ELVINGER HOSS
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Directive amending MiFID II in view of EU post-COVID 19 recovery

One of the recent measures adopted at EU level to help the EU's economic recovery from the COVID-19 pandemic is Directive (EU) 2021/338 of 16 February 2021 ("**Directive**"). The Directive amends the MiFID II Directive (2014/65/EU) on a number of points in order to facilitate that recovery.

The areas addressed by the Directive form part of the European Commission's capital markets recovery package. They include, in particular, amendments to the rules on client information, such as a simplification of information requirements, notably regarding disclosures of costs and charges. Other amendments concern product governance requirements or the energy derivatives markets. In this respect, the following elements are noteworthy:

- all MiFID client communications must from now on be provided in electronic form although retail clients can still request the communication to be provided on paper;
- services provided to professional clients and eligible counterparties are exempted from costs and charges disclosure requirements, except with regard to investment advice and portfolio management;
- the requirement for a cost-benefit analysis is relaxed when switching of financial instruments occurs in relation to services provided to professional clients, although they retain the possibility to opt in;
- a targeted exemption will allow banks and financial firms to bundle research and execution costs relating to small and mid-cap issuers;
- product governance requirements are removed for simple corporate bonds with "make-whole clauses";
- the position limit regime for commodity derivatives is adapted to help EU businesses to react to market volatility and to support the emergence and growth of euro-denominated commodity derivatives markets but the changes do not affect agricultural products, in particular products used for human consumption.

In addition, the obligation to produce best-execution under RTS 27 for execution venues and firms is suspended in light of the pandemic.

The Directive entered into force on 27 February 2021. Its measures shall be applied from

22 February 2022.

For any further information please contact us or visit our website at **www.elvingerhoss.lu**.

The information contained herein is not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific legal advice concerning particular situations.

We undertake no responsibility to notify any change in law or practice after the date of this newsletter.