



**Financial Services in Europe
FECIF YEARBOOK 2007
Part 2
European Union legislation**

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European Federation of Financial Advisers & Financial Intermediaries (FECIF) is the unique grouping of national trade associations in Europe, representing approximately 300,000 intermediaries across Europe.

Editorial Committee:

*Vincent J.Derudder, Secretary General
Aldo Varenna, Deputy Secretary General
Marta Gellová, Board Member
Pierre Christodoulidis, Board Member*

1 THE FINANCIAL SERVICES ACTION PLAN

The European Commission launched the FSAP in May 1999.

The FSAP is the initiative that the Commission hopes would finally co-ordinate the delivery of a true EU cross-border market in financial services by filling in gaps in legislation and removing barriers.

The FSAP has three main aims:

- a single wholesale market,
- an open and secure retail market,
- state of the art prudential rules and supervision.

The FSAP contains no less than 42 separate legislative measures.

The integration of EU financial markets should bring significant benefits to businesses operators, investors and consumers.

It is in the area of retail financial services that most of the FSAP measures are meant to create a true single market, to overcome significant barriers, which include:

- home state product authorisations that prevent promotion of products in other EU markets,
- divergent registration and compliance requirements impacting on distribution cost,
- differences in the tax treatment between local and foreign products,
- registration barriers to enter the market in view to protect the local players,
- differences in regulatory approach between those states focused on products
- inconsistencies in consumer compensation on a cross-border basis.

These are the reasons for continuous complaint from the financial industry.

Unfortunately, the legislative ambitions of the FSAP are undermined by Low and inconsistent implementation across Member States and an integrated European financial market will be impossible without tackling this issue.

1.1 INSURANCE MEDIATION DIRECTIVE

On 30th September 2002 the EU Council of Ministers approved the IMD, which allows insurance intermediaries such as insurance agents, brokers and banks to market their services across Member State borders.

The Internal Market has largely been completed for insurance companies. Since July 1994, under the system set up by the Third Life (92/96/EEC) and Non-Life (92/49/EEC) Insurance Directives, insurance companies have been subject to a single set of administrative authorisation and prudential control arrangements imposed by the Member State where they are based.

This "**European passport**" enables the insurance company to carry on business anywhere in the EU, either under the rules on establishment or under the rules on the freedom to provide services (Articles 43 and 49 of the EC Treaty).

This single market legislative framework has facilitated the growth of cross-border insurance activity but has not yet had a significant impact on the total amount of individual business written.

This is partly due to the fact that insurance service providers who operate legally in one Member State are discouraged from expanding their business into another Member State by stringent requirements imposed by the host Member State under pretext of consumer protection.

Starting January 2005, intermediaries are meant to benefit of the freedom of establishment to provide services anywhere in the Internal Market, if they fulfil legal requirements in their own home country.

The IMD requires that all intermediaries register in their home Member State and meet strict minimum requirements to be free to sell their services anywhere in the EU.

The IMD will require that all individuals or companies (tied-up agents, multi-tied up agents, brokers or banks) who carry out insurance or reinsurance mediation be registered in their home Member State on the basis of the following minimum requirements:

- possession of appropriate knowledge and ability as determined by the regulations applicable in that Member State,
- being of High repute,
- possession of professional indemnity insurance or any other comparable guarantee against liability arising out of professional negligence (at least €1,000,000 per claim and €1,500,000 per year for all claims),
- sufficient financial capacity to protect customers against any failure by the intermediary to transfer customers' premiums to insurance companies or to pass on to customer's money received for claims under the policies they hold.

These minimum requirements guarantee a high level of professionalism and competence.

Member States may adopt more stringent provisions, but only for intermediaries registered on their territory. On the basis of their registration in the home country,

insurance or reinsurance intermediaries will be able to operate in other Member States, subject to the local marketing or consumer protection requirements.

The Directive also requires insurance intermediaries to give customers clear explanations for the advice they give on which products to buy. They need to specify accurately in writing, in terms comprehensible to the customer, why they recommend particular products in the light of the customer's individual requirements. Language is likely to be a key issue here.

The Directive allows Member State financial authorities and other bodies (i.e. professional associations) to be involved in the registration process by, for instance, registering insurance intermediaries under the supervision or control of the competent authority of that State.

Finally, the Directive encourages Member States to set up appropriate and effective Alternative Dispute Resolution procedures for out-of-court redress for dissatisfied customers.

Intermediaries are not the main distribution channel in many EU markets, it may be that the intermediary-led product providers from the more developed markets will need to give this process a kick-start by supplying favoured distributors with the requirements in target markets as they become available, and compliant products to sell.

1.2 UNDERTAKINGS FOR COLLECTIVE INVESTMENTS IN TRANSFERABLE SECURITIES (UCITS) III

The concept of UCITS was originally established by Council Directive 85/611/EEC on 20 December 1985. The scope of this initial Directive was restricted to Collective Investment Undertakings (CIU's) of the open ended variety which promote the sale of their units to the public in the EU. The range of underlying investments was restricted to 'transferable securities' (basically shares and bonds). The objective was to provide a mechanism for investment funds to be freely marketable within the EU.

However, the term 'transferable security' was not defined in the Directive hence different Member States applied different definitions and interpretations. This had a detrimental effect on achieving the objective of such funds being freely marketable within the community.

As a result the original UCITS Directive was amended by two new Directives under the UCITS III banner:

- 2001/108/EC, the Product Directive, extends the range of financial instruments in which UCITS may invest,
- 2001/107/EC, the Management Directive, relates to the regulation of management companies and provides them with a European Passport to operate throughout the EU, as well as extending the range of activities they are permitted to undertake.

Both the new Directives became effective on 13th February 2002 and were required to be adopted by Member States by August 2003, and fully implemented by 13th February 2004.

The Products Directive

Whereas the original 1985 Directive did not define the term Transferable Security the new Products Directive now provides a definition:

- shares in companies and other securities equivalent to shares in companies (“shares”),
- bonds and other forms of securitised debt (“debt securities”),
- any other negotiable securities which carry the right to acquire any such transferable securities by subscription or exchange, excluding certain techniques (e.g. futures and options).

