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MiFID II – next year is likely to be manic

Jonathan Herbst | Global Head of Financial Services

Hannah Meakin | Partner

Conor Foley | Advisor - Government and Regulatory Affairs

John Higgins | Managing Director, OCREUS Group

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Today's programme

- Update on the ESMA technical standards
  - Transparency
  - Algorithmic trading / DEA
  - Transaction reporting
  - Commodity derivatives
- Next steps – EU and UK
- Ideas for running a successful MiFID II implementation project

MiFID II / MiFIR Level 2 Timeline

2 July
MiFID II and MiFIR entered into force

19 December
Level 2 Consultation on technical standards commenced. ESMA provided final report on technical advice to the Commission on delegated acts

End of September
Level 2 regulatory technical standards to be submitted to Commission (delayed from 3 July)

3 January
Level 2 implementing technical standards to be submitted to Commission

3 July
Member States to adopt and publish measures transposing MiFID II into national law

3 January
MiFID II and MiFIR Level 1 and Level 2 implementation date

2014 | **2015** | **2016** | **2017**

Consultation period

Consultation period

1 August
Level 2 Consultation on advice on delegated acts and Discussion Paper on technical standards closed

2 March
Level 2 Consultation on technical standards closed

19 October
FCA MiFID II conference

December
FCA to publish consultation paper on implementing MiFID II and MiFIR – markets issues

March
FCA to publish second consultation paper on implementing MiFID II and MiFIR – conduct issues

June
FCA to publish policy statement and final rules

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Update on the ESMA technical standards

Transparency

Liquidity and transparency: the big picture

- ESMA accepts much more granularity in the categories of instrument for purposes of determining test
- More reference to periodic market calculations
- Liquidity thresholds higher
- Transparency thresholds lower
- Break in 50% link between size-specific-to-instrument (SSTI) and large in scale (LIS): use of floor thresholds
- Overall fair amount of movement within the parameters allowed by Level 2 mandate

Transparency for trading in equities

Exception Type	Instruments Covered	Pre-trade Waiver	Post-trade Deferral
Large-in-scale	All	Yes	Yes
Order management facility	All	Yes	No
Price reference	Equities & equity-like	Yes	No
Negotiated transactions	Equities & equity-like	Yes	No
Size specific to instrument	Non-equities	RFQ & voice trading systems only	Yes (all trading systems)
Illiquid instruments	Non-equities	Yes	Yes

- LIS: For exchange traded funds (ETFs), an order is LIS if over €1m. Other equity and equity-like instruments are set against a scale measured in average daily turnover in the EU
- Order management facility: orders for order management facility may not be smaller than the minimum tradable quantity (as set in the trading venue's rules) and reserve orders may not be smaller than €10,000 at any stage during their lifetime
- Price reference: either the price for that instrument from the trading venue where the instrument was first admitted to trading, or the 'most relevant market in terms of liquidity' (market with the highest turnover in the EU in the preceding calendar year (excluding transactions concluded under a pre-trade transparency waiver))
- Negotiated transactions: ESMA has prescribed the scope of transactions falling within this waiver by merit of being subject to conditions other than market price (which are closely aligned with the transactions that do not contribute to price discovery, such as give-ups or give-ins): catch all category of price taking trades

Transparency for trading in non-equities

Exception Type	Instruments Covered	Pre-trade Waiver	Post-trade Deferral
Large-in-scale	All	Yes	Yes
Order management facility	All	Yes	No
Price reference	Equities & equity-like	Yes	No
Negotiated transactions	Equities & equity-like	Yes	No
Size specific to instrument	Non-equities	RFQ & voice trading systems only	Yes (all trading systems)
Illiquid instruments	Non-equities	Yes	Yes

- Request for quote (RFQ): ESMA permits all submitted quotes to be published at the same time but rejected average price argument
- LIS: ESMA has set restrictive thresholds for block trades – set against either fixed or periodically recalculated thresholds depending on the type of instrument: note treatment of stubs in iceberg situation
- Order management facility: orders for order management facility may not be smaller than the minimum tradable quantity (as set in the trading venue's rules) and reserve orders may not be smaller than €10,000 at any stage during their lifetime
- SSTI: applicable only to actionable indications of interest (IOIs) in RFQ and voice operated trading systems that are at or above a set threshold, where publication would expose liquidity providers to undue risk. Thresholds are a fixed or percentile value lower than the LIS threshold
- Illiquid instruments: encompasses all derivatives which are not subject to MiFIR's trading obligation; also applies to other instruments (including derivatives that are subject to the trading obligation) that ESMA has deemed at Level 2 are not sufficiently liquid to be subject to pre-trade transparency

