



# **Implementation Plan for MiFID Update**

**October 2006**





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# Executive summary

MiFID – the Markets in Financial Instruments Directive – comes into effect on 1 November 2007, when it will replace the existing Investment Services Directive. It requires that amendments to national legislation and rules giving effect to its provisions be made by 31 January 2007. In May 2006, we published with the Treasury our *Joint Implementation Plan for MiFID* (JIP), setting out our approach to implementation and the work programme to meet this timetable.

Since then, the implementation programme has gathered pace. The MiFID technical implementing measures – Level 2 – were formally adopted by the Commission and published in the Official Journal of the European Union on 2 September 2006. Our consultation programme is well advanced and the Treasury is

finalising the necessary changes to UK legislation. The European Commission and the Committee of European Securities Regulators (CESR) are now focusing on the delivery of convergent implementation of the MiFID requirements across Member States – Level 3.

Against this backdrop, this paper provides an update on our implementation plan, setting out a revised programme of consultation and rule-making, together with other planned publications in the run-up to transposition and implementation. It also highlights Level 3 developments, focusing particularly on the priority issues that CESR plans to address through coming months.

Updating our plans will be helpful to firms in their planning for implementation.

# 1. Towards transposition

## *Consultation to date*

In the JIP, published in May 2006, we set out the programme for consulting on the changes to our Handbook necessary to transpose the MiFID requirements. We have since published the following documents:

- May 2006 – DP06/3 – Implementing MiFID’s best execution requirements;
- May 2006 – CP06/9 – Organisational systems and controls: common platform for firms;
- July 2006 – CP06/14 – Implementing MiFID for firms and markets;
- August 2006 – CP06/15 – Reforming the Approved Persons Regime; and
- August 2006 – an informal paper on MiFID’s client categorisation requirements.

The remaining consultation programme enabling us to meet the transposition date of 31 January 2007 can be found in Annex I.

## *Further publications*

The next milestone in this programme is the publication later this month of Consultation Papers (CPs) on *Reforming Conduct of Business (COB) Regulation* and on *Financial Promotion and other communications*. Taken together, these papers are a significant step towards more principles-based regulation.

The *Reforming COB Regulation CP* has two main purposes. First, it will set out our approach

to reforming the Conduct of Business (COB) Sourcebook. This follows the commitments we have been making in our Business Plans since 2005/06, and in our Better Regulation Action Plan in 2005 to move towards a more principles-based regime. This will involve replacing COB with a new sourcebook, NEWCOB. Second, it will consult on our proposed implementation of the conduct of business requirements of MiFID and its Level 2 implementing legislation.

The CP also has two subsidiary purposes. It will discuss the approach to implementing the Unfair Commercial Practices Directive for financial services. And it will consult on a number of MiFID-related changes to other parts of the Handbook, that also need to be finalised by 31 January 2007 notably: complaints handling, record-keeping, outsourcing of retail portfolio management to non-EEA countries, training and competence, and transaction reporting for some non-MiFID scope firms.

The CP will also outline areas where we are considering making a notification to the Commission to retain certain existing requirements under Article 4 of the Level 2 Directive.

In the CP we shall propose that certain MiFID conduct of business requirements – which will over-write many of the existing COB rules – should apply to some firms and business outside the scope of the Directive. There will be no automatic read-across: we will consider issues case-by-case, including on the basis of costs and benefits, but with a focus on the retail product and advice markets. Consultation following a review of conduct of business requirements for

other types of non-scope firm and business, predominately in institutional and wholesale markets, will be undertaken in 2007 (see Part 2 of this paper). With this caveat, the NEWCOB proposals will be relevant to all firms that are currently subject to COB.

The proposals for NEWCOB in this paper will not be relevant to general insurance and mortgage firms, unless they also provide investment services or conduct other investment business that falls within the current conduct of business sourcebook. However, the proposed changes to complaints handling are designed to apply to all firms when dealing with complaints from retail clients, and to all participants in the Financial Ombudsman Service Voluntary Jurisdiction and new Consumer Credit Jurisdiction. Mortgage firms will also wish to note the proposed removal of time limits on passing exams contained in the training and competence proposals.

