih podataka vezanih za izdavaoce finansijskih instrumenata, a kako bi se promovisala efikasnost u procesu formiranja cene za vlasničke finansijske instrumente. Uspostavlja se razumljiv i transparentan režim primenjiv na sve transakcije sa akcijama, bez obzira na mesto izvršenja transakcija. Zemlje članice moraju primeniti obaveze izveštavanja o izvršenim transakcijama i za instrumente koji nisu uključeni u trgovanje na regulisanom tržištu, kao što su zahtevi sa transparentnim izveštavanjem i pre i posle izvršenja transakcija. Međutim, nije cilj ove direktive da se zahteva transparentnost pre transakcije i za transakcije na OTC tržištu.

Dalje, MIFID propisuje da zemlje članice moraju zaštititi pravo na zaštitu ličnih podataka klijenata kao fizičkih lica. Propisuje i minimume zahteva za potrebnim kapitalom za organizatora regulisanog tržišta, uzimajući u obzir specifičnu prirodu rizika koji postoje na takvim tržištima. Konačno, regulatorna tela država članice bi trebalo da tesno sarađuju kao i da imaju propisan minimum ovlašćenja i kadrovskih resursa koji bi garantovala efektivan nadzor nad finansijskim tržištima.

U nastavku teksta objasniceo odredbe Zakona o tržištu kapitala, koje su usklađene sa rešenjima iz MIFIDA.

Opšti uslovi za obavljanje delatnosti investicionog društva

Investiciono društvo (brokersko dilersko društvo ili ovlašćena banka) je lice u čije redovne aktivnosti ili poslovanje spada pružanje jedne ili više investicionih usluga trećim licima, odnosno profesionalno obavljanje jedne ili više investicionih aktivnosti.

Investicione usluge i aktivnosti koje se odnose na sve finansijske instrumente su:

1. prijem i prenos naloga koji se odnose na prodaju i kupovinu finansijskih instrumenata;
2. izvršenje naloga za račun klijenta;
3. trgovanje za sopstveni račun;
4. upravljanje portfoliom;
5. investiciono savetovanje;
6. usluge pokroviteljstva u vezi sa ponudom i prodajom finansijskih instrumenata uz obavezu otkupa;
7. usluge u vezi sa ponudom i prodajom finansijskih instrumenata bez obaveze otkupa;
8. upravljanje multilateralnim trgovačkim platformama;

Dodatne investicione usluge su:

1. čuvanje i administriranje finansijskih instrumenata za račun klijenata, uključujući čuvanje instrumenata i sa tim povezane usluge, kao što je administriranje novčanim sredstvima i kolateralom;
2. odobravanje kredita ili zajmova investitorima kako bi mogli da izvrše transakcije jednim ili više finansijskih instrumenata kada je društvo zajmodavac uključeno u transakciju;
3. saveti društvima u vezi sa strukturom kapitala, poslovnom strategijom, spajanjem i kupovinom društava i sličnim pitanjima;
4. usluge deviznog poslovanja u vezi sa pružanjem investicionih usluga;
5. istraživanje i finansijska analiza u oblasti investiranja ili drugi oblici opštih preporuka u vezi sa transakcijama finansijskim instrumentima;

investment firm's interests with the client's interests, hence the rules have been prescribed to ensure that such a conflict of interests does not jeopardize the client's interests.

One of the objectives of this Directive's adoption was a higher investors' protection, hence the definition of various investors' categories, such as professional investors and micro clients, for which different obligations of investment firms have been prescribed. It is required for transactions to be conducted according to the principle most favourable for the concerned client. This principle implies not only the best possible price, but also the minimum costs, swiftness of transaction processing, and the probability that the transaction will be conducted.

One of the objectives was also to achieve fair competition, hence MIFID prescribes the obligation of establishing conditions for comparing achieved prices of financial instruments traded in various trading systems (regulated markets, MTF or via an intermediary). The obligation has been prescribed to disclose data on prices achieved in the concerned markets. The EU member states are obliged to remove all obstacles for the consolidation of relevant information and their disclosure at the entire EU level.

In order to ensure the smooth functioning of the capital market, MIFID establishes a set of common rules for the disclosure of details on conducted transactions, and the disclosure of relevant data concerning the issuers of financial instruments, all with a view to promoting efficiency in the pricing of equity-based financial instruments. The Directive establishes a comprehensive and transparent regime, applicable to all shares-related transactions, regardless of the place where these transactions are conducted. The member states have to implement the obligations of reporting on conducted transactions, even for the instruments that are not traded at the regulated market, such as requests for transparent reporting both pre-trade and post-trade. However, it is not the intention of this Directive to require the application of pre-trade transparency rules to transactions carried out on an OTC basis.

Furthermore, MIFID prescribes that the Member States have to protect the right to personal data protection of their retail clients.

It also prescribes the minimal requirements for necessary capital of regulated market operators, bearing in mind the specific nature of risk present in such markets. Finally, the regulatory bodies of the Member States should cooperate closely, and have the minimal regulatory authorizations and human resources that would guarantee the effective supervision of financial markets.

What follows below is the elaboration on the provisions of the Law on Capital Market, harmonized with the MIFID solutions.

Operating Conditions for Investment Firms

Investment firm (broker-dealer firm or authorized bank) means any legal person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis.

Investment services and activities relating to all financial instruments are the following:

1. Reception and transmission of orders in relation to one or more financial instruments.
 2. Execution of orders on behalf of clients.
 3. Dealing on own account.
 4. Portfolio management.
 5. Investment advice.
 6. Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis.
 7. Placing of financial instruments without a firm commitment basis.
 8. Operation of Multilateral Trading Facilities.
- Ancillary investment services are:
1. Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management;
 2. Granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction;
 3. Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings;

6. usluge u vezi sa pokroviteljstvom;
7. investicione usluge i aktivnosti, kao i dopunske usluge koje se odnose na osnov izvedenog finansijskog instrumenta a u vezi sa pružanjem investicionih usluga i aktivnosti, kao i dopunskih usluga.