Update from the Level 2 consultations

Criticism responded to

- Not enough granularity in categories of instrument
- Static liquidity thresholds not able to adapt to changing markets
- Significant misclassification of liquidity for derivatives caused by:
  - Inadequate data
  - Insufficiently granular instrument classes
- Liquidity thresholds too low
- LIS and SSTI thresholds too high
- SSTI methodology inappropriate: 50% link to LIS too high

Liquid market definition

- More granular classes of financial instruments approach (COFIA) for derivatives
- Assessment of liquidity for derivatives will now occur annually rather than being static and liquidity thresholds have been raised in general
- Bonds to follow an instrument by instrument approach (IBIA) rather than COFIA to allow more granular treatment
- All FX derivatives classed as illiquid until better data can be collected
- Nearly all types of equity derivatives deemed liquid

Equities waivers/ deferrals

- Increase in number of liquidity bands in general: asset class, sub-asset class and sub-class analysis
- New threshold for shares with ADT below €50,00 added to promote liquidity in small and medium-sized enterprise (SME) shares
- Proposed single pre-trade LIS threshold of €1,000,000 for all ETFs regardless of underlying kept
- New post-trade deferral thresholds for ETFs set at €10m and 50m
- Proposed cut from three to one minute delay to post-trade publication where no deferral applies kept

Non-equities waivers/ deferrals

- Pre-trade thresholds lower than post-trade (previously equal)
- Thresholds raised in general
- SSTI no longer half of LIS; instead a lower trade percentile
- Equity derivatives methodology changed; no longer trade percentile but based on ADT (i.e. like equities)
- Deferral period now T+2BD rather than T+48h
- Supplemental deferral regime of up to 4 weeks remains with 1 week delay in aggregated reporting

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Remaining Level 2 issues

Liquid market definition

- Buy side would prefer COFIA for bonds

Bond thresholds

- For bonds, trades under €100,000 are excluded when measuring trade percentiles
- ESMA argues this is necessary as a large number of small trades can bias the measure and risk loss of transparency for retail investors
- Argument that many institutional trades are under €100,000 and should not be excluded otherwise thresholds biased against professional investors

Package trades

- Examples are swap spreads or exchange for physical (EFP)
- MiFIR provides for post-trade transparency for package trades but not pre-trade
- Concern that showing quotes for each leg of a package transaction separately could be misleading: recognition that deferral to longest period of one element of package is permitted
- ESMA recognises problem but says can only be fixed at Level 1
- Level 1 can't be amended before introduction of pre-trade requirements

Cross border convergence

- 'LIS' v 'Block' regimes; LIS thresholds generally lower
- Divergence of approaches between EU and US – fundamental scope issues remain
- Systems and monitoring convergence / updates required
- Deferral regime NCA discretion under Article 11 MiFIR may lead to regulatory arbitrage
- Trading obligation; 'sufficiently liquid test' should be applied at a more granular level
- BUT alignment with EMIR is welcomed

Algorithmic trading / DEA

Algorithmic trading

"trading where a computer algorithm automatically determines … parameters of orders such as whether to initiate the order, the timing, price or quantity … or how to manage the order after submission, with limited or no human intervention"

It does not include a system only used to:

- route orders to trading venue(s)
- order processing where there is no determination of parameters other than venue
- order confirmation or post-trade processing of transactions

It includes:

- automated trading decisions and optimisation of order execution by automated means
- systems that make independent decisions at any stage – e.g. on initiating, generating, routing or executing orders