As well as providing this definition the scope of permissible investments has been extended to include:

- **Money Market Instruments** - Instruments normally dealt on the money markets which are liquid, and have a value which can be accurately determined at any time,
- **Funds of Funds** - It is now possible to have a UCITS fund of funds, previously it has only been possible for a UCITS to have a limited investment in other UCITS and CIUs,
- **Bank Deposits** - UCITS are now able to make deposits with credit institutions, and hence create cash funds, provided that they are payable on demand or mature within 12 months. The institution must have its registered office in a Member State or, if not registered in the EU, be subject to equivalent prudential rules of an EU Member State,
- **Derivatives** - Previously the use of derivatives was only permitted for the purposes of efficient portfolio management or for currency hedging. Under the Product Directive it is now also possible to invest in derivatives as part of the UCITS investment policy,
- **Index Funds** - As a result of the Product Directive it is now possible to establish Index Tracker Funds. In order to achieve this it was necessary to widen the risk spreading rules for UCITS investing in shares and/or debt securities. The Product Directive requires the index to be sufficiently diversified, represent an adequate benchmark for the market it refers to and be published.

The Management Directive

The original UCITS Directive puts into place the system of EEC/EU passports for UCITS themselves but not for their management companies. The Management

Directive brings management companies into the legislation and introduces the concept of UCITS management companies being granted an EU passport.

As soon as a Management Company is duly registered as authorised in its home country it can offer its services, either directly or through a branch, in any other Member State. The authorisation and regulation of the fund manager will fall within the home Member State's responsibilities.

In order to facilitate management companies passporting their services to other states the Management Directive has established a prudential supervisory regime, with which all UCIT management companies must comply in order to maintain their authorisation. Such a regime includes, for example, requirements for administration and accounting procedures, with adequate internal controls and the management enjoys a High reputation.

Additionally a Management Company is required to hold certain minimum levels of capital – broadly this equates to €125,000 initially plus 0.02% of assets under management in excess of €250m but with a cap on the capital of €10m.

The Management Directive, with the aim of aiding management companies 'to achieve important economies of scale', extends their activities to include the management of funds other than collective investment schemes.

A Management Company is allowed to delegate certain operations (e.g. marketing or administration functions such as legal and accounting services) provided the home state regulator is informed. The entity to which the delegation is made must be qualified to carry out such activities and the Management Company must ensure it monitors the outsourced activity effectively. In addition there are a number of pre-conditions prescribed by the directive in order to safeguard the strict applicability of the UCITS. Specifically a Management Company is able to delegate functions to such an extent that it becomes a 'post box entity' and hence supervision of the entity becomes 'difficult'.

The Management Directive also simplifies the marketing of UCITS and, whilst a full prospectus must still be produced, it allows the production of a simplified prospectus which is more investor friendly, being clear, concise and easily understandable, and containing all the key facts about a UCITS fund. An investor must be offered the simplified prospectus prior to the conclusion of the sale, as well as sign-posting that a more detailed full prospectus is available.

The simplified prospectus would be able to be used in all Member States without alteration, except for translation into the relevant languages.

The UCITS Directives had to be adopted by the Member States before August 2003 all the changes fully implemented by 13 February 2004. Member states may grant existing UCITS a period, up to 13 February 2007, to comply with the new UCITS III directive. At that date the existing UCITS will either have to comply, be wound-up or converted into a non-UCITS fund.

The research also found that passporting is likely to lead to an increased supply of cross-border funds but at the same time UCITS III is likely to drive consolidation of fund ranges and lead to an increase in cross border mergers, with financial service companies with a real presence in each market benefiting from the changes in the market.

However, the reality is a bit different and many Member States have lagged behind in even introducing the legislation with Belgium, the Netherlands and Greece missing the February 2004 deadline. This is just one clear sign UCITS III has not yet taken off in a big way as suggested by some of the initial research findings.

Furthermore, the continuing discriminatory tax practices of certain member states constitutes a barrier against true cross-border funds industry unless altered. The European Commission has stepped up its efforts to fight such practices.

There were also a number of unresolved practical issues surrounding the UCITS III Directives relating to the simplified prospectus and the need provision of further guidance from the EU on the detailed interpretation of the laws.

Many of these issues were resolved when the European Commission published its long awaited guidelines relating to the implementation of the UCITS III Directives in April 2004. The objective of these guidelines is to help Member States interpret, in the same way, the rules in relation to investments in derivatives by UCITS and how fund managers should present the details of their funds in a Simplified Prospectus.

Given the nature of derivatives, the risks associated with such investments can be significant.

The Commission's guidelines set out clear rules and principles to underpin robust risk management standards related to derivatives, thereby ensuring that UCITS will be able to cover the liabilities incurred as a result of trading in derivatives and hence protect investors.

The Simplified Prospectus guidelines set out key components that fund managers are expected to make available to investors. The prospectus is expected to contain basic information about the fund (such as investment objectives and risk profile) as well as standard information to enable investors to compare information on different funds. This standard information includes Total Expense Ratio (TER) to enable investors to compare operating costs and a 'portfolio turnover rate' which indicates the fund's volume of transactions.

Member States are expected to inform the Commission the procedures they intend to implement to apply the Guidelines. The Commission may adopt further measures to consolidate pan-European implementation.

The content of the guidelines were broadly welcomed by EFAMA (the pan-European trade body) but the Commission was criticised for issuing the requirements as guidelines because these are not binding and Member States are not obliged to apply them. Hence uncertainty will remain as to how Member States intend to implement the guideline requirements.

Prior to the publication of the guidelines, the Commission had already been severely criticised for the Low implementation of the UCITS III directives.

EFAMA accused the Commission of providing insufficient guidance with regard to standard implementation, the result being that some countries did not take steps to incorporate the directives into their domestic legislation, whilst others interpret the rules in non-standard ways.

Many Member States had been well ahead of the game in introducing UCITS III but the lack of clarity prevented them from fully implementing the Directives until the European Commission published its guidelines. The UK, as one such State, introduced UCITS III legislation well in advance of the deadline but still has not finalised its rules pertaining to the simplified prospectus with the formal consultation paper due before the end of 2004.

Distance Marketing Directive

In 1998 the EU proposed a new directive to establish a harmonised and appropriate legal framework for selling financial services 'at a distance' while ensuring an appropriate level of consumer protection. This Directive intends to supplement the European Parliament and Council Directive 97/7/EC, which ensured appropriate consumer protection in respect of most products and services other than financial services which were excluded in view of their specific characteristics. Its aims are to rectify this omission by establishing common rules to govern the conditions under which distance contracts for financial services were concluded. It also proposed to amend Directive 90/619/EEC on life assurance and Directive 98/27/EC on actions for injunctions.

