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 **NORTON ROSE FULBRIGHT**

MiFID II and MAR – 40 minute briefing

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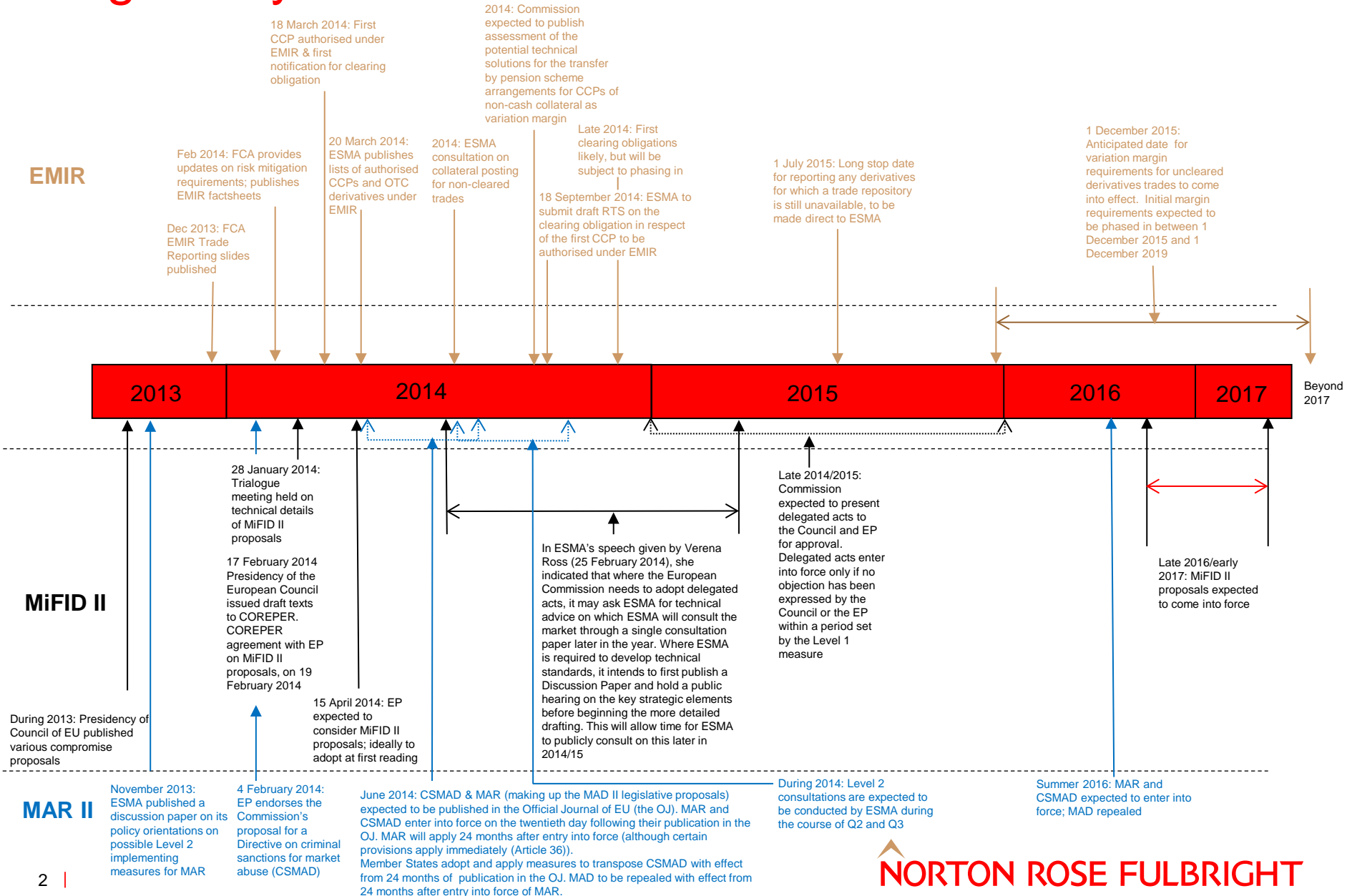
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Regulatory reform: Master timeline



How do the key proposals fit together?

MAD:

- Broader scope to cover MTF traded instruments and related instruments
- Conforming the commodities scope of MiFID

EMIR:

- Uses MiFID definition of derivatives
- MiFID transaction reporting links with position reporting to trade repositories
- Links between clearing eligible derivatives and various MiFID requirements

REMIT:

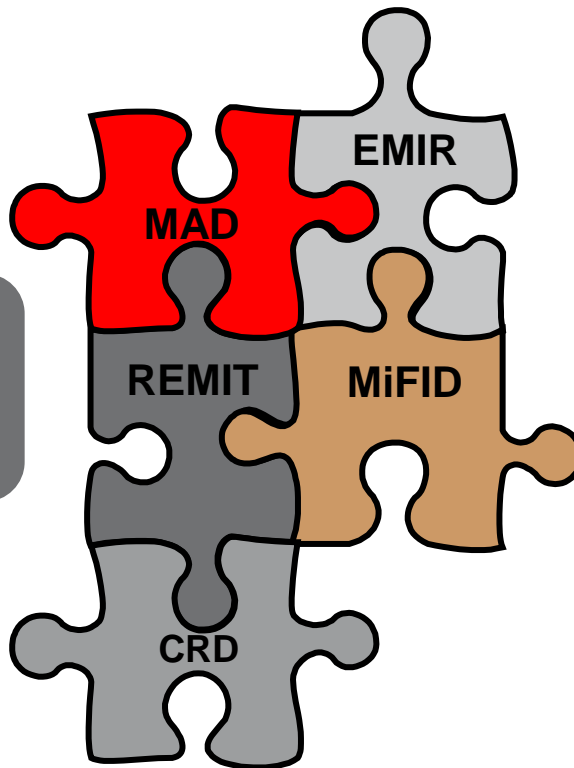
- New market abuse provisions for electricity and gas markets based on MAD

MiFID/MiFIR:

- Mandatory on-platform trading obligation applies to same counterparties as EMIR and selection of derivatives; piggy backs off EMIR process
- Broader transparency and transaction reporting obligations for derivatives
- Position management and limits
- New trading categorisation of OTF

CRD/CRR:

- Carrot to the EMIR Stick
- New 2% risk charge on trading exposures to CCPs
- Layered approach to default fund exposures