Algorithmic trading: obligations on investment firms

Internal systems and controls requirements	• Trading systems must: – be resilient and have enough capacity – be subject to appropriate trading thresholds and limits – prevent the sending of erroneous orders – not function in a way that contributes to a disorderly market – not be able to be used for any purpose that is contrary to the rules of the relevant trading venue • Must have effective business continuity arrangements to deal with system failure • Ensure trading systems are tested and monitored • Records sufficient for competent authority to monitor compliance and kept at least 5 years
Regulatory requirements	• Notify competent authority of home member state and trading venue • Competent authority can require details of algorithmic trading strategies (and above systems and controls), and any other relevant information
Final draft RTS highlights	• Governance and decision making framework for developing and monitoring trading systems and algorithms • Adequate staff (including Compliance) with necessary skills and technical knowledge – and tailored training • Firms are responsible and must have necessary knowledge and documentation for any outsourced hardware or software • Detailed testing and deployment requirements for algorithms leading to order execution with limited or no human intervention • Annual self-assessment and validation including at least specified parameters – Risk Management to create, Compliance to be made aware of any issues and senior management to approve • Appropriate annual stress tests to include high message volume and high trade volume • Ability to cancel unexecuted orders from any trader, desk or client and all outstanding orders • Surveillance systems to monitor orders and transactions and generate alerts and reports capable of replay and ex-post analysis, covering firm's full range of trading and cross check suspicions between different activities – to be reviewed at least annually – and reconciliation of trading logs with others' records • Real time monitoring of all algorithmic trading activity including cross market, cross asset class and cross product by trader and independent Risk control function – alerts within 5 seconds of event • Pre-trade controls and procedures to deal with blocked trades and post-trade controls including continuous assessment of market and credit risk and reconciliations • Business continuity, clear and tested communication channels, IT security • Better recognition of proportionality to nature, scale and complexity of firms' businesses than previous draft but detailed and comprehensive minimum standards

Algorithmic trading sub-set 1: high frequency

High frequency algorithmic trading technique (HFT)

- Infrastructure that is intended to minimise latencies, including at least one of:
  - co-location
  - proximity hosting or
  - high-speed direct electronic access
- System determination of order initiation, generating, routing or execution without human intervention for individual trades or orders; and
- High message intraday rates which constitute orders, quotes or cancellations

Extra obligations

- Keep accurate and time sequenced records of orders, cancellations, executions and quotes
- Cannot rely on exemptions so will need to be authorised

ESMA's options on intraday rates:

- **Option 1** – absolute threshold of average at least 2 messages per second for any instrument
- **Option 2** – absolute threshold of average at least 4 messages per second for all instruments across a venue or Option 1
- **Option 3** – relative threshold of daily lifetime of orders modified or cancelled shorter than median on trading venue – threshold between 40^{th} and 20^{th} percentiles

Other technical advice:

- To start, only liquid instruments
- Only proprietary orders – firm can challenge if it thinks client orders had led to an incorrect classification
- Engaging in HFT on one trading venue or through one trading desk may trigger requirements across the EU

Algorithmic trading sub-set 2: market making strategy

Market making strategy

"as a member of a trading venue, its strategy, when dealing on own account, involves posting firm, simultaneous, two-way quotes of comparable size and at competitive prices relating to financial instruments on trading venues, with the result of providing liquidity on a regular and frequent basis"

Trigger further defined in final draft RTS

- In at least one financial instrument on one trading venue
- For at least 50% of the daily trading hours of continuous trading at that trading venue
- For over half the trading days over a one month period

Obligations in final draft RTS

- Binding agreement with trading venue
- Continuous quoting obligation for no less than 50% of trading hours
- Save in exceptional circumstances – exhaustive list in RTS – to be identified by trading venue

Trading venues are only required to have market making schemes for:

- Certain liquid financial instruments
- Traded through a continuous auction order book trading system

Trading venues must:

- Publish terms of market making schemes and firms that have signed up
- Explain the incentives and parameters in normal and stressed market conditions
- Offer the same incentives to persons who perform equally

Direct electronic access

"an arrangement where a member or participant or a client of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue and includes arrangements which involve the use by a person of the infrastructure of the member or participant or client, or any connecting system provided by the member or participant or client, to transmit the orders (direct market access) and arrangements where such infrastructure is not used by a person (sponsored access)"