The Directive covers for retail financial services contracts (banking, insurance and investment services, including pension funds) negotiated by any means which do not require the simultaneous physical presence of the parties to the contract (i.e. at a distance) such as telephone, fax , internet or direct mail.

On the 23 September 2002, following a consultative period and two readings within the European Parliament the new Directive 2002/65/EC was issued.

The main features of the Directive are:

- the prohibition of abusive marketing practices seeking to oblige consumers to buy a service they have not solicited,
- rules to restrict other practices such as unsolicited phone calls and emails.

Two options have been provided to Member States with respect to the use of 'cold calling' and 'spamming'. The first option ("opt-in") prohibits cold calling and spamming unless the consumer has expressly consented and the second option ("opt-out") prohibits cold calling and spamming only if the consumer has given their objection by entering their name on a register set up for this purpose. The European Commission favours opt-in, but many Member States prefer the more industry-friendly opt-out approach,

- an obligation to provide consumers with comprehensive information before a contract is concluded.

This package should include the identity, contract details etc. of the supplier, the price and payment arrangements, contractual rights and obligations as well as information about the performance of the service offered,

- a consumer ‘right to withdraw’ from the contract during a cooling-off period – except in cases where there is a risk of price fluctuations in the financial market.

Consumers have the right to cancel a contract within 14 days after signing up, extended in the case of life assurance and pension plans to 30 days. Individual Member States may also exclude mortgage or property credit from this right of withdrawal along with already exempt financial services subject to fluctuations in the financial markets such as foreign currency and securities. Information on the existence or absence of a ‘right to withdraw’ is required to be given to the client as part of the package detailed above.

The Directive has been seen as an essential part of a strategy to develop an Internal Market for retail financial services. This strategy was set out in the Commission Communication on e-commerce and Financial Services and aims to create a regulatory environment that encourages the development of e-commerce in financial services and to build consumer confidence. The Directive should be applied in conformity with other directives such as the e-commerce Directive, 2000/31/EC, which was adopted in January 2002.

Although there are various exclusions to the requirements of the Distance Marketing Directive and it only applies to distance it is likely that most financial services product providers will adopt its requirements as a minimum standard.

This is because in the case of intermediary sales the product provider can not be sure that the sale was not carried out ‘at distance’. Furthermore in the case of large financial groups the Distance Marketing Directive will apply to some areas of the business and the parent company will want to see a consistent application across the business.

Taxation of Savings Income Directive

The EU has been looking for more than 10 years for ways to curb what it sees as widespread tax evasion and fraud on non-resident savings by its citizens.

The Helsinki European Council in December 1999 established the principle that “*all citizens resident in a Member State of the EU should pay the tax due on all their savings income*”. This principle is made up of 3 key elements which, in summary, say that:

- Member States should share information about residents’ income,
- all types of savings income are to be covered e.g. bank interest, bond interest and distributions from collective investment vehicles ,

- tax should be paid on all savings income from domestic and foreign sources (whether EU Member State or not). The Helsinki conclusions also recognised that, for successful adoption of any relevant directive, it was essential that “*equivalent measures are applied in third countries and dependent or associated territories with important financial markets*”.

The approach to this problem has divided governments for over 10 years, despite concerted efforts, and EU finance ministers have had considerable difficulty reaching an agreement on cross-border savings taxation, either by exchange of information or through withholding taxes.

The major stumbling block has been the requirement for unanimous approval of all 15 EU governments on tax matters.

The EU ended years of stalemate on 21 January 2003 by reaching a compromise agreement on new rules on the taxation of its residents' savings invested abroad at the Council of Economics and Finance Ministers in Brussels:

- 12 countries, including the UK and Ireland, will implement automatic exchange of information on non-resident's savings from 1 July 2005,
- 3 countries (Luxembourg, Austria and Belgium) will not exchange information but instead be free to levy a ‘retention and withholding tax’ of up to 35%. Transitional arrangements are expected to allow a withholding tax of 15% on non-residents' savings from 1 July 2005, rising to 25% from 1 January 2007 and to 35% from 1 January 2010, sharing the revenue with the country of residence (handing over 75% and retaining 25%).
- Luxembourg, Austria and Belgium will not be obliged to move to information exchange from 2011, contrary to OECD requirements. Instead, a unanimous vote of all member countries will be required, giving each of the three countries an effective veto. It is to be noted that this depends on the US, Switzerland, Liechtenstein, Monaco, Andorra and San Marino also adopting automatic exchange of information.

The Taxation of Savings Income will essentially require **paying agents** to report information regarding **savings income payments** to **relevant payees** and residual entities from 1st July 2005.

Paying Agents

A paying agent is a person who in the course of his business or profession

- makes a savings income payment to,
- or secures a savings income payment for,
- the immediate benefit of an individual resident (according to scheme rules) in a prescribed territory or a residual entity.

Relevant Payees

A relevant payee is an individual resident in a prescribed territory who receives a savings income payment from, or for whom a savings income payment is secured by, the paying agent.

Savings Income Payments

There are four main categories of savings income under the scheme, including definitions of interest payments that may not be obviously classed as interest.

Broadly, these are:-

- interest paid out on debt-claims or credited to accounts e.g. interest on bank or building society. Interest payments on government and corporate bonds and interest on certificates of deposit,
- interest rolled-up and paid out when a debt-claim is repaid or sold e.g. accrued interest or discounts on Treasury Bills, commercial paper or other money market instruments, zero-coupon bonds or other discounted securities. The category includes accrued interest or discounts included in the price when securities are sold to a new holder as well as when they are redeemed by the issuer,
- distributions made by collective investment funds which have the requisite proportion of their investments in debt-claims e.g. Income paid out, reinvested in new units or added to existing units by collective investment schemes, which have invested more than 15% of the fund in debt claims ,
- accumulated income paid out when units in a collective investment fund which has invested the requisite proportion of its investments in debt-claims are redeemed or sold e.g. accrued income included in the redemption (or sale) price of units issued by collective investment schemes, which have invested more than 40% of the fund in debt-claims.

Collective Investments Funds

While the reporting requirements for the types of deposit listed under (a) and (b) above seem relatively straight forward, the implications for collective investment schemes under (c) and (d) are somewhat more complicated.