We will provide further information around the publication of the CP to highlight the changes in NEWCOB that will be of most relevance to small firms.

The CP will draw conclusions from our informal consultation on client categorisation and on our Discussion Paper (DP) on best execution, together with firm proposals on our proposed approach to implementation of the relevant MiFID provisions.

The JIP indicated that we would also be publishing a separate CP following a review of the current disclosure regime for packaged products. We now intend to incorporate the results of this review within the *Reforming COB Regulation CP*, rather than in a separate paper.

The *Financial Promotion and other communications CP* will present the results of our financial promotion review. We will set out proposals for a coherent, simplified financial promotion regime, including the implementation of the generally high-level MiFID requirements in this area. We will also ask for comments on proposals to apply most, though not all, of the MiFID requirements to all financial promotions. This will apply whether they fall within or

outside the scope of MiFID, where appropriate and proportionate.

### *Consultation period*

The consultation period for the *Reforming COB Regulation CP* and the *Financial Promotions and other communications CP* will run until the end of February 2007. However, we have an obligation to transpose the requirements of MiFID by 31 January 2007 and our approach to transposition of those requirements is essentially one of 'intelligent copy out' of the relevant provisions of the Level 1 and 2 texts. To enable us to meet the January deadline, consultation on the way in which we have copied out the MiFID requirements will close towards the end of November 2006. However, consultation on proposed guidance on those requirements, on proposals subject to notification under Article 4 and on proposals applying to non-scope firms and business will run to the end of February 2007.

### *Changes to FSA rules*

We plan to issue a Policy Statement (PS) on CP06/9, *Organisational systems and controls: common platform for firms*, with made rules, in November 2006. CP06/9 consulted on proposals to implement the general organisational and systems and controls requirements in both MiFID and Capital Requirements Directive (CRD) with a single set of rules: the 'common platform'. It contained draft Capital Adequacy Directive/MiFID perimeter guidance which we plan to finalise in January 2007, to allow for the publication of the changes to the Regulated Activities Order and to the Prudential Sourcebook for Banks, Building Societies and Investment Firms. The common platform will be mandatory for CRD firms and MiFID firms from 1 November 2007, though they may adopt it earlier in 2007 if they wish. From 1 January until they switch, CRD firms must comply with the CRD provisions and our existing Handbook provisions.

We plan to issue two further Policy Statements towards the end of January, which will end the policy and rule-making necessary to deliver transposition of MiFID by 31 January 2007.

The first will include feedback and made rules on all of the issues consulted on in the *Implementing MiFID for firms and markets* CP. It will include those elements of the *Reforming COB Regulation* and the *Financial Promotion and other communications* CPs that are designed to implement the MiFID conduct of business requirements. The PS will also cover policy decisions and made rules on the MiFID-related non-COB parts of the *Reforming COB Regulation* CP as outlined above.

The second PS will cover feedback and made rules on the part (section IV of Chapter 3) of CP06/15 – *Reforming the Approved Persons Regime* – dealing with the changes necessary to bring that regime in line with MiFID requirements. The made rules will also include the proposals we are taking forward from CP05/10 *Reviewing the FSA Handbook*.

## 2. Towards implementation

Beyond the transposition date of 31 January 2007, a programme of work remains to complete and complement the wider consultation programme described in Part 1. The main elements of this are set out in Annex II and are described below.

There are a number of issues which, for practical reasons, we have decided to defer and return to outside the timetable for MiFID transposition. We plan to publish CPs on the following issues during 2007, subject to the decisions we make on overall priorities when we finalise our Business Plan for 2007/08.

### *Non-scope COB issues*

As we indicated in Part 1, we will consult in the second quarter of 2007 on proposals from a review of the conduct of business requirements for certain types of non-scope business. This is in light of the approach to NEWCOB and the implementation of MiFID requirements set out in our October CPs. This review will include, for example, the position of managers and depositaries or trustees of collective investment undertakings, who are outside the scope of MiFID. The planned scope of the review will be described in more detail in the *Reforming COB Regulation* CP, which will invite comments on its completeness.