A short de-brief on MAR

The new EU market abuse regime

- Back to basics:
 - Proposals for a new Regulation (MAR) and Directive (CSMAD) published on 18 October 2011: Proposals updated in July 2012 to prohibit and criminalise manipulation of benchmarks
 - MAR will replace MAD entirely and will expand and develop the existing EU market abuse regime: Query whether Commission is seeking to introduce a single rulebook for market abuse?
 - MAR is designed to fit in with the MiFID II proposals and therefore the intention is to update both regimes in tandem
 - CSMAD complements MAR introducing minimum rules on criminal offences and criminal sanctions for market abuse
 - Treaty of Lisbon provides that UK and Ireland not automatically bound by EU legislative proposals in areas concerning freedom, security and justice: CSMAD falls within this
 - UK Government currently indicates that it will not opt into CSMAD
 - Political agreement on final MAR text now reached between the European Parliament and the Council: Now passed to technical experts to resolve drafting issues but will not be formally finalised until MiFID II agreed
 - MAR expected to take effect from summer of 2016

MAR: Key issues (1)

- MAR extends scope to:
 - Financial instruments traded on a European MTF or OTF
 - Other financial instruments whose price or value depends on or which has an effect on the price or value of financial instruments traded on a regulated market, European MTF or OTF and bids for emission allowances
 - In all cases, regardless of whether trades executed on platform or OTC
- Insider dealing:
 - Continues the definition of inside information as precise and non-public information that, if made public, would be likely to have a significant effect on the prices of relevant financial instruments (see laminate 1)
 - Specific definition of inside information for commodity derivatives and emission allowances and other auctioned products
 - Commodity derivatives required or expected to be disclosed test parallels UK traditional approach
- Market manipulation:
 - Existing definition is broad and expressly states that it should be adapted to cover new practices: MAR however specifies certain examples of strategies using algorithmic trading and HFT which could be manipulative (see laminate 2)
 - Prohibition on attempted market manipulation

MAR: Key issues (2)

- Abuse of benchmarks:
 - Since March 2011 investigations have been taking place in relation to possible manipulation of EURIBOR and LIBOR benchmarks: Integrity of rates has been called into question
 - MAR expressly prohibits direct manipulation of benchmarks
 - All benchmarks are included in MAR provided that these determine the amount payable under a financial instrument (see laminate 3)
 - MAR prohibits natural or legal persons from transmitting false or misleading information, providing false or misleading inputs, or any action which manipulates the calculation of a benchmark, including the manipulation of benchmarks' methodologies
- Administrative sanctions:
 - Common principles, notably that the maximum fine should be three times the amount of profits gained or losses avoided: Applicable to UK
- Suspicious transactions:
 - Current reporting of suspicious transactions extended to unexecuted orders and suspicious OTC transactions

MiFID II projects

MiFID II: Macro themes in your MiFID II project



The markets dimension of MiFID II

Navigating a way through the markets maze

- The markets debate cannot be viewed in isolation:
 - A tale of two stories as shown in a series of Level 2 powers in the conduct of business arena and in fundamental change in markets regulation: Micro versus macro change but cumulative micro costs may be large
 - Post crisis reaction: Narrowing the exemptions and tougher regulation in areas such as mandatory platform trading, position limits and product regulation
 - Little trust in the industry as a result of the banking crisis
 - Reflects change in political consensus away from free market thinking and towards some protections even for ECPs and professional clients
- The problem of technology:
 - One of the reasons for MiFID II is that the markets have moved on and the EU institutions do not want this to happen again
- The global problem:
 - Concerns on free rider issues with firms based in the rest of the world and need for level playing field

Issue 1: Who is in scope

- The changes to the MiFID exemptions will have a significant effect on commodities markets participants

MiFID I exemption	Still available?	Any amendments?
2(1)(b) – “the group exemption”	Yes	No
2(1)(d) – “the dealing on own account exemption”	Yes	Now only applies to financial instruments other than commodity derivatives, EUAs and derivatives on EUAs and has additional requirements
2(1)(i) – “the ancillary business exemption”	Yes	<u>Significant amendments</u> have been made to this exemption – see following slides
2(1)(k) – “the commodities dealer exemption”	No	N/A

- Any firms which currently rely on any of these exemptions would be well advised to revisit and update their MiFID analysis
- N.B. There are other exemptions in MiFID, this presentation focuses on those which are commonly used by commodity market participants

MiFID II: Exemptions – what's the impact?

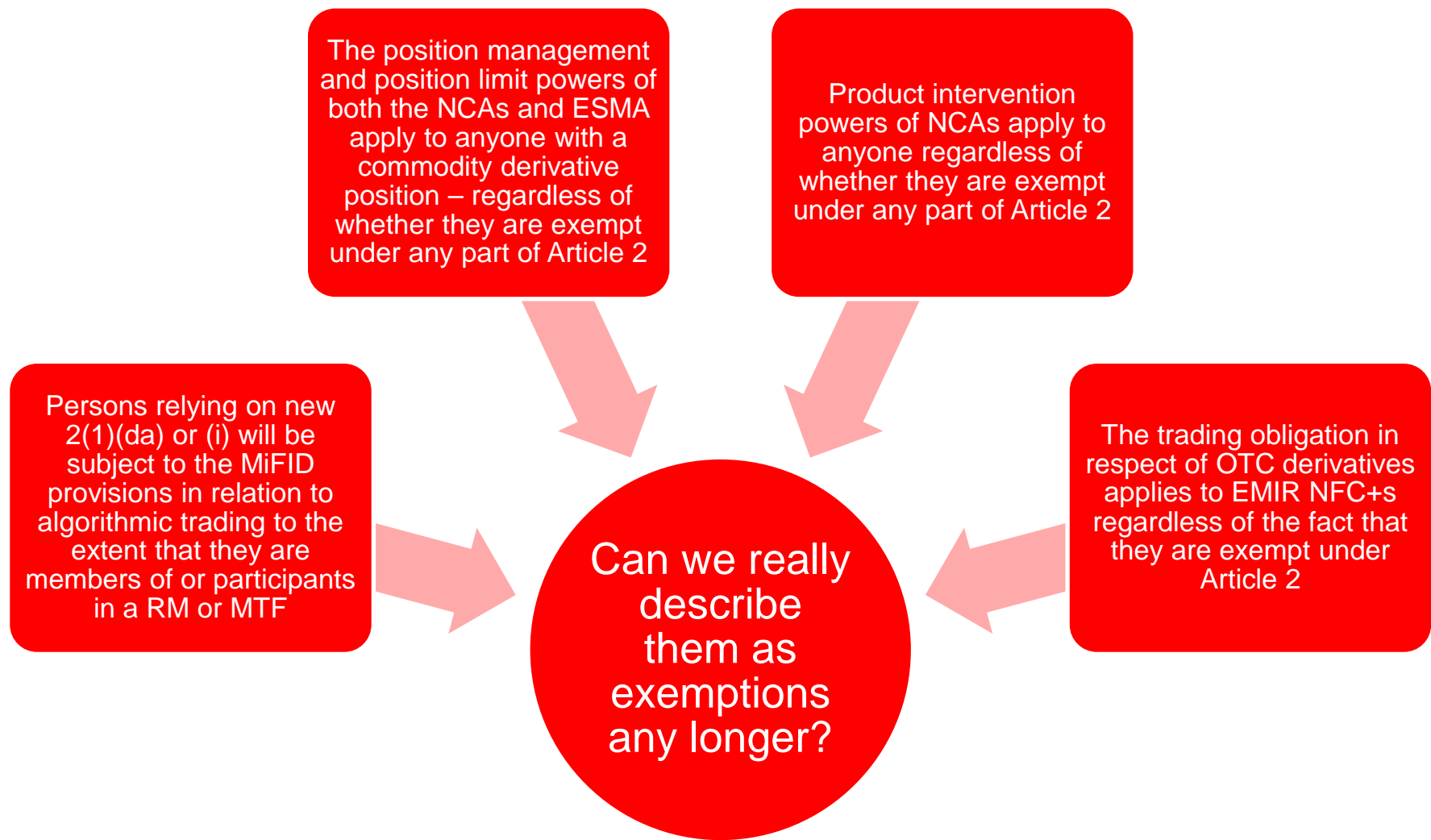
Article 2(1)(i): Entities who, in relation to commodity derivatives, EUAs or EUA derivatives:

- Deal on own account;
- Excluding those who deal on own account by executing client orders (execution of orders as an ancillary activity between two persons where the main business on a group basis is neither the provision of investment services under MiFID nor banking services under the BCD should not be considered dealing on own account by executing client orders); or
- Provide investment services other than dealing on own account to the customers or suppliers of their main business

Provided:

- In both cases, individually and on an aggregate basis, this is an ancillary business to their main business when considered on a group basis;
- Main business is not the provision of investment services under MiFID or banking services under BCD, nor acting as a market maker in relation to commodity derivatives;
- They do not apply a high frequency algorithmic trading technique; and
- They notify the relevant competent authority that they make use of this exemption on an annual basis and, on request, provide to the relevant competent authority the basis on which they consider the activity to be ancillary to their main business

Even if you are out are you really out?



Issue 2: Mandatory on-platform trading

Mandatory on-platform trading for derivatives under MiFIR: Reflects G20 commitment

- Derivatives that are subject to clearing obligation in EMIR which:
 - are traded on at least one RM, MTF, OTF or third country trading venue; and
 - are considered sufficiently liquid to only trade on these venues
- The Commission and ESMA will define eligible derivatives through technical standards
- ESMA also has an own initiative power to identify derivatives that are not CCP cleared or traded on a trading venue for this purpose
- If within scope then must be traded on an RM, MTF or OTF or equivalent third country venues: Odd provision under which competent authority may require explanation of why market cannot operate as an RM or MTF: A vestige of the Parliament approach
- Same scope as EMIR in relation to counterparties:
 - trades between financial counterparties and in-scope non-financial counterparties;
 - trades between an EU captured entity and third country entities that would be subject to EMIR;
 - trades between third country entities that would be subject to EMIR if they were established in the EU where their transactions could have a direct, substantial and foreseeable effect within EU and necessary to avoid evasion; and
 - excludes certain intra-group transactions
- The only derivatives contracts that will in future continue to trade OTC are those that do not meet the test of being 'clearing eligible and sufficiently liquid'
- Two lower tiers now: Cases of liquid derivatives market (but not within mandatory trading) where SI obligations apply and remaining pure OTC market
- The end of the OTC equities market? – Final text requires that investment firms trade liquid shares on an RM, MTF or systematic internaliser save where they:
 - are non-systematic, ad hoc, irregular and infrequent; or
 - carried on between ECPs or professionals and do not contribute to price discovery
 - Level 2 provisions will be key to unlocking scope of this, eg in definition of non-addressable liquidity trades

Issue 3: Market structure - The macro story

- Hostility in many circles (particularly Parliament) to OTC market
- Rejection of UK argument that OTC trading does not pose any risk as such given the fact that credit risk is the key and clearing is the solution for this and mandatory platform trading is irrelevant
- Therefore, approach is to:
 - Require more on platform trading
 - Create more obligations on platforms
 - Regulate remaining OTC market to a much greater degree
 - Spell out obligations of each type of market participants much more clearly, eg HFT and algo trading pursuing a market making strategy
- Also concerns about conflicts within market infrastructure providers:
 - Underlying thinking is to some degree that they are a form of public utility
 - This explains the ban on group proprietary trading in both MTF and OTF case, ban on group matched principal trading in MTF case and ban on operator proprietary or matched principal trading in case of RM
- Concerns for integrity of price formation model: New pre- and post-trade transparency and equities volume cap on waiver usage are good examples of this
- Also scrutiny on pricing and access models to be expected: Concept of availability on reasonable commercial basis likely to be scrutinised

OTFs: Scope of concept

- Political background to the broker crossing system debate:
 - Parliament did not want to permit trading on OTFs for equities, and this is reflected in the final text
- Broadly defined: All types of organised execution and arranging of trading which does not correspond to RM or MTF
- Includes:
 - Broker crossing systems (internal electronic matching systems) which execute client orders against other client orders and systems eligible for trading clearing-eligible and sufficiently liquid derivatives
- Does not include:
 - Facilities where there is no genuine trade execution or arranging taking place in the system, such as bulletin boards, aggregation engines or electronic post-trade confirmation or portfolio compression
 - Bilateral systems
- There are two different levels of discretion of operator of system:
 - When deciding to place an order on the OTF or to retract it again
 - When suggesting prices and quantities and deciding not to match an order or, for crossing systems, when deciding if, when and how much of two or more client orders it wants to match within the OTF
 - Operator must make clear how it will exercise discretion
- Commission text prevented execution of orders against proprietary capital:
 - Final text allows operator to do matched principal in bonds and non-cleared derivatives and to deal on own account in sovereign debt where no liquid market
- Ban on OTFs connecting to other OTFs but unclear how this ties to best execution or ability to have a front end smart order router