The main type of collective investment funds concerned will be UCITS (Undertakings for Collective Investment in Transferable Securities, authorised in accordance with Directive 85/611/EEC) which, in the UK for instance, may either be authorised unit trusts or open-ended investment companies.

Paying agents will also have to report payments which are derived from income payments made by, or from the proceeds of the sale or redemption of units in, collective investment funds based outside the UK, including funds based outside the EU.

The term 'fund' refers to any type of collective investment fund irrespective of its base or legal form and 'unit' to any unit or share certificate in a fund.

The introduction of this Directive is going to cause considerable headaches for the individuals involved. In addition to 'relevant payees' needs to structure their cross border finances accordingly many financial institutions will have considerable requirements to changes IT and reporting systems.

2 MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE

2.1 OVERVIEW

MiFID is due to be implemented in EU Member States by 1st November 2007. It replaces the current Investment Services Directive (ISD), but goes much further than the ISD in terms of creating an effective single market in investment services.

One of the reasons behind the need to replace the ISD is that, since it was finalised in 1993, the financial markets have developed significantly and certainly far beyond the scope envisaged by the ISD. For this reason, an important area where MiFID expands on the scope of the ISD is in the area of commodity derivatives. At present, EEA Member States choose to regulate commodity derivatives in different ways. Firms which belong to non-commodity groups, such as banking groups with commodities arms, will be among those that feel the effect of this change.

Scope of MiFID

The precise scope of MiFID has been subject to much debate, and, as already noted, is yet to be finalised. However, we do know that the following will be within its scope:

- Options, futures, swaps, forward rate agreements, and any other derivative contracts relating to commodities that may be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event).
- Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market and/or a multilateral trading facility.
- Options, futures, swaps, forwards and any other derivative contract relating to commodities, that can be physically settled not otherwise than mentioned in 2 above and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls.
- Other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or a multilateral trading facility, are cleared and settled through recognised clearing houses or are subject to regular margin calls.

Other derivative financial instruments are also included within the scope, including some, such as freight rates and emissions that may also be of relevance to commodity firms.

MiFID has been written in such a way as to try to anticipate and cover developments in the financial markets by being drafted in broad terms. The fourth category shown above therefore amounts to a sweep-up designed to cover types of instrument not expressly referred to, and perhaps not in existence at the time MiFID was drafted.

How does MiFID work?

The basic structure of MiFID will be recognisable enough to anyone familiar with the ISD. Like the ISD, MiFID distinguishes between “core” and “non-core” investment services, although under MiFID these will be known respectively as “investment services and activities” and “ancillary services”.

Under MiFID, a firm which performs only ancillary services is not a MiFID firm. If, however, it carries on investment services and activities, it is subject to MiFID in respect of both those investment services and activities and any ancillary services which it also carries on, and it can provide both those investment services and activities and those ancillary services in other Member States under the MiFID passport regime.

Key exemptions

2.1.1.1 Groups

Of general application is the group exemption for companies providing investment services exclusively for other companies in the same group. However, it is unclear whether this exemption would apply to all intra-group principal-to-principal dealings, because the exemption refers only to “investment services”, and not to “investment services and activities”.

2.1.1.2 Dealing on own account

There is also an exemption for persons who only deal on own account. However, this exemption does not apply, and so firms will be caught by MiFID, if they are market makers, or if they deal on own account outside a regulated market or multilateral trading facility on an organised, frequent and systematic basis by providing a system accessible to third parties in order to engage in dealings with them. Again, exactly what this means is unclear, but it could catch arrangements where firms make dealing services available to counterparties and clients.

2.1.1.3 Commodities dealers

There are also important exemptions specific to commodity derivatives. Those whose main business consists of dealing on own account in commodities or commodity derivatives, and who are not part of a group whose main business is the provision of other investment or banking services, are excluded.

2.1.1.4 Ancillary business

In addition, those dealing on own account in financial instruments or providing services in commodity derivatives or derivative contracts of the type referred to in 4 above to the clients of their main business, are exempt, provided this is an ancillary activity to their main business when considered on a group basis. However, this exemption is not available to investment or banking groups. It is not clear what “ancillary” means in this context, but it probably means incidental to the main business of the group.

2.1.1.5 Non-clearing members

Also exempt are firms which are non-clearing members of a market who only: (1) deal on own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets;

or (2) deal for the accounts of other members of those markets or make prices for them, and who in either case are guaranteed by clearing members of the same markets and where responsibility for performance of the firm's contracts is assumed by clearing members of the same markets.

It is also worth bearing in mind that, even where MiFID in general does apply, certain obligations, such as those in relation to pre- and post-trade transparency are excluded in relation to derivatives. However, this and a number of other aspects of MiFID are due to be the subject of further review, so firms should monitor developments in this area.

2.2 CLIENT CLASSIFICATION UNDER MIFID

One of the more tricky areas of MiFID is in the area of client classification.

A three tier system

MiFID sets down a three-tier system of client classification. The full range of protections applies to private customers - retail customers as they are known under MiFID. More limited rules apply to clients classified as professional clients (such as financial institutions, large undertakings and government bodies), with a still-lighter regime for eligible counterparties.

Eligible counterparties would include other investment firms, banks, insurance companies, UCITS and their management companies, pension funds and national governments.

However, the categorisation of a client as an eligible counterparty does not apply to all types of investment service. The carve-out in relation to eligible counterparties applies only in relation to the activities referred to in Article 24(1) MiFID, namely executing orders on behalf of clients, dealing on own account, and receiving and transmitting orders. In relation to investment advice or portfolio management, for example, the same client would have to be categorised as a professional or retail client.

Also, being an eligible counterparty still leaves significant obligations under MiFID, such as the requirements of Article 18 MiFID in relation to conflicts of interest, and the client money obligations.

2.3 MIFID — INVESTMENT FIRM BRANCH ISSUES EXAMINED

Currently under the Investment Services Directive investment firms that are authorised in one Member State may provide investment services in other Member States. The investment firm may do this without having to be authorised separately in each Member State in which they do business either cross border or through a branch. This is known as the "passport".

The requirements for authorisation in Directive 2004/39/EC (MiFID) are set out in Article 5 which provides that an investment firm must be authorised by its Home Member State regulator. Article 4(20) MiFID provides that the "Home Member State" is where the investment firm's registered office is situated or if it has no registered office under its national law, the Member State in which its head office is situated. Article 4(21) MiFID defines a "Host Member State" as a Member State other than a

Home Member State in which an investment firm has a branch or where it performs services or activities.