### *Non-scope systems and controls*

The common platform proposals we consulted on in CP06/9 were designed to apply to firms subject to either MiFID or the CRD or both. As we indicated in that paper, we plan to consult in the second half of 2007 on whether the 'common platform' should apply to non-

MiFID/CRD firms, (excluding insurers: we will take forward work on insurance as part of our Solvency 2 Directive work).

### *Changes to FSA rules*

The wider consultation on *Reforming COB Regulation* and *Financial Promotion and other communications* is planned to close at the end of February 2007. We plan to publish feedback on the consultation and to make the NEWCOB rules in the second quarter of 2007, to come into force on 1 November 2007. NEWCOB will incorporate and replace the rules made for transposition of the MiFID conduct of business rules in January 2007.

We plan to make rules following consultation on the non-scope COB issues mentioned above in the third quarter of 2007, to come into force on 1 November 2007. We will make appropriate transitional arrangements to maintain the effect of existing COB rules for a limited time beyond this date.

### *Consequential Handbook changes*

The programme of consultation and rule-making described above will result in significant change to a number of Handbook modules. Changes in one module will, in certain circumstances, require consequential amendment to others. These are likely to be of a minor, 'housekeeping' nature. We plan to address these either in quarterly CPs throughout 2007, or – where they are more extensive or significant in policy terms, as may be the case with NEWCOB- in a stand-alone CP in the third quarter of 2007.

### *Other publications*

We aim to publish a *Permissions and Notifications Guide* for firms during the first quarter of 2007. This will give firms more information on the circumstances, arising from MiFID implementation, in which they may need or wish to vary their permissions, or notify us of particular events or activities, and will set out the process and timetable for doing so.

The timing of the publication of this guide and its content is dependent on Level 3 discussions (see Part 3 of this paper) and therefore is subject to change.

We are also planning to publish a *Transaction Reporting Users Pack* (TRUP), the first draft of which we hope to circulate before the end of 2006. The TRUP will provide technical assistance to those responsible for dealing with transaction reporting issues on a day-to-day basis. It will not contain formal guidance but will provide practical help to those responsible within firms on the technical issues associated with transaction reporting.

# 3. Level 3: working towards European convergence

Now that the Level 2 measures have been adopted, CESR and the Commission are focussing at Level 3 on the ways we can advance convergent implementation and application of the Level 1 and Level 2 requirements by Member States. CESR published its draft Level 3 work plan in July pointing to an initial focus on operational issues, and is now finalising its list of key priorities for 2007.

The CESR work will be overseen by a Level 3 MiFID Experts' Group, supported by two sub-groups (focussing on markets and intermediaries issues respectively) on which the FSA is represented. We intend to contribute actively to the delivery of this programme of work.<sup>1</sup>

CESR is likely to contribute to the Commission's review of transparency in non-equity markets and address, amongst others:

- data consolidation;
- transaction reporting;
- passporting and home-host issues;
- best execution;
- inducements; and
- record keeping.

The first outputs are likely to be consultation papers this month on data consolidation and record-keeping. The first will explore the scope for developing common approaches to the

publication and consolidation of market transparency information, to address industry concerns about data fragmentation after MiFID is implemented. The second paper will consult on a possible common list of the minimum records that investment firms should be required to keep, as prescribed by Article 51(3) of the Level 2 Directive.

We expect that significant progress will be made on all of these issues by the first quarter of 2007. It is possible that, in light of the results of CESR's work, we may need to review our own implementation approach on particular issues. If we decide that we need to change our approach to reflect the outcome of the CESR work we shall consult in the usual way.