Advantages and disadvantages of OTFs

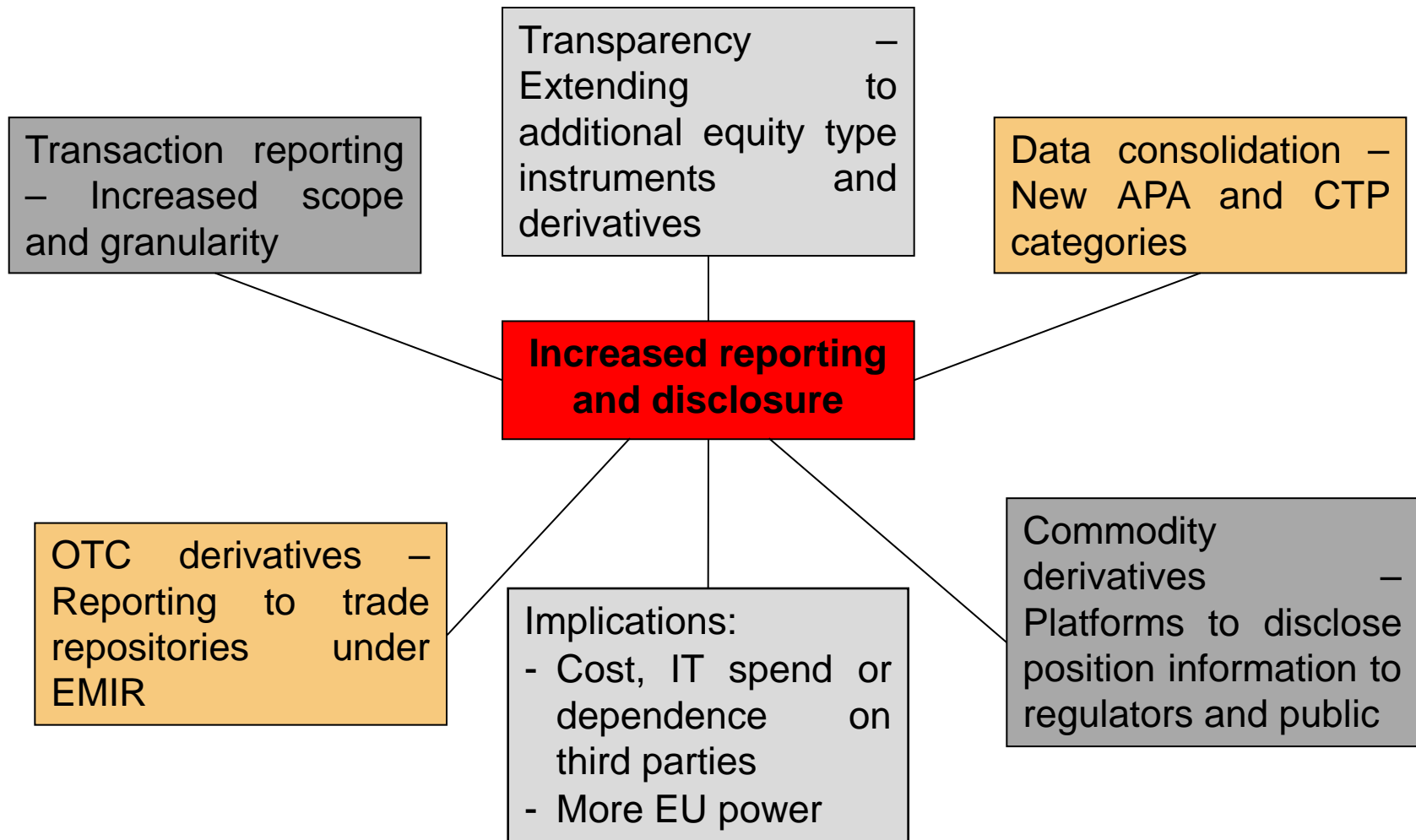
- Pros:

- Trade venue operators can either concentrate on the percentage of the market which will trade on an RM / MTF or to also cater for those who would use an OTF
- Members of MTFs or RMs must be regulated, whereas unregulated participants can use an OTF
- An OTF has a greater level of flexibility as it has discretion on order flow but has to be non-discriminatory
- Physically settled gas and power forwards traded on an OTF but not MTF or RM will be outside MiFID II. The impact of this is that they are outside of the EMIR threshold calculation and the OTF debate

- Cons:

- Counts towards EMIR threshold (if outside narrow exception for gas / power forwards) unlike contracts on an RM / MTF
- Increased bureaucracy (particularly as it states a “detailed explanation” may be needed on why an RM or MTF has not been used)
- Full conduct of business rules apply to operator, including best execution
- Issues over whether an OTF can connect with another OTF
- Reputational issues: Does not have gold stamp of an RM (or possibly same reputation as MTF but this is more debatable)
- Does best execution mean best execution on your venue or best execution on venues in general?
- Equities are not going to be tradeable on an OTF

Issue 4: Increased reporting and disclosure: Overview



Extension of transparency regime: Investment firms

Pre-trade

Post-trade

Shares and equity-like instruments

- Applies to SIs: Extended to equity-like instruments such as depositary receipts, exchange traded funds and certificates traded on a trading venue
- Some amendments including minimum quote size, two way quotes and price improvement for retail as well as professional clients