Zakon je propisao da investiciono društvo može obavljati investicione usluge i aktivnosti ako ispunjava uslove kadrovske i organizacione osposobljenosti i tehničke opremljenosti propisane aktom Komisije. Investiciono društvo je dužno da ima najmanje dva lica zaposlena na neodređeno vreme sa dozvolom Komisije.

Dalje, investiciono društvo je dužno da ustanovi adekvatna pravila i procedure koje obezbeđuju da je poslovanje društva, njenih rukovodioca i zaposlenih u skladu sa odredbama zakona, aktima Komisije, kao i odgovarajućim pravilima koja se odnose na lične transakcije ovih lica. Ako investiciono društvo pruža usluge i obavlja aktivnosti investicionog savetovanja ili upravljanja portfoliom, najmanje jedno fizičko lice, mora imati dozvolu Komisije za obavljanje poslova investicionog savetnika i portfolio menadžera.

Investiciono društvo je dužno da ustanovi pouzdane administrativne i računovodstvene procedure, mehanizme unutrašnje kontrole, efikasne procedure za procenu rizika, kao i efikasnu kontrolu i zaštitu informacionih sistema.

Poslove prijema i prenos naloga koji se odnose na prodaju i kupovinu finansijskih instrumenata, izvršenja naloga za račun klijenta, trgovanja za sopstveni račun, usluga pokroviteljstva u vezi sa ponudom i prodajom finansijskih instrumenata uz obavezu otkupa i usluga u vezi sa ponudom i prodajom finansijskih instrumenata bez obaveze otkupa mogu obavljati samo fizička lica zaposlena u investicionom društvu koja imaju važeću dozvolu za obavljanje tih poslova, dok poslove investicionog savetovanja i portfolio menadžera mogu obavljati samo fizička lica zaposlena u investicionom društvu koja imaju važeću dozvolu za obavljanje poslova portfolio menadžera i investicionog savetnika.

Komisija organizuje nastavu i polaganje

ispita za sticanje zvanja brokera, investicionog savetnika i portfolio menadžera. Dozvolu Komisija izdaje ako podnosilac zahteva za dobijanje te dozvole ima položen ispit za sticanje zvanja i ne podleže primeni pravnih posledica osude. Pri tome, podnosilac zahteva za dobijanje dozvole za obavljanje poslova investicionog savetnika i portfolio menadžera mora imati najmanje tri godine radnog iskustva sa visokom stručnom spremom na poslovima s hartijama od vrednosti.

Komisija propisuje bližu sadržinu zahteva za davanje prethodne saglasnosti na izbor, odnosno imenovanje direktora i člana odbora direktora, nadzornog odbora ili izvršnog odbora investicionog društva koje je brokersko - dilersko društvo i rukovodioca investicionog društva koje je ovlašćena banka.

Opšta akta investicionog društva su osnivački akt, statut, pravila i procedure poslovanja, kao i pravilnik o tarifi. Investiciono društvo je dužno da naplaćuje naknade za usluge i poslove koje obavlja do maksimalnih iznosa propisanih tarifnikom koji je dostavljen Komisiji. Komisija daje prethodnu saglasnost na osnivački akt, statut, pravila i procedure poslovanja, kao i na njihove izmene i propisuje njihovu bližu sadržinu.

Kapitalni zahtevi

Propisan je i minimalni iznos kapitala koja investiciona društva moraju posedovati kako bi obavljala određene investicione usluge. Ove odredbe Zakona u potpunosti su usklađene sa zahtevima koje propisuje EU direktiva MIFID. Tako je sada potrebno za obavljanje brokerskih poslova (prijem i prenos naloga za trgovanje i izvršenje transakcija za klijenta), investiciono savetovanje, poslove agenta emisije i upravljanje portfoliom 125.000 evra u dinarskoj protivvrednosti, za trgovanje za sopstveni račun (dilerski poslovi i poslovi market mejkera) potrebno je da investiciono društvo poseduje minimalni kapital od 200.000 evra, a za pokrovitelja emisije i upravljanje multilateralom trgovačkom platformom 730.000 evra u dinarskoj protivvrednosti.

4. Foreign exchange services where these are connected to the provision of investment services;
5. Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments;
6. Services related to underwriting;
7. Investment services and activities as well as ancillary services of the type related to the underlying of the derivatives, where these are connected to the provision of investment or ancillary services.

The Law has prescribed that an investment firm can provide investment services and activities if it meets the conditions in terms of personnel, organization and technical equipment, pursuant to the Commission's bylaw. An investment firm is obliged to have at least two persons employed for an indefinite period of time with the Commission's permission.

Furthermore, an investment firm is obliged to establish adequate rules and procedures, ensuring that the firm's operations and the actions of its managers and employees are in line with the provisions of the Law, the Commission's bylaws, and the relevant rules concerning the personal transactions of these persons. If an investment firm provides the services and conducts the activities concerning investment advice or portfolio management, at least one natural person has to possess the Commission's licence for conducting the operations of an investment advisor and portfolio manager.

An investment firm is bound to establish reliable administrative and accounting procedures, internal control mechanisms, efficient risk assessment procedures, and efficient control and protection of information systems.

Reception and transmission of orders in relation to selling and purchasing of financial instruments, execution of orders on behalf of clients, dealing on own account, underwriting and placing of financial instruments on a firm commitment basis, and placing of financial instruments without a firm commitment basis, can be conducted only by natural persons employed in an investment firm with a valid authorization for conducting such operations, whereas the services of investment advice and

portfolio management can be performed only by natural persons employed in an investment firm with a valid authorization for conducting the operations of a portfolio manager and investment advisor.

The Commission organizes the courses and examinations for acquiring the title of a broker, investment advisor and portfolio manager. The Commission issues the relevant authorization if the applicant has passed the exam for acquiring the title and has never suffered legal consequences of a conviction. In addition, the applicant filing a request for obtaining the authorization for conducting the operations of an investment advisor and portfolio manager must have a university degree and at least three years of working experience with securities transactions.

The Commission prescribes the detailed content of a request for providing previous consent to the election, i.e. appointment of the Director and members of the Board of Directors, Supervisory Board or Executive Board of an investment firm which is a broker-dealer company, and the head of an investment firm which is an authorized bank.