Article 4(26) MiFID sets out a technical definition of the term “Branch”. This provides that it is an investment firm’s place of business other than its head office which has no legal personality and which provides investment services and/or activities and which may also perform ancillary services for which the investment firm has been authorised. The definition also provides that all the places of business set up in the same Member State by an investment firm with headquarters in another Member State shall be regarded as a single branch.

Article 31 MiFID places a requirement on Member States to ensure that authorised investment firms may freely perform investment services and activities as well as ancillary services within their territories. The caveat to an investment firm’s freedom is that such services and activities must be covered by its authorisation and that ancillary services may only be provided together with an investment service or activity.

Article 32 MiFID places a requirement on Member States that they shall ensure that an investment firm may provide investment services through a branch provided that such services are covered by the investment firm’s authorisation granted by the regulator in its Home Member State and that any ancillary services are only provided together with investment activity. The second paragraph to Article 32(1) MiFID then provides that Member States shall not impose any additional requirements on the organisation and operation of an investment firm’s branch except as set out in Article 32(7) MiFID. Article 32(7) MiFID provides that the branch will be subject to the rules of conduct laid down in Articles 19 (conduct of business obligations when providing investment services to clients), 21 (obligations to execute orders on terms most favourable to the client), 22 (client order handling rules), 25 (obligation to uphold integrity of markets, report transactions and maintain records), 27 (obligation for investment firms to make public firm quotes) and 28 (post trade disclosure by investment firms) MiFID of the Member State where the branch is situated.

What does this mean in practice for passported investment firms? Where an investment firm provides services on a purely cross-border basis Home State conduct of business and organisational requirements will only apply. For an investment firm which establishes a branch in another Member State, the branch will be required to comply with Home State organisational requirements but in relation to the activities carried out in the Host State the investment firm will need to comply with Host State conduct of business requirements. Where a passported branch provides services outside the territory of its Host State, it seems, somewhat bizarrely, that Home State conduct of business requirements will apply.

In practice how would this look? Take for example investment company A which is authorised in the UK but has a branch in Paris which provides investment services to clients in France and also provides investment services cross border in Luxembourg. Under MiFID the investment services conducted in Paris by investment company A’s Paris branch would be subject to UK organisational requirements but must comply with French conduct of business requirements. In relation to the investment services

which investment company A's Paris branch provides to clients in Luxembourg, UK and not French conduct of business requirements will apply.

Using another example investment company B that provides investment services cross border from the UK to France will only be subject to UK conduct of business requirements. This is a significant change from the position under the Investment Services Directive and may lead many firms to consider whether it would be worthwhile restructuring their delivery of services to take account of the benefits of this change.

Some commentators have observed that certain jurisdictions may not be able to implement MiFID into their national legislation within the current legislative timetable. This then begs the question of what the organisational and conduct of business requirements will be for those branches where its Home State has implemented MiFID on time but its Host State has not or vice versa. Testing times may be ahead.

2.4 THE LATE IMPLEMENTATION OF MIFID

Whisper it very quietly, but some EU Member States might not implement the Markets in Financial Instruments Directive by the deadline of 1 November 2007.

The Commission is adamant that there will be no more official delays in implementation, and that any Member States which miss the deadline are liable to face infraction proceedings. Equally, in the UK, both HM Treasury and the FSA are also clear that they will meet both deadlines of 31 January 2007 for transposing MiFID into UK law, and of 1 November 2007 for bringing the new regime into effect.

However, the messages coming from some other Member States are not so clear cut. The Netherlands, for example, has already indicated officially that it will not meet the deadline. And if one thinks back, for example, to the Market Abuse Directive - a significantly less complex Directive than MiFID - many Member States were late implementing that.

Certainly, firms would be unwise to rely on there being any delay in implementation when putting their own implementation plans into effect. However, the possibility that some Member States may be late implementing MiFID raises a number of practical issues that firms should be thinking about.

Passporting

The existing passporting regime, under the 1993 Investment Services Directive, falls away on 1 November 2007, since it is supposed to be replaced by MiFID. This raises a number of transitional questions, such as:

- Will firms be able to continue to exercise passporting rights as they have under the ISD?
- Will they be able to use the MiFID passport (which extends to services, such as investment advice, which are not core services under the ISD) into Member States that have not yet implemented MiFID?

- Will firms wanting to passport from a Member State that has not yet implemented MiFID be able to do so?

The short answer is that the position is unclear, and may well come down to the approach adopted by the authorities in each of the relevant Member States. It is therefore to be hoped that the Commission takes action to ensure that firms are not prejudiced by the failure of a Member State to implement MiFID on time.

Home / Host issues

It is not just firms that are likely to be confused by a patchwork of MiFID and non-MiFID regimes - such a scenario raises practical issues for the competent authorities in each Member State as well. For example, under MiFID, the Home State regulator of a firm is also responsible for regulating the conduct of MiFID business on a cross-border basis into other Member States. This includes cross border business carried on from a branch. So a German firm having a branch in Sweden, from which services are provided into other Nordic States would be subject to German regulation of conduct of business in all States other than Sweden. If, however, one or more of those Nordic States has not yet implemented MiFID, the cross-border business would potentially be subject to two different and possibly conflicting sets of rules, and supervised by two different regulators.

There may also be uncertainty about transaction reporting and trade reporting, where firms may have to continue to report in States where MiFID has yet to be implemented, as well as to their competent authority under MiFID.

Practical steps firms should consider

Firms that currently operate cross-border under the ISD, or which plan to do so under MiFID, should therefore identify each of the jurisdictions that are relevant to them, and if possible assess the likelihood of that Member State implementing MiFID on time. They may then have to take legal advice in those jurisdictions on the possible implications of providing investment services in or into those jurisdictions at a time when that Member State has not brought its MiFID implementation measures into effect.

Similarly, firms whose Home State looks likely to miss the MiFID deadline may need to consider the need for legal advice if they plan to use the passporting rights under MiFID before their Home State has implemented it.