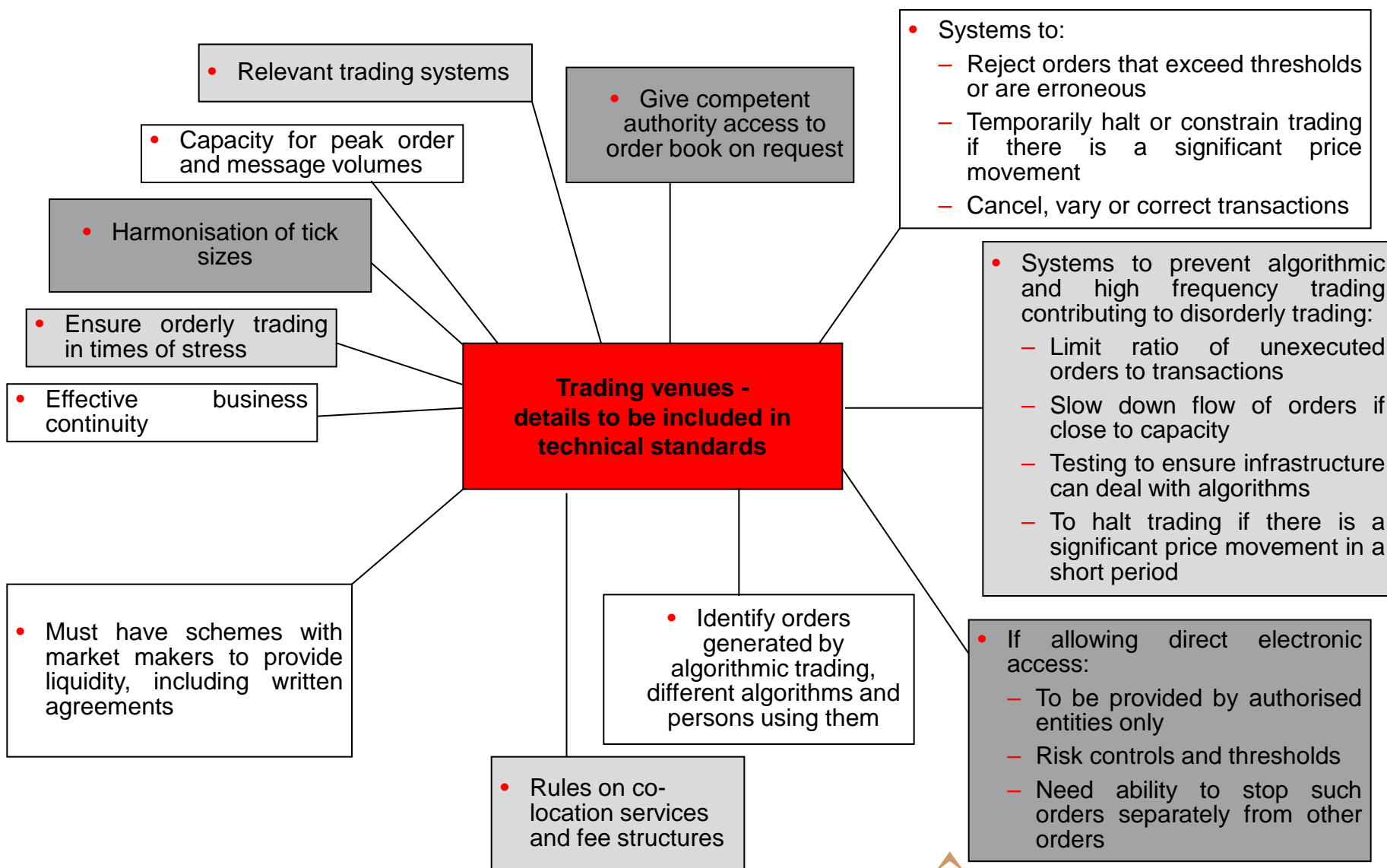
- Investment firms must make public trades through an Approved Publication Arrangement
- Applies in respect of instruments traded on a trading venue but if venue can defer, this should also apply to OTC trades
- Make public volume, price and time of transaction

- New SI regime extended to bonds, structured finance products, emissions allowances and derivatives
- Must provide quotes where asked by clients
- Must make available to other clients and trade if up to certain size
- Price improvement permitted in justified cases

Other instruments

- Investment firms must make public trades in bonds, structured finance products, emission allowances and derivatives traded on a trading venue through an Approved Publication Arrangement
- Detailed information requirements to be set by Level 2
- Competent authority can permit deferral, or restricted or aggregated disclosure, and can suspend and this also applies to OTC trades

Issue 5: Coping with technology



The example of algo and HFT

Algorithmic Trading: Trading in financial instruments where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited or no human intervention. This does not include any system used only for processing orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions

High frequency trading (HFT): A sub-set of algorithmic trading characterised by (a) infrastructure intended to minimise network and other types of latencies, including at least one of the following facilities for algorithmic order entry: co-location, proximity hosting or high speed direct electronic access; (b) system determination of order initiation, generating, routing or execution without human intervention for individual trades or orders; and (c) high message intraday rates which constitute orders, quotes or cancellations

Algorithmic trading with market making obligations involves: (1) Carrying out market making continuously during a specified proportion of the trading venue's trading hours, except under exceptional circumstances, with the result of providing liquidity on a regular and predictable basis to the trading venue; (2) entering into a binding written agreement between the investment firm and the trading venue which shall at least specify the obligations of the investment firm; and (3) having in place effective systems and controls to ensure that it fulfils its obligations under the agreement referred to in point (2) at all times, taking into account the liquidity, scale and nature of the specific market and the characteristics of the instrument traded

Level 2 powers to specify HFT and market making concepts

Algorithmic trading and HFT

- Algorithmic trading, HFT and algorithmic trading with market making obligations apply across all asset classes: New structure is a reaction to heavy lobbying by buy-side players to be excluded from market marking obligations
- Overall, there is a framework for monitoring HFT: Regulated markets monitor the role of investment firms who in turn are monitoring their clients' compliance with HFT. Competent authorities provide a level of supervision across the system as a whole
- The key end user exemptions in Articles 2(1)(d) and (i) do not apply to HFT so distinction between mere use of an algo to trade and HFT will become important
- Part of general theme of bringing in more end users into the regulated sphere
- There is no obligation on non-market making algorithmic trading to provide market liquidity
- In contrast to the CFTC rules, MiFID II makes no reference to latency and the resting order provisions in the Parliament text have not been followed
- Both the CFTC rules and MiFID II: (1) recognise that HFT is facilitated by co-location of market participants' facilities in close physical proximity to a trading venue's matching engine; (2) use co-location as one of the determinants as to whether HFT is occurring; and (3) require co-location services to be provided on a non-discriminatory, fair and transparent basis
- The non-discrimination detail at Level 2 will be important for these purposes

Brief word on third country requirements

The end of the overseas persons exclusion?