General by-laws of an investment firm are the founding act, the statute, business rules and operational procedures, and the rulebook on tariffs. An investment firm is obliged to charge fees for services and operations it provides up to the maximum amounts prescribed by the tariff-book submitted to the Commission. The Commission provides its consent to the founding act, the statute, business rules and operational procedures, and to their amendments, and prescribes their detailed content.

Capital Requirements

What is also prescribed is the minimum amount of capital that investment firms must possess in order to conduct certain investment services. These provisions of the Law are fully harmonized with the requirements prescribed by the EU MIFID Directive. Thus, it is now required to have EUR 125,000 in the dinar equivalent in order to conduct brokering operations (reception and transmission of orders for trading and performing transactions for a client), investment advice, operations of

Minimalan kapital investicionih društava

Delatnost	Pre primene ZTK	Posle primene ZTK
Brokerski poslovi	€ 50.000	€ 125.000
Investiciono savetovanje	€ 50.000	€ 125.000
Agent emisije	€ 100.000	€ 125.000
Portfolio menadžment	€ 200.000	€ 125.000
Dilerski poslovi	€ 100.000	€ 200.000
Pokrovitelj emisije	€ 300.000	€ 730.000
Market mejker	€ 300.000	€ 200.000
Upravljanje MTP	-	€ 730.000

Zaštita investitora

Zaštita investitora u skladu sa MIFID direktivom ogleđa se u standardima pružanja investicionih usluga koji su ugrađeni u Zakon. Tako Zakon propisuje da je prilikom pružanja investicionih usluga klijentima investiciono društvo dužno da stavlja interese svojih klijenata ispred sopstvenih interesa i posluje pravično, pošteno i profesionalno, u skladu sa najboljim interesima klijenata poštujući načela utvrđena odredbama Zakona.

Sve informacije, uključujući i marketinške, koje investiciono društvo upućuje svojim klijentima ili potencijalnim klijentima, moraju biti istinite, jasne i da ne dovode u zabludu, a marketinški materijal mora biti jasno označen kao takav.

Kako bi klijenti mogli da shvate prirodu i rizike investicionih usluga i vrstu finansijskog instrumenta koji se nudi i da donesu utemeljenu odluku o ulaganju, investiciono društvo klijentima ili potencijalnim klijentima daje odgovarajuće informacije u razumljivom obliku o:

1. investicionom društvu i njegovim uslugama;
2. finansijskim instrumentima i predloženim investicionim strategijama, uključujući odgovarajuće smernice i upozorenja u vezi sa rizikom ulaganja u pomenute instrumente, odnosno strategije;
3. mestima izvršenja naloga;
4. troškovima i naknadama.

Pri pružanju investicionog saveta ili usluga upravljanja portfolijom, investiciono društvo je dužno da prikupi neophodne informacije o znanju i iskustvu klijenta o investicionoj oblasti, finansijskoj situaciji i investicionim ciljevima klijenta koji su značajni za određenu

vrstu finansijskog instrumenta ili usluge, kako bi investiciono društvo bilo u stanju da klijentu preporuči za njega odgovarajuću investicionu uslugu ili finansijski instrument.

Kada investiciono društvo pruža ostale investicione usluge, dužno je da zahteva od klijenta podatke o njegovom znanju i iskustvu u investicionoj oblasti koja je od značaja za finansijski instrument ili uslugu koja se nudi

ili traži, kako bi moglo da proceni u kojoj meri su predviđena investiciona usluga ili finansijski instrument odgovarajući za klijenta.

U slučaju kada investiciono društvo smatra da, na osnovu informacija dobijenih od klijenta, finansijski instrument ili usluga nisu pogodni za klijenta, o tome je dužno da ga upozori, a ovo upozorenje se može dostavljati u standardizovanoj formi. Ako klijent ne pruži ove informacije ili kada ne pruži dovoljno informacija o svom znanju i iskustvu, investiciono društvo je dužno da upozori klijenta da se zbog takve odluke ne može utvrditi da li su za njega određeni finansijski instrument ili usluga odgovarajući.

Investiciono društvo je dužno da u prostorijama u kojima obavlja rad sa strankama omogući uvid u pravila poslovanja i pravilnik o tarifama, kao i da ih objavi na svojoj internet stranici.

Članovi uprave, rukovodioci i zaposleni investicionog društva dužni su da, kao poslovnu tajnu, čuvaju podatke o stanju i prometu na računima klijenata tog društva, ne smeju ih saopštavati trećim licima niti ih koristiti osim u interesu klijenta. Investiciono društvo je dužno da, kada drži finansijske instrumente klijenata, ustanovi adekvatne sisteme za zaštitu vlasničkih prava klijenata kako bi se sprečilo korišćenje finansijskih instrumenata klijenta za račun investicionog društva ili za račun drugih klijenata, osim uz izričitu saglasnost klijenta.

Investiciono društvo ne može da:

1. zalaže ili otuđuje finansijske instrumente u vlasništvu klijenta bez njegovog prethodnog pismenog ovlašćenja;
2. izvršava naloge klijenata na način koji nije u skladu sa Zakonom i aktima Komisije,

a securities agent and portfolio management. In order for an investment firm to conduct trading on own account (dealing and market maker operations), it has to own minimum capital in the amount of EUR 200,000; whereas to be a securities underwriter and manage a multilateral trading facility, it has to own EUR 730,000 in the dinar equivalent.

Minimum capital of investment firms

Field of activities	Before implementation of the Law on capital Market	After implementation of the Law on capital Market
Brokering operations	€ 50.000	€ 125.000
Investment advice	€ 50.000	€ 125.000
Securities agent	€ 100.000	€ 125.000
Portfolio management	€ 200.000	€ 125.000
Dealing operations	€ 100.000	€ 200.000
Securities underwriter	€ 300.000	€ 730.000
Market maker	€ 300.000	€ 200.000
MTF management	-	€ 730.000

Investors Protection

Investors protection according to the MIFID Directive reflects in the standards for providing investment services built into the Law. Thus, the Law prescribes that, when providing investment services to clients, an investment firm is obliged to put the interests of its clients before its own interests, and act honestly, fairly and professionally in accordance with the best interests of its clients and comply with the principles set out in the provisions of the Law.