ESMA's technical advice

- Critical test is ability to exercise discretion regarding exact fraction of second of order entry and lifetime of orders within that timeframe
  - Where an order is effectively intermediated, it should be out – e.g. online brokerage
  - Automated order router (determines trading venue but doesn't change other parameters) – not algorithmic trading and would only be DEA if other elements satisfied
  - Smart order router (determines parameters of order other than trading venues) – algorithmic trading but would not be DEA if orders routed through SOR of market member

Direct electronic access: the chain

Regulatory status

Main responsibilities

Trading Venue RM, MTF or OTF

Regulatory status:

- Authorised as RM or investment firm operating MTF or OTF

Main responsibilities:

- Only allow member/participant/client to provide DEA if:
  - they are authorised credit institution or investment firm
  - they retain responsibility for orders and trades in relation to MiFID II

Member DEA Provider

Regulatory status:

- Must be authorised credit institution or investment firm
- Must be a member or participant of trading venue
- Must notify own competent authority and that of trading venue – they may require information on systems and controls

Main responsibilities:

- Ensure clients using DEA comply with the requirements of MiFID II and rules of trading venue
- Must have an agreement with trading venue setting out rights and obligations but DEA Provider must retain responsibility under MiFID II
- DEA Provider retains responsibility for orders submitted and trades executed through the use of its DEA systems or trading codes
- Monitoring and reporting to competent authority – breach of MiFID II or trading venue rules, disorderly trading, market abuse
- Systems – to ensure suitability of clients, risk controls, thresholds
- Controls in relation to sponsored access to be at least equivalent to direct market access
- Record keeping – to enable competent authority to monitor compliance

Client DEA User

Underlying Client DEA User?

Regulatory status (Client DEA User and Underlying Client DEA User?):

- Cannot be exempt by Art 2(1)(d) MiFID II but other exemptions may possibly apply e.g. Art 2(1)(j)
- DEA Provider would have to take into account regulatory status of DEA User

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Direct electronic access: obligations on investment firms

Internal systems and controls requirements	• Ensure proper assessment and review of suitability of clients using the service • Clients are prevented from exceeding pre-set trading and credit thresholds • Proper monitoring of trading by clients • Appropriate risk controls to prevent: – risks to investment firm – creation or contribution to disorderly markets – breaches of the market abuse regime – breaches of the rules of the trading venue • Records sufficient for competent authority to monitor compliance – at least 5 years
Documentation requirements	• Binding written agreement with the client • Investment firm must retain responsibility for its compliance with MiFID
Regulatory requirements	• Competent authorities of home member state and trading venue • Competent authority can require description of the systems and controls and evidence that they have been applied
Final draft RTS	• DEA providers are responsible for client trading – need procedures to ensure compliance • Undertake due diligence – minimum requirements but as appropriate to risks posed by nature of clients and their activities – annual risk based reassessment of client systems and controls • If user can sub-delegate, provider must ensure user has equivalent due diligence framework • Pre- and post- trade controls including automatic rejection of orders outside certain price and size parameters and ability to stop order flow and monitor on ongoing basis • Ability to identify each DEA user and, where sub-delegated, each order flow

Transaction reporting

Transaction reporting for investment firms

Which trades?	• Investment firms that execute transactions in financial instruments: – that are admitted to trading or traded on a trading venue or for which a request has been made – where the underlying is a financial instrument traded on a trading venue – where the underlying is an index or basket of financial instruments traded on a trading venue
Transactions and execution	• Transaction means an acquisition or disposal subject to various exceptions • Execute means reception and transmission, executing orders on behalf of clients, dealing on own account and making a decision in accordance with a discretionary mandate • A firm that transmits orders can enter a transmission agreement under which receiving firm will report but, if it doesn't transmit all required information, it must report trades itself
Which information?	• ESMA has attempted to simplify the reports – now down to 65 fields • New fields include client ID, IDs of person or committee that make decision to trade and algo responsible for decision and execution • Legal entities to be identified by LEI codes, simplified concatenation for individuals • Codes for algos and committees must be unique, consistent and persistent • Various new designations – e.g. waivers, short sales
How?	• Firms can report themselves or through an approved reporting mechanism (ARM) or trading venue – they must take reasonable steps to ensure compliance where they don't report themselves and remain responsible • Trading venues will report trades executed by firms not subject to reporting obligation
To whom and by when?	• Home competent authority of firm, even where a branch executes the transaction • As quickly as possible and no later than end of next working day
Link to EMIR?	• Transactions reported to a trade repository under EMIR count provided: – that trade repository is also an ARM – the report contains all the required details – trade repository transmits information to competent authority