- One of the most controversial issues of MiFID II has been the third country provisions: The position kept changing in the texts during trialogue
- But the texts of February set out a settled position being:
 - In MiFID II, a third country firm may only provide investment services to retail clients and opted-up professional clients if it establishes a branch
 - Branch will be authorised by Member State but certain conditions must be satisfied including cooperation arrangements being in place between the Member State's regulator and firm's home state regulator
- In MiFIR, a third country firm may provide investment services to ECPs and per se professional clients without establishing a branch BUT must be registered with ESMA:
 - Commission must adopt an equivalence decision concerning home state regime of firm before registration can occur
 - Co-operation arrangements between ESMA and third country regulator
 - RTS will be developed specifying the information that third country firms must supply to ESMA
 - Reverse solicitation carve out applies to both MIFID II and MiFIR

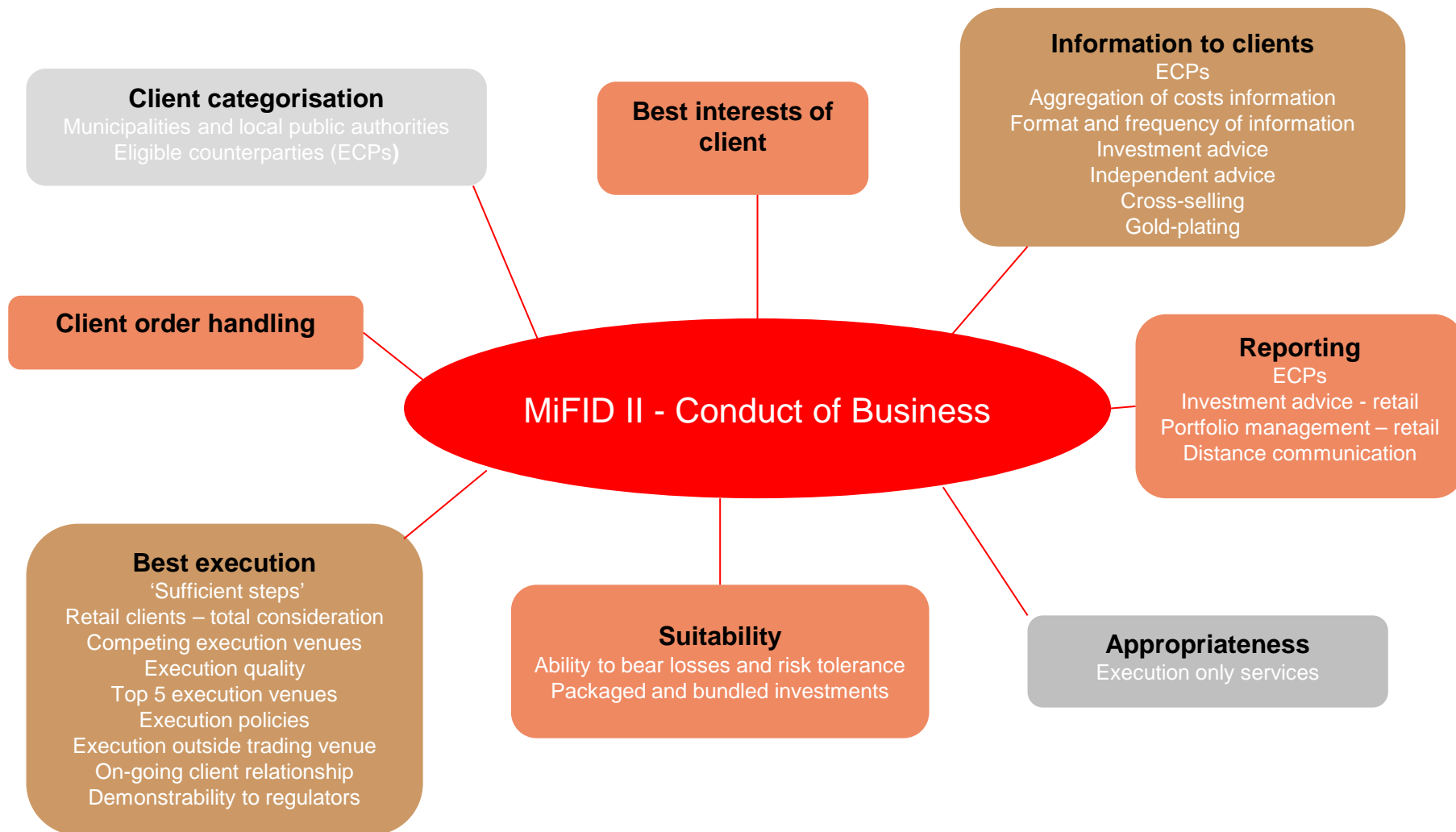
The conduct of business dimension of MiFID II

Putting together the COB puzzle

- At first glance:
 - The headline changes to the MiFID regime centre on market infrastructure
 - But it is clear that many of the proposed conduct of business amendments are likely to have a significant impact on the way UK firms carry on business
 - Many small changes that snow ball into significant regulatory reform
- Post crisis reaction:
 - Theme 1: Small steps change – example being obligations applicable to ECPs
 - Theme 2: Commission strengthening the right to information for both retail and professional clients - number of proposals regarding the provision of investment advice will be familiar to a UK audience
 - Theme 3: Suspicion of wholesale business and protection of consumers - fees and commission restrictions and product banning examples
 - Theme 4: The devil in the detail - many of the provisions will be layered by Level 2 measures and ESMA guidelines - best execution, suitability and appropriateness examples

MiFID II – Conduct of business obligations

Overview



Theme 1: Eligible counterparties

- The following obligations will now also apply to ECPs:
 - Obligation to act honestly, fairly and professionally and to communicate in a way which is fair, clear and not misleading taking into account the nature of the ECP and its business (MiFID II Recital 56, Article 30)
 - Obligation to provide information under Article 24(3)
 - Reporting obligations under Article 25(5)

Theme 2: Information to clients (MiFID Article 24)

- In good time:
 - Firms must provide existing and potential clients with appropriate information ‘in good time’ about:
 - Whether the financial instrument is intended for retail or professional clients, taking into account the intended target market (Article 24(3)(b))
 - All costs and charges related to both investment or ancillary services including the cost of advice, where relevant, the cost of the financial instrument recommended or marketed to the client and how the client may pay for it, and including any third party payments (Article 24(3)(d))
- Aggregation of information on costs (Article 24(3) sub para 2):
 - Firms will be required to provide:
 - Aggregated information on all costs and charges, including costs and charges in connection with the investment service and the financial instrument, which are not caused by the occurrence of underlying market risk
 - Itemised breakdown of costs on clients’ request
- Format and frequency of information (Article 24(3) sub para 3):
 - Regular basis, at least annually
 - Comprehensible form
 - The client must reasonably be able to understand the nature and risks of the investment service and of the specific type of financial instrument offered and to be able to take informed decisions
- Gold-plating of information requirements (Article 24(8)):
 - Regulators may impose additional information requirements on firms subject to certain conditions