All information, including marketing communications, addressed by the investment firm to clients or potential clients shall be fair, clear and not misleading, and marketing communications shall be clearly identifiable as such.

In order for the clients to understand the nature and risks of investment services, and the type of offered financial instruments, thereby making a grounded investment decision, appropriate information shall be provided by the investment firm in a comprehensible form to clients or potential clients about:

1. the investment firm and its services;
2. financial instruments and proposed

investment strategies, including appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies;

3. execution venues; and
4. costs and associated charges.

When providing investment advice or portfolio management the investment firm shall obtain the necessary information regarding the client's knowledge and experience in the investment field relevant to the specific type of product or service, his financial situation and his investment objectives so as to enable the firm to recommend to the client the investment services and financial instruments that are suitable for him.

When providing other investment services, investment firms are obliged to ask the client to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the investment firm to assess whether the investment service or product envisaged is appropriate for the client.

In case the investment firm considers, on the basis of the information received from the client, that the financial instrument or service is not appropriate to the client, the investment firm shall warn the client, and this warning may be provided in a standardised format. In cases where the client does not provide this information, or where he provides insufficient information regarding his knowledge and experience, the investment firm shall warn the client or potential client that such a decision will not allow the firm to determine whether the service or product envisaged is appropriate for him.

Investment firms are bound to enable insight into their operating rules and tariffs rulebook on their business premises, and to publish them on their webpages.

Members of the management, department heads and employees of the investment firm are obliged to keep, as business secret, the data on balances and turnovers in respect of

odnosno aktima regulisanog tržišta, ili MTP čije je investiciono društvo član ili korisnik;

3. kupuje, prodaje ili pozajmljuje za sopstveni račun iste finansijske instrumente koji su predmet naloga klijenta pre postupanja po nalogu klijenta;
4. kupuje, prodaje ili pozajmljuje finansijske instrumente po osnovu ugovora o upravljanju finansijskim instrumentima isključivo radi naplate provizije ili druge naknade;
5. podstiče klijente na učestalo obavljanje transakcija isključivo radi naplate provizije.

Investiciono društvo koje ima dozvolu Komisije da drži novčana sredstva, odnosno finansijske instrumente klijenata dužno je da ispuni sledeće zahteve radi zaštite prava svojih klijenata:

1. vođenje evidencija i računa na način koji im omogućava da u svakom momentu i bez odlaganja razdvoje sredstva jednog klijenta od sredstava drugog klijenta, kao i od sopstvenih sredstava;
2. precizno i tačno vođenje evidencija, računa i svoje korespondencije u vezi sa finansijskim instrumentima i novčanim sredstvima klijenata na računima koje vode;
3. redovno sravnjenje svojih internih računa sa evidencijama i računima trećih lica koja drže ta sredstva;
4. preduzimanje neophodnih koraka kako bi se obezbedilo da svi finansijski instrumenti klijenata registrovani u evidenciji Centralnog registra mogu da se razlikuju od finansijskih instrumenata investicionog društva;
5. preduzimanje neophodnih koraka kako bi se obezbedilo da se sva novčana sredstva klijenata deponovana u kreditnoj instituciji koja je član Centralnog registra drže na računu ili računima koji se razlikuju od računa koji se koriste za držanje sredstava investicionog društva;
6. uspostavljanje odgovarajućih mera kako bi se umanjio rizik od gubitka ili smanjenja imovine klijenata, odnosno prava u vezi sa tom imovinom, a koji mogu nastati kao posledica zloupotrebe te imovine, prevare, lošeg upravljanja, neadekvatnog vođenja evidencije ili nemara.

Investiciono društvo je dužno da preduzme sve neophodne aktivnosti kako bi pri izvršenju

naloga postiglo najbolji mogući efekat po klijenta s obzirom na cenu, troškove, brzinu, mogućnost izvršenja, saldiranje, veličinu, prirodu i sve ostale činioce u vezi sa izvršenjem naloga, s tim što kada klijent izda posebna uputstva u vezi sa transakcijom, investiciono društvo izvršava nalog prema tim uputstvima.

Investiciono društvo je dužno da ustanovi i sprovede efikasne procedure za izvršavanje naloga klijenata koje za svaku klasu finansijskog instrumenta sadrže podatke o različitim mestima za izvršenje naloga klijenata i činiocima koji utiču na izbor odgovarajućeg mesta izvršenja naloga.

Investiciono društvo je dužno da obezbedi svojim klijentima odgovarajuće informacije o izvršenju naloga i da pre izvršenja naloga od klijenta dobije pismenu saglasnost na procedure u vezi sa izvršenjem naloga, a navedene informacije i saglasnost mogu biti i deo ugovora sa klijentom.

Kada procedure izvršavanja naloga predviđaju mogućnost izvršenja naloga van regulisanog tržišta, odnosno MTP u skladu sa odredbama Zakona i aktima Komisije, investiciono društvo o toj mogućnosti mora da obavesti klijenta i da od njega dobije prethodnu izričitu saglasnost pre nego što pristupi izvršenju naloga, a ta saglasnost može biti deo ugovora ili data za svaku pojedinačnu transakciju.

Dalje, investiciono društvo je dužno da:

1. prati efikasnost procedura izvršavanja naloga kako bi na vreme identifikovalo i otklonilo nedostatke;
2. redovno procenjuje da li se na mestima izvršenja naloga navedenim u procedurama o izvršenju naloga postižu najbolji rezultati za klijente i da li je potrebno izvršiti izmene u postojećim procedurama;
3. obaveštava klijente o svim značajnim promenama u vezi sa načinom ili procedurama izvršenja naloga;
4. svojim klijentima, na njihov zahtev, dokaže da je izvršilo naloge u skladu sa procedurama društva o izvršenju naloga.