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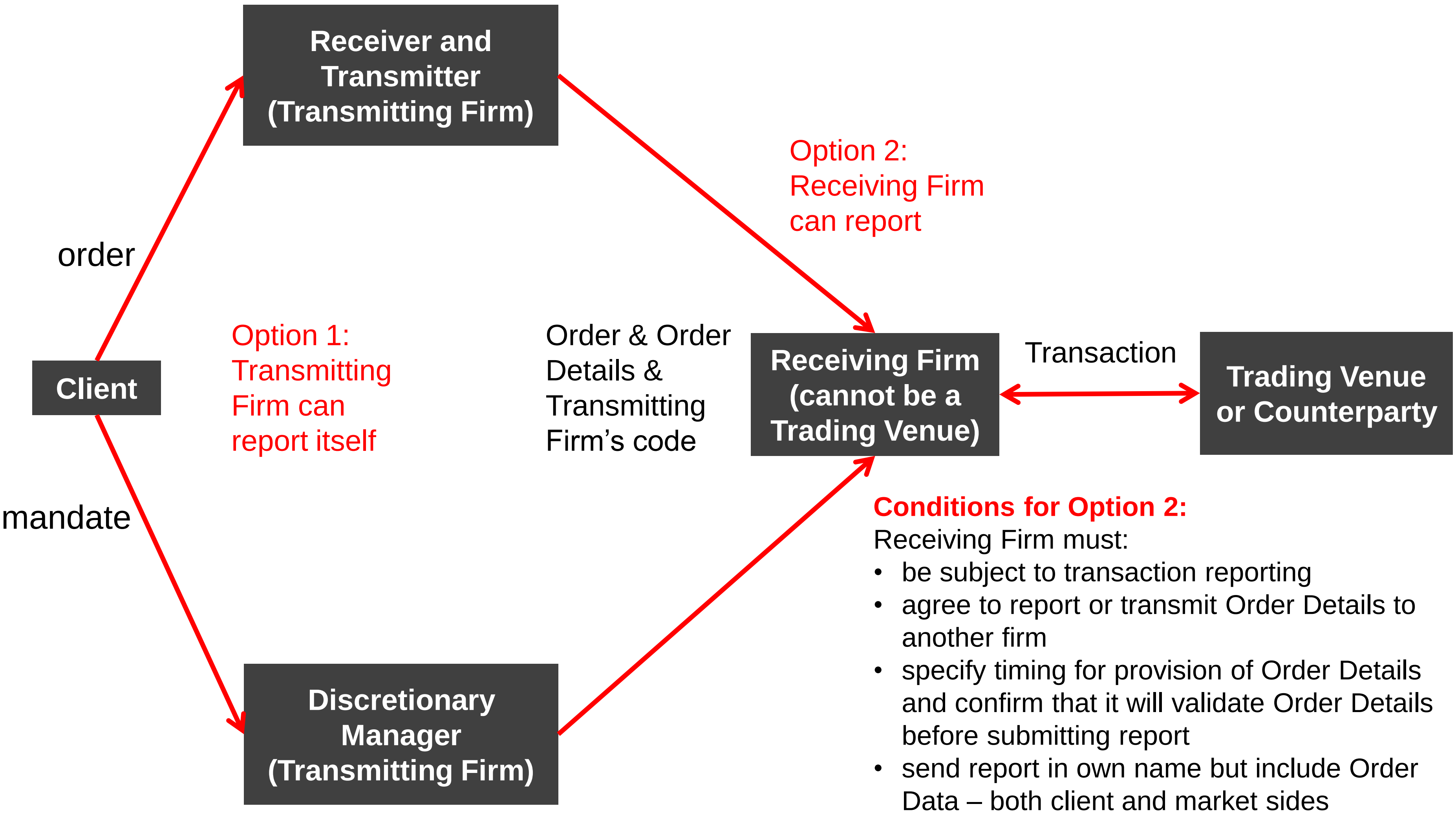
Transmission of orders