Theme 2: Information to clients

- Independent advice (Article 24(4) sub para 2):
 - A firm which informs the client that it is providing it with independent advice must:
 - Assess a sufficient range of financial instruments available on the market which must be sufficiently diverse with regard to their type and issuers or product providers to ensure that the client's investment objectives can be suitably met
- The advice should not be limited to financial instruments provided either by:
 - The firm itself; or
 - Other entities with which the firm has either: (i) close links; or (ii) such close legal and economic relationships, such as contractual relationships, as to pose a risk of impairing the independence of the advice

- Investment advice (Article 24(3)(a)):
 - When a firm gives investment advice it must inform the client in good time before the advice is provided:
 - Whether the advice is provided on an independent basis or not;
 - Whether it is based on a broad or more restricted analysis of different types of financial instruments and, in particular, whether the range is limited to financial instruments issued or provided by entities: (i) having close links with the investment firm; or (ii) any other legal or economic relationships, such as contractual relationships, so close as to pose a risk of impairing the independent basis of the advice provided; and
 - Whether it will provide the client with a periodic assessment of the suitability of the financial instruments recommended to clients

Theme 2: Information to clients – Cross selling

Concern:

Cross selling practices where 2 or more financial services are sold together in a package and at least one of those services is not available separately, can represent practices where the interest of the client is not adequately considered

Article 24(7)

Where an investment service is offered together with another service or product as part of a package or as a condition for the same package or agreement, a firm must:

(1) inform the client whether it is possible to buy the different components separately and provide for a separate evidence of the costs and charges of each component; and (2) where the risks resulting from such an agreement or package offered to a retail client are likely to be different from the risks associated with the components taken separately, provide an adequate description of the different components of the agreement or package and the way in which its interaction modifies the risks

ESMA guidelines:

To be developed on the assessment and supervision of cross-selling practices and indicate non-compliant practices

Theme 2: Reporting (MiFID II Article 25(5))

- MiFID I on reporting (MiFID I Article 19(8)):
 - Firms must provide clients with adequate reports on the service they provide
- MiFID II on reporting (MiFID II Article 25(5)):
 - Reporting must be in a durable manner
 - Reporting must include periodic communications taking into account the type and complexity of the financial instruments involved and the nature of the service provided as well as the associated transaction and service costs
 - N.B. Applies to ECPs (Article 30(1))

Theme 3: Fees, commissions and non-monetary benefits

- Services covered:
 - Investment advice on an independent basis
 - Portfolio management
- Starting point – Article 24 and Recital 52:
 - Firms ‘shall not accept and retain’ commissions or monetary or non-monetary benefits paid or provided by any third party of any person acting on behalf of a third party
 - All fees, commissions and any monetary benefits paid or provided by a third party must be returned in full to the client
 - Firm cannot offset any third-party payments from the fees due by the client
 - Client should be accurately and, where relevant, periodically, informed about all fees, commissions and benefits the firm has received in connection with the investment service provided
 - Firms providing independent advice or portfolio management should set up a policy to ensure that third party payments received are allocated and transferred to clients
- But:
 - Minor non-monetary benefits are allowed subject to certain conditions including that they do not, or are not likely to, impair the firm to act in the client’s best interests

Theme 3: Fees, commissions and non-monetary benefits

- The requirement:
 - When providing investment advice on an independent basis and portfolio management, fees, commissions or non-monetary benefits paid or provided by a person on behalf of the client are allowed BUT only as far as the person is aware that such payments have been made on his behalf and that the amount and frequency of any payment is agreed between the client and the investment firm and not determined by a third party
- Cases which would satisfy the caveat:
 - Where a client pays a firm's invoice directly or it is paid by an independent third party who has no connection with the investment firm regarding the investment service provided to the client and is acting only on the instructions of the client
 - Where the client negotiates a fee for a service provided by an investment firm and pays that fee
- To further protect consumers:
 - Investment firm that provides investment services to clients shall ensure that it does not remunerate or assess the performance of its staff in a way that conflicts with its duty to act in the best interests of its clients (Article 24 (6A))

Theme 3: Product banning - General

- Recitals indicate that product banning can be better achieved at the EU level
- The distribution, sale or marketing of any financial instrument or structured deposit may be prohibited or restricted
- Any ban must address one of the following:
 - A significant investor protection concern
 - A threat to the orderly functioning and integrity of financial or commodity markets
 - A threat to the stability of the whole or part of the EU financial system
- Commission will give further detail regarding the criteria and factors to be taken into account, including the:
 - Degree of complexity of a financial instrument and the relation to the type of client to whom it is marketed and sold
 - Size or the notional value of an issuance of financial instruments
 - Degree of innovation of a financial instrument, an activity or a practice
 - Leverage a product or practice provides

Theme 3: Product banning - Competent Authorities

- Competent authorities should where relevant coordinate with ESMA or the EBA
- ESMA/EBA may temporarily ban products
- The banning authority will notify the public and, where relevant, the competent authorities regarding any measures taken
- ESMA or, where relevant, the EBA will issue an opinion on the steps taken by competent authorities to ban/restrict products
- ESMA/EBA will review measures taken to prohibit a product at least once every three months
- Competent authorities will revoke a prohibition once the rationale for it no longer applies

Theme 4: Best execution (MiFID Recitals 59 and 60, Article 27)

- New obligations of best execution (Article 27):
 - Firms must now take ‘sufficient steps’ to obtain best execution for their clients (Article 27(1))
- Execution quality data – trading venues, execution venues and systematic internalisers (Article 27(2)):
 - On at least an annual basis and without charge, data relating to the quality of execution of transactions on a venue, including details about price, costs, speed and likelihood of execution for individual financial instruments, must be made available to the public by trading venues and systematic internalisers, in the case of financial instruments subject to the trading obligations in Article 20c and 24 of MiFIR, and by execution venues, in the case of all other financial instruments (Article 27(2))
 - ESMA regulatory technical standards:
 - To determine the specific content, format and periodicity of data to be published on execution quality (Article 27(8)(a))
 - Following the execution of an order, a firm must inform its client where that order was executed (Article 27(2))
 - A firm must summarise and make public on an annual basis, for each class of financial instruments, the top five execution venues in terms of trading volumes where they executed client orders in the preceding year and information on the quality of execution obtained (Article 27(4a))

Theme 4: Best execution (MiFID Recitals 59 and 60, Article 27)