Sukob interesa

Takođe, investiciono društvo je dužno da svoje poslovanje organizuje tako da se na najmanju

their clients' accounts; they shall not disclose these data to third parties or use them in any other way except in the interest of their clients. When holding financial instruments of their clients, investment firms shall establish adequate systems of protection of their clients' ownership rights, so as to avoid the usage of a client's financial instruments on account of the investment firm or on account of other clients, unless with a straightforward consent of the concerned client.

Investment firms shall not:

1. pawn or alienate financial instruments owned by a client without his prior authorization in writing;
2. execute the clients' orders in a way that is not in accordance with the Law and the Commission's by-laws, i.e. the regulated market's by-laws, or with the MTF whose member or user the investment firm is;
3. purchase, sell or borrow on own account the same financial instruments that are subject of the client's order before acting upon the client's order;
4. purchase, sell or borrow financial instruments based on a contract on financial instruments management solely for the purpose of charging fees or other remunerations;
5. encourage clients to engage in frequent transactions solely for the purpose of charging fees.

Investment firms authorized by the Commission to hold monetary funds, i.e. the clients' financial instruments, shall meet the following requirements in order to protect the rights of their clients:

1. keeping records and accounts in the manner which enables, at all times and without delay, the funds of one client to be separated from the funds of another client, and from the firm's own funds;
2. precise and accurate keeping of records, accounts and correspondence in respect of financial instruments and monetary funds of the clients in the accounts they hold;
3. regular settlement of the firm's internal accounts with the records and accounts of third parties holding these funds;
4. undertaking necessary steps in order to ensure that all financial instruments of a

client registered at the Central Registry can be differentiated from the financial instruments of the investment firm;

5. undertaking necessary steps in order to ensure that all monetary funds of a client, deposited at a credit institution which is a member of the Central Registry, are held on an account or accounts different from the accounts used for holding the funds of the investment firm;
6. establishing appropriate measures in order to reduce the risk of losing or diminishing the client's assets, i.e. the rights concerning those assets, that might occur as a result of assets abuse, fraud, bad management, inadequate record-keeping or negligence.

Investment firms shall take all necessary activities to obtain, when executing orders, the best possible result for their clients taking into account the price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. Nevertheless, whenever there is a specific instruction from the client concerning a transaction, the investment firm shall execute the order following the specific instruction.

Investment firms shall establish and implement efficient procedures for executing the clients' order in respect of each class of financial instruments, containing information on the different venues where the investment firm executes its client orders and the factors affecting the choice of execution venue.

Investment firms shall provide appropriate information to their clients on their order execution policy, and shall obtain the prior written consent of their clients to the execution policy. The stated information and the client's consent may be a part of the contract concluded with the client.

Where the order execution policy provides for the possibility that client orders may be executed outside a regulated market or an MTF, pursuant to the provisions of the Law and the Commission's by-laws, the investment firm shall inform its clients about this possibility, asking for a prior explicit consent of their clients before proceeding to execute their orders. Investment firms may obtain this consent either in the form of a general contract, or in respect of each individual transaction.

moguću meru svedu mogući sukobi interesa njegovih klijenata i interesa tog investicionog društva, njegovih akcionara, direktora, članova odbora direktora, nadzornog odbora ili izvršnog odbora i zaposlenih tog društva.

Investiciono društvo je dužno da preduzme odgovarajuće mere kako bi otkrilo sukobe interesa, uključujući i sukobe interesa investicionog društva, njegovih akcionara, direktora, članova odbora direktora, nadzornog odbora ili izvršnog odbora i zaposlenih tog društva i svih lica blisko povezanih s njima, s jedne strane, i interesa svojih klijenata, s druge strane, kao i međusobne sukobe interesa pojedinačnih klijenata, a koji nastanu tokom pružanja investicionih usluga.

Pre izvršenja transakcije za klijenta, investiciono društvo je dužno da klijenta upozna s mogućim sukobima njegovih interesa sa interesima tog društva, odnosno interesima drugih klijenata investicionog društva, uključujući i opštu prirodu, odnosno izvore tih sukoba.

Prijem naloga

Investiciono društvo je dužno da sa klijentom zaključi pisani ugovor kojim se utvrđuju prava i obaveze ugovornih strana, kao i ostali uslovi pod kojima investiciono društvo klijentima pruža usluge, s tim što prava i obaveze ugovornih strana mogu biti navedeni i upućivanjem na pravna i druga dokumenta dostupna klijentu. Investiciono društvo je dužno da omogućí svojim klijentima uvid u izmene pravila poslovanja i pravilnik o tarifi u roku od sedam dana pre početka primene tih izmena.

Investiciono društvo je dužno da ustanovi mere za brzo, pošteno i efikasno izvršenje naloga klijenata u odnosu na naloge ostalih klijenata ili tog investicionog društva. Ove mere moraju omogućavati izvršenje sličnih naloga klijenata u skladu sa vremenom kada je investiciono društvo primilo naloge.

Kada investiciono društvo od klijenta primi nalog sa limitom u vezi sa akcijama koje su uključene u trgovanje na regulisanom tržištu, odnosno MTP, a koji nije odmah izvršen ili izvršiv prema trenutnom prevladavajućem stanju na tržištu, društvo je dužno da, osim ukoliko klijent nije izričito dao drugačija

uputstva, preduzme mere za izvršenje naloga u najkraćem roku, tako što će odmah objaviti nalog sa limitom na način koji će ga učiniti lako dostupnim ostalim učesnicima tržišta.

Smatra se da je investiciono društvo ispunilo ovu obavezu tako što je prosledilo nalog sa limitom na regulisano tržište, odnosno MTP, kao i kada se obaveza objavljivanja limita ne primenjuje na naloge koji prelaze uobičajenu veličinu tržišta utvrđenu pravilnicima regulisanog tržišta, odnosno MTP.

Investiciono društvo je dužno da klijentu dostavi izveštaje o izvršenim uslugama koji sadrže i troškove u vezi sa transakcijama i uslugama izvršenim u ime klijenta.