Conditions for Option 2:

Receiving Firm must:

- be subject to transaction reporting
- agree to report or transmit Order Details to another firm
- specify timing for provision of Order Details and confirm that it will validate Order Details before submitting report
- send report in own name but include Order Data – both client and market sides
- state that report is for a transmitted order

Important points from September RTS

Branches

- Single report to home member state unless agreed otherwise with host
- Branch code to be included where it:
  - receives order or makes decision,
  - has supervisory responsibility for person responsible for decision or execution or
  - transaction is executed on trading venue outside EU using branch membership
- Branch of a third country firm submits to competent authority that authorised it – where there is more than one, they agree which one to report to

LEIs

- To be used for all legal entities
- Must not provide service before obtaining LEI
- Validate against Global LEI website at time of onboarding, rather than transaction by transaction

ESMA Guidelines

- ESMA still plans to replace existing framework with buyer / seller fields and a separate trading capacity field
- Further instructions may be provided in ESMA Guidelines

Commodity derivatives: exemptions and position limits

Ancillary activity exemption

Applies to:

- Commodity derivatives, EUAs and derivatives on EUAs

For two types of activity:

- Dealing on own account including market making but not dealing on own account when executing client orders
- Providing investment services other than dealing on own account to customers or suppliers of the main business

But only applies to a person if:

- This activity is ancillary to its main business when considered on a group basis and that business is not:
  - MiFID investment business
  - CRD IV banking activities or
  - market making in relation to commodity derivatives
- It doesn't apply a high frequency algorithmic trading technique and
- It notifies the competent authority annually and reports the basis on which the activity is ancillary on request

Ancillary activity: the tests (as we understand it)

Test 1: Market share test: per asset class

- **Size of your trading activity at group level** [in the EU?] but excluding privileged transactions and transactions executed by a MiFID or CRD IV authorised entity

- **Size of overall market trading activity in the EU** (contracts traded on an EU trading venue and OTC contracts to which an EU person is party)

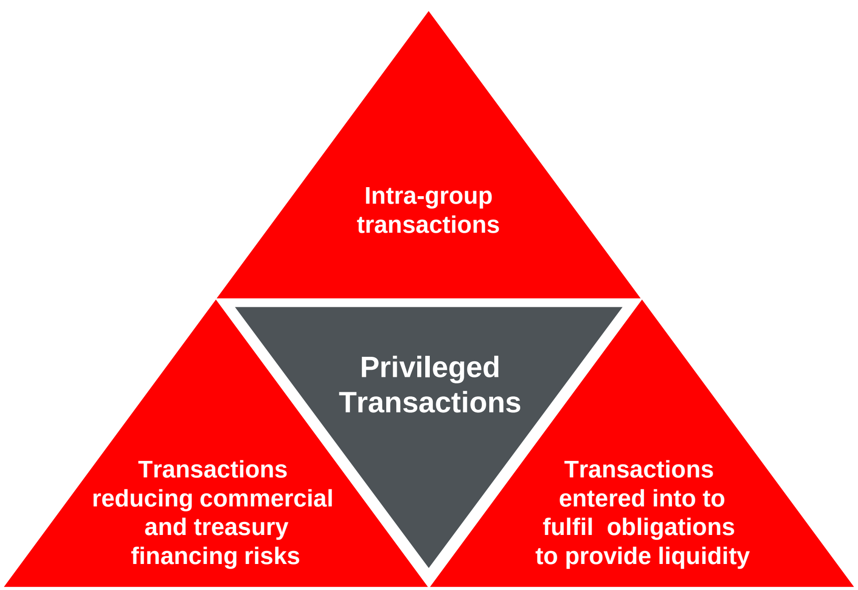
measured in gross notional value

Test 2: Main business test: aggregate of all relevant asset classes

- **Size of your trading activity at group level** [in the EU?] but excluding privileged transactions and transactions executed by a MiFID or CRD IV authorised entity