3 THE SUPERVISION WITHIN THE EU

3.1 EUROPEAN UNION

Traditionally, EU legislation focused primarily on requirements for adequate administrative and internal controls systems in financial institutions. With the recent adoption of the MiFID, there is now an explicit requirement for investment firms and banks to establish a “permanent and effective” compliance function. MiFID is one of the first, and definitely the most expensive, piece of legislation to be subject to the “Lamfalussy procedure”: whereby “Level 1” legislation is adopted through the traditional co-decision procedure (involving the European Council and the European Parliament) and the Level 2 legislation is developed by the EC, upon advice from a Lamfalussy committee – in this case, the Committee of European Securities Regulators (CESR) – and in collaboration with the European Securities Committee (comprising representatives of national governments).

Work is currently ongoing on the MiFID Level 2 measures. The European Commission recently announced a postponement in the date of implementation by one year to April 2007, to allow additional time to elaborate the new Level 2 details and for regulators to implement the necessary national measures, once these details were agreed. CESR’s advice includes principles relating to the compliance function, compliance policies and procedures, and compliance oversight. MiFID, however, also establishes high-level organisational and conduct of business standards, covering classification and suitability requirements for customers.

There are no similar requirements, as yet, at the EU level for insurance companies.

Anti-money laundering

Two community directives have been adopted in the field of anti-money laundering, the first in 1991 and the second in 2001. The first directive made the reporting of money laundering an obligation and required financial institutions to identify and know their clients, to keep appropriate records, and establish anti-money laundering training programmes. The second directive extended the scope of the directive beyond the financial sector (i.e. asset managers, insurance undertakings, investment firms and credit institutions) to embrace professions such as accountants, external auditors and lawyers.

In June 2004 the Commission proposed a third AML directive, which is currently being considered by the European Parliament and the Council of Ministers. The EC issued the draft directive in order to align EU standards fully with Financial Action Task Force on Money Laundering (FATF) 40 recommendations. Inter alia, it subjects insurance intermediaries to equivalent requirements to those imposed on other financial services intermediaries.

3.2 AUSTRIA

The requirement for an independent compliance function were introduced in 1993 on a voluntary basis based on a self regulation of the sub-organisations for credit institutions, insurance companies and pension fund associations within the Austrian Chamber of Commerce. There currently no legal requirements for the appointment for a compliance officer or establishment of compliance function. The main principles are:

- Definition of restricted areas which will normally deal with sensitive information
- Listing and monitoring of restricted securities (i.e. securities which must be traded by the company or its employees)
- Listing and monitoring of monitored securities (trades in these securities will be investigated by the compliance function).

Currently, the activities of the compliance function are limited mainly to the prevention of insider trading or other prohibited transactions as defined in the Austrians in the Austrian Securities Exchange Act and Austrian Securities Supervision Act.

Austrian anti-money laundering regulations adopted EU-standards in 1993. The most recent amendment was in 2003 when the 2nd EU AML directive was transposed. These regulations specify the appointment of an independent AML compliance officer, who shall not have wider compliance responsibilities. In a circular in March 2004, the Austrian Financial Market Authority (FMA) stated that, in principle, the compliance, the AML compliance function and internal audit must not be fulfilled by one organisational unit/person. Nevertheless they admitted that – depending on the size of the entity, the number of employees, the business conducted, and the number and complexity of transactions relevant for Compliance and/or AML – these functions could be conducted by one person, provided that an independent review is undertaken. The FMA is currently in discussions with industry as to its understanding of the compliance function requirements in the context of MiFID. These new rules are expected to lead to significant change in the meaning of compliance in Austria and, therefore, will impact the approach to compliance functions.

3.3 BELGIUM

The Banking, Finance and Insurance Commission (BFIC), created through the integration of the insurance Supervisory Authority (ISA) into the banking and Finance Commission (BFC), has been the single supervisory authority for the Belgian financial sector since 1 January 2004.

In Circular D1 2001/13, the BFIC set out its position on the organisation of a comprehensive compliance function in credit institutions, enumerating 10 principles. The circular requires credit institutions to set up an independent compliance function with the aim of ensuring that the firm complies with the rules relating to banking “integrity”. It identifies the areas to which the integrity policy should give priority. The executive committee is responsible for drawing up an integrity policy and the board of directors is responsible for its adequacy. At least once a year, the executive committee reports to the board of directors on the compliance, through the audit committee if one exists. The circular stipulates that professional competence, integrity and discretion are essential qualities of the compliance staff for the proper functioning of the compliance function. In November 2002, the Belgian regulator issued a similar circular stipulating that the compliance function in investment firms should be independent: in March 2005, similar requirements were imposed on insurance companies. These circulars are supplemented by a June 2004 circular which

confirmed that the compliance requirements apply to credit institutions and investment firms in terms of all outsourced activities.

Prior to 2001, requirements for a limited compliance function were established for all financial institutions (banks, investment firms and insurance companies) by the anti-money laundering law of 11 January 1993, which inter alia, required the appointment of a compliance officer. Similar requirements relating to “special mechanisms” (anti-fraud and tax evasion) were also in effect at that time. The law of 11 January 1993 transposed the first EU AML Directive (91/308/EEC). The second EU Directive (2001/97/EC) was transposed by the Law of 12 January 2004. Article 21bis of this law provided that the BFIC should define the specific implementation rules applicable to institutions it supervises and these rules were promulgated by the BFIC circular of 27 July 2004 which was subsequently approved by the Royal Decree of 8 October 2004.

3.4 FRANCE

The Autorité des Marchés Financiers (AMF, formerly CMF), the French regulator of investment firms, was the first regulator in France to establish requirements regarding compliance agreements. The General Regulation requires that a “déontologue” is appointed in each entity that’s responsible for the definition, and implementation, of conduct of business rules throughout the institution. Recently, the Commission Bancaire, the French banking regulator, issued a series of proposals on compliance arrangements. Those proposals apply to both banks and investment firms, as the Commission Bancaire supervises both groups of institutions. These form part of the current regulation on internal controls (Regulation 97-02).

The proposals introduce a definition of “non-compliance risk”, based on the Basel Committee’s definition as set out in October 2003 consultation paper. AML is included within the scope of non –compliance risk although not explicitly. The main proposals are the following:

- Appointment of a dedicated and independent compliance officer
- Implementation of a compliance monitoring programme
- Implementation of specific procedures with respect to new products approval
- Implementation of specific procedures in terms of breach identification, escalation process and record-keeping
- Implementation of a non-compulsory whistle-blowing process (i.e. each employee must be given an opportunity to blow the whistle if he/she deems this necessary, but must be under no compulsion to do so).