Investiciono društvo je dužno da:

1. vodi knjigu naloga u elektronskom obliku u koju se upisuju nalozi klijenata za kupovinu ili prodaju hartija od vrednosti, kao i opozivi tih naloga, na način kojim se odmah beleži vreme prijema naloga i koji sprečava naknadnu izmenu naloga koju nije odobrio klijent;
2. prima naloge klijenata u svojim poslovnim prostorijama.

Investiciono društvo može odlučiti da prima naloge klijenata telekomunikacionim ili drugim elektronskim sredstvima, ukoliko je to predviđeno ugovorom sa klijentom i u tom slučaju investiciono društvo radi obezbeđivanja tačnosti i integriteta naloga u evidenciji investicionog društva primenjuje odgovarajuće mehanizme.

Zastupnici

Članom 154. stav 7. Zakona propisano je da investiciono društvo mora da ima najmanje dva člana koja zastupaju to društvo. Ta odredba predstavlja novinu za brokersko-dilerska društva koja su do sada bila obavezna da imaju po jednog zastupnika. Cilj ove dodatne obaveze treba da doprinese većoj sigurnosti poslovanja investicionih društava, pre svega zbog uvođenja novih usluga za klijente investicionih društava (zbirni novčani računi i sl.).

Sa druge strane, u slučaju ovlašćene banke smatra se da je ispunjena obaveza kolektivnog zastupanja u smislu člana 154. Zakona i kroz samu organizacionu strukturu banke, na taj način što ovlašćenu banku može zastupati, kao

Furthermore, investment firms shall:

1. monitor the effectiveness of their order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies;
2. assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best possible result for the client or whether they need to make changes to their existing execution arrangements;
3. notify the clients of any material changes to their order execution arrangements or execution policies;
4. demonstrate to their clients, at their request, that they have executed their orders in accordance with the firm's execution policy.

Conflict of Interest

Also, investment firms shall organize their operations so as to reduce as much as possible the potential conflicts of interest between their clients and themselves, including their shareholders, managers, members of the Board of Directors, Supervisory Board or Executive Board, and their employees.

Investment firms shall undertake all necessary measures to identify conflicts of interest, including the conflicts of interest between themselves, their shareholders, managers, members of the BoD, Supervisory Board or Executive Board, their employees and all closely connected persons, on the one hand, and their clients, on the other hand, as well as mutual conflicts of interest among individual clients, occurring during the provision of investment services.

Before undertaking business on the client's behalf, investment firms shall introduce the client with the potential conflicts of his interests with the interests of the concerned firm, and the interests of other clients of that investment firm, including the general nature and/or sources of such conflicts.

Reception of Orders

Investment firms shall conclude a written agreement with the client, stipulating the rights and obligations of the contractual parties, as well

as other conditions under which the concerned investment firm provides its services to the clients. The rights and obligations of contractual parties may also be stipulated by referring to the legal and other documents accessible to the client. Investment firms shall enable their clients proper insight into the amendments to their business rules and tariff rulebook at least seven days before the concerned amendments come into effect.

Investment firms shall establish measures for a swift, fair and efficient execution of the client's orders, in comparison with the orders of other clients or the concerned investment firm. These measures shall enable the execution of similar orders of the client, according to the period when these orders were received by the concerned investment firm.

When an investment firm receives from its client a limit order concerning shares traded at the regulated market, or the MTF, and the order is not immediately executed or executable under the prevailing market conditions, the investment firm shall, unless the client explicitly instructed otherwise, undertake the measures to facilitate the earliest possible execution of that order, by immediately disclosing the concerned limit order, thus making it easily accessible to other market participants.

The investment firm shall be deemed to comply with this obligation by transmitting the client's limit order to a regulated market or an MTF, or when the obligation to disclose the limit order does not apply to an order that exceeds the normal market size as determined by the rules of the concerned regulated market or the MTF.

The investment firm shall furnish the client with the reports on executed services containing the costs related to transactions and services performed on behalf of the client.

An investment firm shall:

1. keep an electronic book of orders, which shall record the clients' orders for purchase or sale of securities and cancellations of such orders, in the manner whereby such orders are time stamped immediately upon receipt, thereby preventing any subsequent alteration of the order that has not been authorized by the client;
2. accept the clients' orders on its business premises.

poseban organizacioni deo banke, rukovodilac tog organizacionog dela i predsednik izvršnog odbora banke, odnosno nadležni član izvršnog odbora.

Naime, članom 2. stav 1. tačka 6) Zakona uređeno je da je ovlašćena banka investiciono društvo koje je organizaciona jedinica kreditne institucije u čije redovne aktivnosti ili poslovanje spada pružanje jedne ili više investicionih usluga trećim licima, odnosno profesionalno obavljanje jedne ili više investicionih aktivnosti u vezi sa jednim ili više finansijskih instrumenata. Članom 2. stav 1. tačka 7) definisana je kreditna institucija kao lice koje obavlja poslove u skladu sa odredbama zakona kojim se uređuju banke, odnosno kreditne institucije. Član 211. stav 2. Zakona daje mogućnost da ovlašćena banka može obavljati propisane usluge putem sistema ovlašćene banke ili drugih sistema kreditne institucije, odnosno koristeći kombinaciju ovih sistema.

Dalje, članom 3. Zakona o bankama („Službeni glasnik RS”, br: 107/05 i 91/10, u daljem tekstu: Zakon o bankama) propisano je između ostalog, da se osnovne odredbe zakona kojim se uređuju privredna društva, a koje se odnose na zastupanje i zastupnike, primenjuju na banke, ako nisu u suprotnosti sa ovim zakonom. Članom 75. Zakona o bankama propisano je, između ostalog, da predsednik izvršnog odbora banke predstavlja i zastupa banku, kao i da pri zaključivanju pravnih poslova i preduzimanju pravnih radnji iz delokruga izvršnog odbora, predsednik izvršnog odbora banke je dužan da obezbedi potpis jednog člana tog odbora.