## Contacts

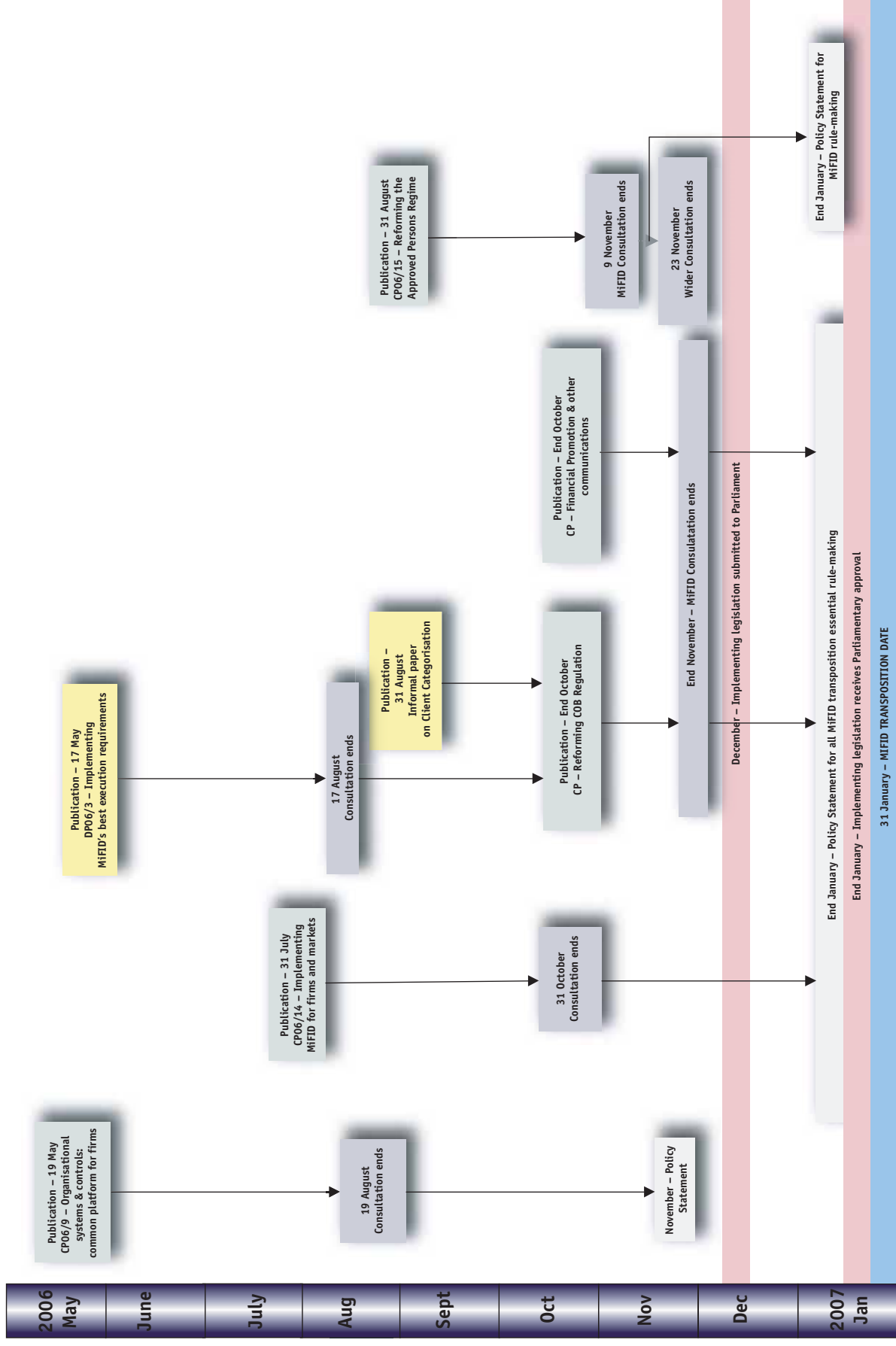
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<sup>1</sup> You can find the documents via the following link: <http://tinyurl.com/yfoewa>. The CESR link is: [http://www.cesr-eu.org/index.php?page=consultation\\_details&id=76](http://www.cesr-eu.org/index.php?page=consultation_details&id=76).

# Annex I: Towards transposition



# Annex II: Towards Implementation; proposed plan for 2007

