

Information concerning entities authorized to conduct acquisition of clients and direct marketing of investment services on behalf of a foreign investment firm in the Republic of Poland

On 29th April 2017 came into force amended provisions of the Polish Act on Trading in Financial Instruments of 29th July 2005¹ (the Act) i.e. the key piece of domestic regulations of trading in financial instruments taking into account the importance of retail clients' protection. The amendment to the Act concerns among others the limited circle of entities authorized to conduct activities directly connected with investment services.

According to the new article 79.2a of the Act, a foreign investment firm acting in the territory of Poland upon the article 31 of (EU) Directive 2004/39/EC (MiFID I) i.e. without establishing a branch office or a subsidiary, has two available ways of conducting its services in Poland:

- i. on its own, or
- ii. through establishing a tied agent, i.e. a supervised intermediary acting in Poland on behalf and in the name of the given foreign investment firm.

The above relates to the following activities listed in the article 79.2 of the mentioned Act:

- acquisition of clients or potential clients,
- providing information on the scope of investment services provided by the investment firm as well as financial instruments being the subject of investment service and activities (direct marketing),
- activities which are related to the execution of agreements for provision of services by the investment firm or which facilitate performance of such agreements, particularly – reception of client orders or any other statements of will.

As a single exception from the adopted rule, the article 79.2b of the Act specifies that the abovementioned activities may be performed not only by investment firms themselves and tied agents, but also by other entities – exclusively on condition that the information is addressed to a broad range of clients or potential clients or publicly disseminated to undefined addressee, as for example television or press advertisement campaigns.

The described rule takes into account the interpretation included in the MiFID Questions and Answers – Investor Protection & Intermediaries published by ESMA as of 22 June 2012 (ESMA/2012/382)². The answer to Question 7 (Article 23 of MiFID – Tied agents) provides clearly that neither a foreign investment firm nor a tied agent are entitled to perform the activities through other third persons e.g. “authorised representatives”.

According to the current provisions of the Act, any persons/entities conducting acquisition of clients or potential clients for a foreign investment firm without obtaining a tied agent status, can be fined with a penalty of up to 5 million PLN.

¹ Journal of Laws 2016, Item 1636 as amended

² www.esma.europa.eu/sites/default/files/library/2015/11/2012-382.pdf