Upravo na osnovu gore navedenih odredaba zakona, kao i svrsishodnosti odredbi člana 154. Zakona, proizilazi dodatna mogućnost za ovlašćene banke, da ispune obaveze po članu 154. Zakona u vezi sa zastupanjem. Umesto da imenuju još jedno lice u okviru ovlašćene banke za zastupnika pored rukovodioca ovlašćene banke, mogu za drugog zastupnika opredeliti zastupnika na način uređen zakonom kojim se uređuju banke. Pri tome, ovlašćenu banku ništa ne sprečava da, ukoliko tako odluči, odredi drugog zastupnika u okviru same ovlašćene banke, u skladu sa članom 154. Zakona.

Kvaliteti rešenja MIFID-a za zaštitu investitora

20. oktobra 2011. godine Evropska Komisija usvojila je Predlog direktive o tržištima finansijskih instrumenata (u daljem tekstu: Predlog) koji treba da zameni MIFID 2004/39/EC. Naime, primena MIFID-a u kombinaciji sa tehnološkim napretkom dramatično je izmenila strukturu finansijskih tržišta širom Evrope. Predlog ima za cilj da ojača poverenje investitora, smanji rizike tržišnih poremećaja i sistemske rizike i da poveća efikasnost finansijskih tržišta uz istovremeno smanjenje troškova za tržišne učesnike.

Nova trgovačka mesta i tržišne strukture, kao što su platforme za trgovanje derivatima i drugi brokerski sistemi uparivanja, toliko su se razvili, pa iako su njihove aktivnosti slične MTP, nisu predmet regulatornih zahteva direktive. Takođe, porast obima trgovanja na OTC tržištima vlasničkih hartija od vrednosti doveo je u pitanje kvalitet formiranih cena na berzama. Stoga se u Predlogu definišu i organizovani trgovački sistemi (OTF) koji treba da uspostave regulatorni okvir za brokerske sisteme uparivanja vlasničkih finansijskih instrumenata, kao i za druga različita mesta trgovanja koja trenutno nisu pokrivena direktivom, a na kojima se obično trguje derivatima.

Dalje, uočene su veće poteškoće i troškovi koje mala i srednja preduzeća imaju za prikupljanje kapitala u odnosu na velike izdavaoce. Ove poteškoće odnose se na nedovoljnu uočljivost ovih tržišta, nedostatak likvidnosti kod trgovanja akcijama malih i srednjih preduzeća i visoke troškove kod inicijalne javne ponude.

Dalje, uočen je nedovoljan stepen transparentnosti za tržišne učesnike. Naime, uočeno je vremensko odlaganje objavljivanja izveštaja o trgovanju za vlasničke hartije od vrednosti, a za ne-vlasničke hartije od vrednosti nisu propisani zahtevi za transparentnošću u MIFID-u, već se regulišu na nacionalnom nivou, koji često nisu dovoljni. Stoga se kao rešenje predlaže kombinacija prenošenja zahteva za transparentnošću nakon trgovanja koji važe za vlasničke i na ne-vlasničke instrumente, uz propisivanje posebnih zahteva transparentnosti za svaki tip ne-vlasničkog finansijskog instrumenta.

An investment firm may decide to receive the clients' orders by means of telecommunication or by other electronic means, provided that such means were stipulated in the contract with the client, in which case the investment firm shall employ appropriate mechanisms to ensure the accuracy and integrity of such orders in the investment firm's records.

Representatives

Article 154, Paragraph 7 of the Law prescribes that an investment firm shall have at least two members to represent it. This provision is an innovation for broker-dealer companies that were so far obliged to have only one representative. The objective of this additional obligation is to contribute to a higher safety of investment firms' operations, mostly in light of the introduction of new services for investment firms' clients (aggregate cash accounts, etc.).

On the other hand, in case of an authorized bank, the obligation of collective representation in terms of Article 154 of the Law is considered to be fulfilled through the bank's organizational structure itself, given that the authorized bank may be represented by the head of the concerned organizational part, and the President of the bank's Executive Board, or the competent Executive Board's member.

Namely, Article 2, Paragraph 1, Item 6 of the Law prescribes that an authorized bank means an investment firm which is an organizational unit of a credit institution and whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis involving one or more financial instruments. Article 2, Paragraph 1, Item 7 of the Law defines a credit institution as a person performing activities in accordance with the law governing banks i.e. credit institutions. Article 211, Paragraph 2 of the Law provides the possibility for an authorized bank to perform prescribed services through a system of the authorized bank or through other systems of a credit institution, or by combining these two systems.

Furthermore, Article 3 of the Law on Banks ("Official Gazette of the RS", no: 107/05 and

91/10, hereafter to be referred to as: the Law on Banks), prescribes, among other things, that basic provisions of the law on companies, referring to representation and representatives, shall apply to banks, unless in breach of this Law. Article 75 of the Law on Banks prescribes, among other things, that the President of the bank's Executive Board shall represent and act on behalf of the bank, and that, when concluding legal transactions and performing other legal activities coming under the remit of the Executive Board, the President of the bank's Executive Board shall ensure that the concerned documents are signed by one member of the Executive Board.

It is exactly based on the above stated provisions, and meaningfulness of the provisions of Article 154 of the Law, that additional possibility arises for authorized banks to meet their obligations prescribed by Article 154 of the Law in respect of representation. Instead of naming another person from the authorized bank as a representative, in addition to the head of the authorized bank, they can choose another representative in the manner prescribed by the Law on Banks. At the same time, there is nothing to prevent the authorized bank, if it decides so, to appoint another representative within the authorized bank itself, pursuant to Article 154 of the Law.

Benefits of the MIFID Solutions for Investors Protection

On 20 October 2011 the European Commission adopted the Proposal for a Directive on Markets in Financial Instruments (hereafter to be referred to as: the Proposal), repealing the MIFID Directive 2004/39/EC. Namely, the implementation of MIFID, combined with the technological progress, has dramatically changed the structure of financial markets across Europe. The Proposal aims to strengthen the trust of investors, reduce the risks of market turmoil and systemic risks, and increase the efficiency of financial markets, at the same time reducing the costs for market participants.

