Understanding Marketing in a Post-MiFID II World

The latest update to the Markets in Financial Instruments Directive or MiFID II was enforced by the European Securities and Markets Authority (ESMA) in January 2018. The changes made to the regulations are focused at protecting participants in the financial markets in Europe. While improving transparency and trade report of service providers, and also making changes to the market structure.

What this essentially means is that MiFID II has not only strengthened the supervisory powers of ESMA but has also given the regulator additional powers to coordinate and supervise the European financial services market. ESMA now has the ability to intervene in pre-execution or product development stages, as well as post-execution, in terms of sales and marketing. The regulator also has the authority to oversee processes of governance, with the ability to intervene wherever it deems necessary.

Impact of MiFID II on Financial Services Providers

What the revised regulations emphasize is the compliance of all market participants, while also focusing on audit and risk management. In particular the creation and marketing of new financial products, conflict of interest and reporting. MiFID II also aims to enhance integrity and promote robust management practices in the best interests of clients.

The new, more stringent regulations will definitely have a significant impact on the products and services offered within the financial markets. In fact, according to a study conducted by HIS Markit and Expand, a Boston-based consultancy, to ensure compliance with the revised regulations, financial firms are expected to incur a total cost of $2.1 billion. The study goes on to say that of this total expenditure, more than $1 billion will be spent on IT upgrades alone.

Impact on Affiliate Programmes

Given that a key aim of the new regulations is to protect the consumer, brokers will need to make key changes in their affiliate and IB programmes, working to enhance transparency and trade reporting, while ensuring best practices. One prominent change is that now IBs and affiliates cannot provide services on behalf of more than one investment firm. Moreover, such firms need to be MiFID regulated and compliant.

To put it simply, under MiFID II, if an affiliate or IB does not wish to fall under the scope of the regulations, they could still continue with their role of introducing clients to brokerages, but they will not be permitted to facilitate transactions for such clients, neither can they be involved in transmitting or receiving orders.

How Does MiFID II Affect Marketing Practices?

A key aspect of investor protection, which is the primary objective of the revised rules, will, therefore, be how affiliates and brokerages market their services. Marketing strategies will definitely be something that the regulator will look to scrutinize. Whether it is something that you put up on your website, advertise online (even in the form of banners or small print ads) as well as what you send out to clients. All such marketing activity will need to be compliant with the regulations.

With MiFID II coming into force, all client outreach activity will be strictly regulated. This will include not just marketing materials, but also financial promotions, disclosure of charges and fees to clients and any informative content that you might release, online and offline, to engage your target audience. In addition, communications between financial firms and their professional clients, including affiliates, will now be viewed as financial promotions and subject to compliance.

Article 50 of the MiFID II rules focuses on the disclosure of charges and fees. The revised regulations now require firms to disclose considerably more information regarding fees and charges as part of their marketing materials and other communications than they currently do. This will also apply to ongoing communications with clients.

The new rules also bring in additional requirements that now need to be part of all marketing and communication materials – with these and all financial promotions being "fair, clear and not misleading." This last part is now applicable for both retail and professional clients.

New Requirements for Marketing Materials

The first thing that all firms and affiliates should be aware of is that MiFID II makes it compulsory for marketing material to not just talk about potential benefits and returns but to include risk warnings. Such warnings were already compulsory, the new regulations have extended the requirements.

The first change regarding risk warnings is that they need to move from the fine print to being displayed prominently in all marketing materials. According to the revised rules, financial services providers have to make risk warnings as prominent as the remaining text, in terms of font size and layout.

In addition, MiFID II requires firms to provide much more detailed information regarding future performance, including how investments are expected to perform in both bull and bear markets.

Both financial services firms and affiliates will, therefore, need to take a relook at their existing communication and marketing materials and update them to be compliant with the new rules. Given that such audit is time consuming, the sooner one starts, the better. Also, firms need to update their approvals process to meet the new requirements. One way to prevent any violation of the new regulations is to automate part of the approval process, based on the revised rules.

What ATFX Has Done to Ensure Compliance

AT Global Markets (CY) Ltd (ATFX) has always been a fully regulated and compliant entity; is regulated by the CySEC, is EEA authorized and registered with the UK FCA and accepts clients from another 14 non-EEA territories. ATFX is already fully compliant with the newly upgraded MiFID II regulations. This means that each of its products and services, including its affiliate programme, the Marketing Partners Programme (MPP), is in-line with the new European regulations.

Keeping both the interests of retail clients and online affiliates in mind, ATFX had proactively worked on all its marketing materials, while also designing MPP such that affiliates will never need to worry if the regulators will come down on the programme, leading affiliates to lose their source of income.

Moreover, given that the revised regulations have very stringent rules for commissions, MPP has revolutionised the commission structure away from being based on the trading activity and deposits of introduced clients. This is exactly what MiFID II is also trying to accomplish. MPP bases commissions on where an introduced client might be within the ATFX sales funnel, giving its online affiliates peace of mind that they will not only get commissions that are rightfully theirs, their commissions will not be in violation of the revised regulations.

When financial services providers work in the best interests of their clients and partners, there should be no concern that their products or services would be in breach of regulations.

Discover more about MPP here.