In addition to the above, the new proposals (due to come into force on 30 June 2005) include specific requirements on outsourcing and introduce a requirement to split internal controls and internal audit functions (internal controllers being now referred as “permanent controllers”). The compliance function is a permanent control function, compared with internal audit which is now referred to as a “periodic control function”.

A series of specific AML-related regulations – beyond definitions of money laundering practices and related sanctions that are of a legal nature – are in place, but no recent change as been introduced.

No compliance regulation exists for insurance companies at that stage. However specific AML requirements are in place.

3.5 GERMANY

Germany's financial services regulators merged into a single entity during 2002, forming the Federal Financial Supervisory Authority (BaFin). BaFin is responsible for the supervision of financial institutions, including insurance undertakings and pension funds, and the regulation of securities trading and the investment business (investment companies). The supervision of financial services institutions is dual faceted, split between solvency and market supervision.

Financial service institutions - Market supervision

Looking at the financial services industry in Germany the term “compliance” is closely linked to all issues regarding the securities sector and investor protection. The basis for supervision, and the groundwork for investor protection, is provided by the rules of business conduct for investment services enterprises set out in the Securities Trading Act (WpHG).

A further fundamental component of market supervision is supervision is supervision in accordance with the Safe Custody Act (DepotG). For financial services institutions, whose regular business is the provision of investment services (investment firms); the compliance function has been a part of the regulatory regime since 1994 when certain rules for staff transactions came into force. The role was further developed in the Securities Trading Act (WpHG) and corresponding supervisory guidelines covering organisational requirements and rules of contract. Since 2002, BaFin also monitors securities analysis provided by investment firms. In October 2004 Germany transposed the European Directive on insider dealing and market manipulation (Market Abuse Directive) establishing organisational duties and rules of conduct for all kinds of financial analysts creating and distributing investment recommendations.

Compliance function structures, and compliance processes, are governed by the BaFin guideline on organisational duties pursuant to Sec 33 WpGH. These include, for example, obligations for companies to maintain the necessary level of resources for the compliance function, and obligations for addressing conflicts of interests. The compliance function should fit to the nature and structure of the investment firm's business(es). Detailed minimum requirements are stipulated. The compliance function should be a standalone department. Irrespective of the functions of the compliance office, the overall responsibility for compliance remains with the management.

BaFin monitors compliance with the rules of business conduct and the Safe Custody Act. External auditors undertake annual audits of financial institutions, checking compliance. BaFin evaluates the resulting audit reports.

Beyond the securities sector, there are only few specific requirements relating to compliance, but more extensive requirements relating to internal control.

Solvency supervision

The groundwork for internal control and compliance (in a border sense) is provided by sec. 25a of the Banking Act (KWG) supplemented by several BaFin guidelines. The three major ones i) Minimum requirements for the Trading Activities of Credit Institutions (MaH, 1995), ii) Minimum requirements for the credit business of credit institutions (MAK, 2002) and iii) Minimum requirements for the internal audit function of credit institutions (MaIR, 2000); will be merged in 2005 into the Minimum requirements for Risk Management (MaRisk). The new MaRisk will implement the second pillar of Basel II (Supervisory Review Process and Internal Capital Adequacy Assessment Process, Sound Practices for the Management and Supervision of Operational Risk).

Insurance

The basis for supervision of the insurance industry is the Insurance Supervision Act (VAG). BaFin circular 29/02 deals with the requirements regarding investment of insurance undertakings. This circular requires, amongst other things, a “compliance report” regarding investments of an insurance undertaking confirming compliance with the legal, regulatory and internal regulations and guidelines.

Investment Companies

According to German law, investment companies are specialised credit institutions. The Investment Act provides a catalogue of permissible assets that may be freely combined within the investment limits. The Derivatives Ordinance (2004) governs the specific risk management and risk measurement policies, required under the Investment Act when using derivatives in funds. Reporting obligations are designed on exceeding investment limits, statement of assets and material transactions to intensify and improve the market supervision of funds.

Anti Money Laundering

The Money Laundering Act (GwG) and the “Guidelines of the BaFin concerning measures to be taken by credit institutions to combat and prevent money laundering” are the main regulations designed to combat money laundering. The Money Laundering Act, which entered into force at the end of 1993 and was updated in 2002, specifies statutory duties for credit institutions and other businesses (financial services institutions, as well as some kinds of insurance business). The guidelines of the BaFin clarify the main statutory duties. These regulations represent minimum requirements. Credit institutions are called upon to make additional organisational and administrative arrangements.

3.6 ITALY

The Bank of Italy and CONSOB regulate the banking and securities sectors in Italy. The insurance sector is supervised by ISVAP. The three supervisory bodies, especially Bank of Italy, have clearly defined the internal control framework for the Italian companies, but requirements regarding compliance monitoring as an activity within the internal audit function and related processes.

Bank of Italy is about to issue a new circular which will regulate the Investment and Asset Management companies operations in accordance with UCITS III directive. The draft circular states that the internal audit function has to perform the activities connected with the “compliance function”.

3.7 LUXEMBOURG

The Commission de Surveillance du Secteur Financier (CSSF) supervises the financial services sector in Luxembourg, including credit institutions, investment firms, investment funds and pension funds. On 27 September 2004, following consultation with industry, the CSSF issued a circular (CSSF 04/155) providing detailed guidelines for the setting up of a compliance function in banks and investment firms. This function will be mandatory in all Luxembourg banks and investment firms as from 1 January 2006.

The introduction of a compliance function does not lead to an additional level of supervision. Rather it aims at ensuring proper co-ordination, organisation and structuring of controls, already carried out in accordance with the provisions of the circular on internal control, but which are often split amongst different departments and handled at different organisational levels.

According to the circular, the board of directors must adopt a positive attitude towards compliance, ensure the effectiveness of the compliance function, and approve the compliance policy and the compliance charter defined by the management. The compliance policy must include the fundamentals of the compliance risk, clarify the broad principles for managing the compliance risk, define the compliance function, its objectives and independence, prescribe the charter process and define the training programme. The compliance charter, communicated to the entire staff, governs the objectives and responsibilities of the compliance function. The compliance charter must include the compliance function's objectives, responsibilities, independence and permanence, relationships with other units, access to all necessary information, reporting lines and access to the management bodies. Management is in charge of developing and implementing the compliance policy, as well as of setting up a compliance function which is in accordance with stated principles. Management must appoint one its members, whose name must be communicated to the CSSF, as the person directly in charge of the compliance function.