New trading venues and market structures, such as derivative trading platforms and other broker crossing systems, have developed, and although they carry out similar activities to MTFs, they are not subject to the same

Tokom svetske ekonomske krize se pokazalo da regulatorna tela imaju ograničena ovlašćenja kada je potrebno da zabrane trgovinu ili distribuciju određenih proizvoda ili usluga u slučaju nepovoljnih kretanja, te se predlažu nova ovlašćenja kako bi regulatorna tela mogla da zabrane nove usluge ili proizvode.

Što se tiče zaštite investitora, nedostatak podataka o kvalitetu izvršenja transakcija može dovesti do nemogućnosti investicione firme da izabere najbolje tržište za izvršenje klijentovog naloga. Potrebna je veća harmonizacija u propisima o primanju telefonskih ili elektronskih naloga i njihovog evidentiranja. Takođe, nedovoljno je preciran zahtevani nivo kvaliteta investicionog savetovanja. Nisu dovoljno propisani specifični organizacioni zahtevi za pružanje usluga upravljanja portfoliom, pokroviteljstva i plasiranja hartija od vrednosti, te su česte brojne žalbe klijenata na ove usluge. Stoga Predlog nastoji da reši ove nedostatke jačanjem uloge direktora investicionih firmi, naročito funkcije internog kontrolora kao i specifičnim organizacionim zahtevima za upravljanje portfoliom i pružanje usluge pokroviteljstva emisije hartija od vrednosti. Cilj je Predloga i da se suzi broj finansijskih instrumenata za čije se trgovanje može pružiti samo usluga izvršenja naloga, imajući u vidu sve kompleksnije vrste finansijskih instrumenata.

Međutim, ovo je samo Predlog direktive, koji

još nije usvojen od strane Evropskog parlamenta i Saveta te je podložan izmenama, do konačnog usvajanja. Nakon toga, sve zemlje članice imaju određeni rok da ga implementiraju u svoja nacionalna zakonodavstva, a naša država momentom ulaska u EU.

Zaključak

Kako se naša država opredelila za pristupanje EU, a naročito nakon dobijanja statusa kandidata za članstvo u EU, očekuje nas veoma kompleksan proces usklađivanja kompletne pravne regulative sa direktivama EU čiji su principi obavezujući za sve zemlje članice EU. Međutim, na tom putu još uvek nam predstoje pregovori sa EU u kojima se tačno precizira šta u kojoj oblasti je potrebno uskladiti i kojim tempom, a kako bi momentom pristupanja EU naš pravni poredak bio u potpunosti usklađen sa pravom EU. Stoga je na nama da procenimo koje nam odredbe direktiva EU koristi da primenimo odmah, a koje će zbog svoje zahtevnosti biti bolje što kasnije ugraditi u domaće zakone. Ugrađivanjem odredaba MIFID-a u Zakon o tržištu kapitala, načinjen je samo prvi korak u procesu daljeg usklađivanja strukture domaćeg finansijskog tržišta sa prepoznatljivim principima koji vladaju na finansijskom tržištu EU i to u onoj meri u kojoj se postiže pre svega bolja zaštita investitora.

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regulatory requirements of the Directive. Also, the growth of over the counter (OTC) trading on equities has led to concerns among some national supervisors about the quality of price formation on stock exchanges. Therefore, the Proposal also defines the organized trading facilities (OTF) which should establish a regulatory framework for broker crossing systems for equity financial instruments, along with other different trading venues that are currently not covered by the Directive, although derivatives are often traded there.

Furthermore, it has been observed that small and medium-sized enterprises face greater difficulties and costs to raise capital from equity markets than larger issuers. These difficulties are related to the lack of visibility of SME markets, the lack of market liquidity for SME shares and the high costs of an initial public offering.

In addition, an insufficient level of transparency for market participants has been observed. Namely, there have been time delays in the publication of trade reports in the equities markets. For non-equity markets, transparency requirements are not covered by the MIFID and are only regulated at national level, which is often insufficient. The proposed solution is, thus, to combine the transmission of post-trade transparency requirements for equity instruments to non-equity instruments as well, with the introduction of special transparency requirements for each type of non-equity financial instruments.

During the global economic crisis, it turned out that regulatory bodies have limited powers when it comes to banning trade or distribution of certain products or services in case of unfavorable trends, hence the new powers have been proposed so that the regulatory bodies could ban new services or products in such circumstances.

When it comes to investors protection, the lack of data on the quality of performed transactions may lead to the inability of an investment firm to choose the best market in which to execute a client's order. Higher level of harmonization is needed in regulations on receiving phone or electronic orders and their record-keeping. Likewise, the required level of quality of investment advice has not been defined precisely enough. The

specific organizational requirements for providing services of portfolio management, underwriting and placing securities, have also insufficiently defined, hence frequent and numerous complaints by the clients in respect of these services. The Proposal, thus, strives to eliminate these drawbacks by strengthening the role of investment firms' directors, especially their function of internal controllers, and by introducing specific organizational requirements for portfolio management and securities underwriting services. The Proposal also aims to narrow the number of financial instruments for whose trading only order execution can be provided as a service, bearing in mind the occurrence of increasingly complex types of financial instruments.

However, this is just the Proposal for a Directive, which has not yet been adopted by the European Parliament and the Council, hence is still susceptible to amendments, until its final adoption. After that, all member states will have a certain deadline to implement it into their national legislations, whereas Serbia will get a chance to do so after it joins the EU.

Conclusion

Given that Serbia opted for joining the EU, after receiving the status of a candidate for EU membership, we are looking at a rather complex process of harmonizing the complete legislation with the EU directives, whose principles are binding for all EU member states. However, what still awaits us on this path are the negotiations with the EU, when it gets precisely defined which fields need harmonization, and at which pace, so that at the moment of joining the EU our legal system would be fully harmonized with the EU *acquis*. Therefore, it remains to be assessed which provisions of the EU directives would be beneficial to implement immediately, and which ones, due to their complexity, are best to be integrated into the national laws in later stages. The implementation of MIFID provisions into the Law on Capital Market marked only the first step in the process of further harmonization of the structure of the local financial market with the recognized principles of the EU financial market, to the extent in which, first and foremost, the improved investors' protection has been achieved.