- In complying with its existing obligation to monitor the effectiveness of its order execution arrangements and to, where appropriate, correct any deficiencies, a firm will also be required to take into account the information published by trading venues, systematic internalisers and execution venues, under Article 27(2), on the execution quality of transactions and the summary of its top five execution venues for each class of financial instruments under Article 27(4a) (Article 27(5))
- New obligations of best execution (Article 27):
 - Information on a firm's order execution policy must now explain clearly, in sufficient detail and in a way that can be easily understood by clients, how orders will be executed by the firm for the client (Article 27(4) sub para 2)
 - A firm must now inform clients where there is a possibility that their order will be executed outside a trading venue and it must obtain prior consent from its client before doing so (Article 27(4) sub para 3). Under MiFID I, firms only have the obligation to do this where there is a possibility that their clients' orders will be executed outside a regulated market or a multilateral trading facility (MTF)
 - A firm's obligation to inform clients of material changes to its order execution arrangements has been limited to an obligation to inform clients with whom the firm has an 'on-going relationship' (Article 27(5))
 - ESMA regulatory technical standards:
 - To determine the content and format of this information
 - Upon request, firms will not only be required to demonstrate to the regulator that they have executed their orders in accordance with their execution policy but also their general compliance with the best execution obligation in Article 27 (Article 27(6))

Theme 4: Suitability

MiFID I on suitability (MiFID Article 19(4))

When making a personal recommendation or providing portfolio management services to a client or potential client, a firm must obtain the necessary information regarding the client's knowledge and experience, his financial situation and his investment objectives so as to enable the firm to recommend to the client or potential client the investment services and financial instruments that are suitable for him

MiFID II on suitability (Article 25(1) and (5))

A firm must also obtain information about the client's ability to bear losses and risk tolerance in order to ensure that investment services and financial instruments are recommended accordingly

ESMA guidelines: To be developed specifying the criteria for assessing the knowledge and competence of the client

Theme 4: Appropriateness

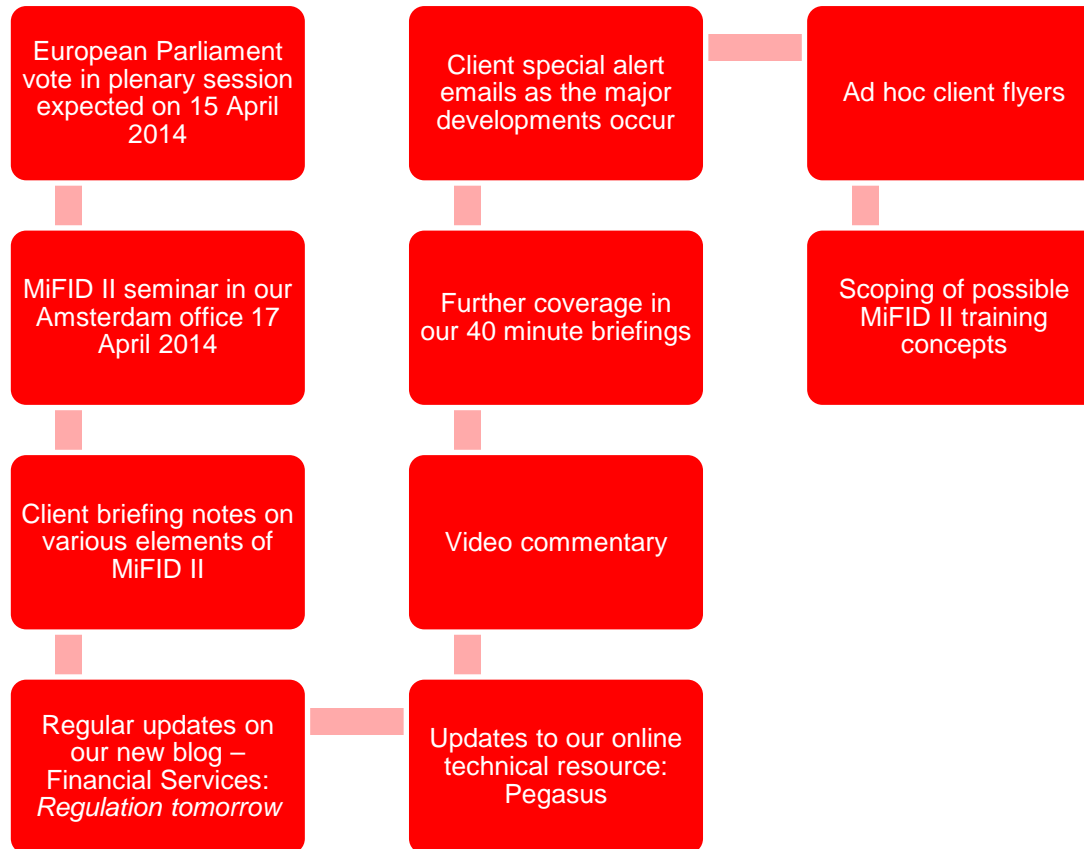
- MiFID I on appropriateness (Article 19(5)):
 - When providing services (other than investment advice or portfolio management), a firm must ask their existing or potential clients to provide information regarding their knowledge and experience relevant to the specific type of service or product provided, to enable it to assess whether it is appropriate for the client
- MiFID I on execution only services (Article 19(6)):
 - Firms are not required to ask their clients to provide information or assess appropriateness if the service is 'execution only', namely, the service consists of execution and/or the reception and transmission of client orders with or without ancillary services, and provided that certain other conditions are satisfied such as the service relates to particular non-complex financial instruments

- MiFID II on appropriateness (MiFID II Article 25(3)):
 - The list of financial instruments that fall within the exempted 'execution only' regime, and in relation to which an appropriateness assessment is not required, now covers:
 - Shares admitted to trading on a regulated market, an equivalent third country market or a MTF, where these are shares in companies (except shares in non-UCITS collective investment undertakings and shares that embed a derivative)
 - Bonds and other forms of securitised debt admitted to trading on a regulated market, an equivalent third country market or a MTF (except those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved) *
 - Money market instruments (except those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved)
 - Shares or units in UCITS (except structured UCITS)
 - Structured deposits (except those that incorporate a structure which makes it difficult for the client to understand the risk of return or the cost of exiting the product before its term)*
 - Other non-complex financial instruments*

* Subject to ESMA guidelines.

Our MiFID II campaign

Over the coming months



The logo consists of a stylized, upward-pointing chevron shape in a gold color, positioned above the first letter of the text.

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