The circular also stipulates that the compliance function shall be independent from all commercial, administrative or control functions and shall exist on a permanent basis. It has the power to start investigations and controls on its own initiative, and has the right to access any kind of information. The institution has to designate an employee in charge of the compliance function, the "compliance officer", whose name has to communicate to the CSSF. The compliance officer must, in principle, be dedicated on a full-time basis to the compliance function. Small-scale institutions engaged in low-risk activities are allowed to fulfil their compliance function on a part-time basis, with prior authorisation from the CSSF.

Certain tasks assigned to the compliance function may be delegated to other services provided that such tasks are compatible with other tasks for which the personal of these services are responsible. In such cases, the compliance function assumes a coordination role between the services carrying out these tasks. In any event, the responsibility for the tasks remains with compliance function.

The Commissariat aux Assurances (CAA) supervises the insurance industry in Luxembourg. The CAA has not issued any specific regulations on compliance function for the insurance sector, as yet.

3.8 THE NETHERLANDS

Financial markets are regulated by the Autoriteit Financiële Markten, the Financial Markets Authority (AFM), in so far as it related to market conduct supervision. Prudential requirements for banks, securities institutions, pension funds, investment institution and insurance companies are supervised by the Dutch Central Bank, De Nederlandsche Bank (DNB).

Investment institutions and securities institutions and credit institutions and credit institutions in the Netherlands are obliged by regulations to retain one or several compliance officer(s). The Regulations on Organisation and Control (Regeling Organisatie en Beheersing or 'ROB') stipulate that the compliance function should be independent with direct reporting lines to the management board, and in case the integrity of the management board is in doubt the compliance officer should have access to a delegate of the supervisory board.

Although not mandatory, the compliance officer is expected to monitor and control the institution's activities, as well as consult on the implementation and interpretation of rules and regulations and advising management on compliance issues. There are only very limited rules for appointing a compliance officer and even though there are certification programmes offered by commercial training entities for compliance officer they are not compulsory.

Under the Dutch act that covers AML (Wet melding ongebruikelijke transacties); there is no obligation to appoint a compliance officer. However, this is common practice as it is perceived that the task under the AML act are best performed by one person, in general or preferably, by the compliance officer.

3.9 SPAIN

In Spain, the supervision of the financial sector is carried out by the Bank of Spain (banking activities), the Spanish National Securities Exchange Commission (stock market and the General Directorate of Insurance and Pension Funds (insurance activities).

Under Spanish law applicable to financial entities, compliance requirements have traditionally applied within the regulatory regime in terms of the rules on conduct of business, conflict of interest, internal control and adequate level of administrative resources. According to this approach to the compliance function, Spanish general regulation on financial institutions provided general conduct of business standards, general principles on conflict of interest, and specific regulatory obligations regarding customer and operations. Since 2003 certain legislation focused on internal control resources, corporate governance, transparency and investor protection has been adopted accordingly.

Spanish anti-money laundering rules have recently been modified to implement additional quality control measures such as enhancing corporate governance within the financial institutions' AML framework, particularly strict know-your-customer rules, and the adoption of qualified control and supervisory measures applicable to those high-risk areas within financial institutions according to the nature of their activities, and type of clients, amongst other things. Amongst the changes introduced

by the new AML regulatory framework, financial institutions are now subject to a compliance review of their internal procedures by an external expert.

3.10 SWEDEN

Finansinspektionen (FI), an integrated regulator supervising all sectors in the Swedish financial services industry, was established in 1991.

There is a regulatory code (FFFS 2002:5-7) requiring all investment firms and banking institutions, licensed to conduct securities operations, to have a compliance function. An investment firm must have one or more compliance officers who are responsible for ensuring that employees within the firm, and its board of directors to ensure that the compliance officer reports directly to them or to the company's management. Banks and insurance companies (regulatory code 1999:12 and 2000:3) are required to have an internal function that is responsible for the compliance with internal as well as external rules and regulations.

3.11 UNITED KINGDOM

The Financial Services Authority (FSA), the UK regulator, an integrated regulator set up by the Financial Services and Markets Act 2000, was established in 1997 and assumed full responsibility for the financial sector in 2001, succeeding the Securities & Investments board which was established in 1985.

Since the late 1980s, the vast majority of financial services firms in the UK have been required to have a compliance officer. An investment firm must allocate a director or senior manager as having responsibility for the oversight of the firm's compliance and should report directly to the firm's executive board. The compliance function is a "controlled function" in the United Kingdom, which means that a candidate proposed as head of compliance cannot be appointed until approval has been given by the FSA. The FSA must be satisfied that the person is fit and proper in accordance with the "fit and proper test for approved persons". Outsourcing compliance to external consultants is allowed, but responsibly rests with one or more directors or senior managers of the firm as head of compliance.

The compliance officer consults all business lines, and does not solely have control function. Compliance generally means respecting the Principles of Businesses and Senior Management, and rules for Conduct of Business (COB), the Collective Investment Schemes (CIS) and Money Laundering (ML). Heads of compliance will normally have responsibility for overseeing a firm's relationship with the FSA. Compliance is defined by the FSA Handbook section "Senior Management Arrangements, Systems and Controls" Chapter 3 and Money Laundering sourcebook.

3.12 SWITZERLAND

The Federal Banking Commission (SFBC) is the licensing and supervising body in Switzerland for banks and securities firms. The Swiss Banking Law is the main legal basis in regulating compliance. More guidance is included in SFBC circulars.

Compliance, as part of internal controls, was first mentioned in the circular on internal controls issued by the Swiss Bankers Association in 2002. In a SFBC circular, expected by mid 2005, banks and securities dealers will be required to establish a compliance function. However, the implementation of compliance functions is

common practice nowadays in Switzerland. Due to its large community of international banks, national standards are strongly influenced by international best practice and the work of international standard setters.

The SFBC views compliance as a staff function: it should be independent and should not have operational responsibilities. It should have direct reporting lines to the board of directors.

The Anti-Money-Laundering Ordinance was due to be totally implemented by 30 June 2004. The implementation was audited and a separate report must be filed to the SFBC by 15 March 2005.