- **Size of trading activity undertaken by group** including privileged transactions and those entered into by an authorised entity (calculated by reference to financial instruments entered into)

measured in gross notional value



Asset classes and market share thresholds

Asset class	Main business test 10% or less	Main business test more than 10% but less than 50% (50% of market share threshold)	Main business test equal to or more than 50% (20% of market share threshold)
Metals	4	2	0.8
Oil and oil products	3	1.5	0.6
Coal	10	5	2
Gas	3	1.5	0.6
Power	6	3	1.2
Agricultural products	4	2	0.8
Other commodities	15	7.5	3
EUAs and EUA derivatives	20	10	4

Position limits

Definition:

Limit on net position a person can hold – positions held by a person and on its behalf at an aggregate group level (subsidiary undertakings)

Separate limits for spot and other months (NB. Spot is contract next to expire according to trading venue)

Applies to:

- Everyone – whether or not regulated
- Wide territorial scope
- All commodity derivatives traded on a trading venue, commodity derivatives considered to be the same and economically equivalent OTC contracts
  - Except positions held by non-financial entities which are objectively measurable as reducing risks directly relating to its commercial activity
  - NB. Must apply for exemption to competent authority which sets limits for that contract

Applied by competent authorities in accordance with methodology in RTS:

Step 1

Start with the baseline limit:

- Spot month - Baseline limit is 25% deliverable supply or, where there is nothing to deliver, open interest
- Other months – baseline limit is 25% open interest

Step 2

Adjust to between 5% and 35% according to factors: maturity, deliverable supply, overall open interest, number of market participants and characteristics of underlying commodity market

Step 3

Special 2,500 lot limit for contracts with combined open interest not exceeding 10,000 lots

Next steps – EU and UK

Technical standards / Delegated Acts / Commission Decisions

Technical standards

- Commission Delegated Regulation
- ESMA draft technical standards (RTS / ITS)
- Council and EP scrutiny period
- Rejection: voting requirements
- Required for:
  - RTS: most detailed MiFID II and MiFIR requirements
  - ITS: disclosure and reporting requirements

Delegated Acts

- Commission Delegated Regulation
- ESMA technical advice
- Council and EP scrutiny period
- Rejection: voting requirements
- Required for:
  - Definitions and exemptions (HFT, DEA, Algorithmic trading)
  - Research
  - Investor protection
  - Reasonable Commercial Basis
  - MiFID 2 Annex 1 Section C
- Expected publication November or December 2015

Commission Decisions

- Examination procedure
- European Securities Committee (ESC)
  - Composition
  - EG-ESC
- QMV decision making procedures
- Commission Decision on positive decision of committee
- Complex procedures if negative decision, no decision
- Required for:
  - Third country equivalence decisions

On the RTS

Preliminary responses from EU institutions

- AA exemption
- Position limits
- Pre-trade transparency
- Open access

FCA MiFID II conference – our observations

- Application of MiFID II / MiFIR
- Authorisations
- Exemptions and non-EU persons
- Position limits

UK transposition and application

MiFID II implementation

- Article 93 MiFID II: Member States shall adopt and publish, by 3 July 2016, the laws, regulations and administrative provisions necessary to implement this Directive
- FCA states that the biggest practical challenges will be around issues such as transaction reporting, commodities position reporting and the provision of information to ESMA for various purposes
- But a significant part of its work will be about communication so that firms can get to grips with the new legislation and deal with the various notifications, authorisations and variations of permissions
- How to keep informed: our technical resource *Pegasus* and our blog *Regulation tomorrow*

HM Treasury

- March 2015: Published consultation paper on transposition of MiFID II
- Consultation closed 18 June 2015. Government expects that the draft legislation will be made in 2016

FCA

- December 2015: Publication of the first consultation paper on implementing MiFID II – markets issues
- March 2016: Expected publication of second consultation paper on implementing MiFID II – conduct issues
- Q1 2016: New draft authorisation application forms to become available
- April 2016: FCA intends to start accepting draft authorisation applications
- June 2016: FCA feedback and policy statement confirming final changes to its Handbook
- July 2016: FCA authorisation applications can be submitted

Ideas for running a successful MiFID II implementation project

What we are seeing and the challenges

Scope management
- Needs to be managed robustly
- Acknowledge uncertainty and allow flexibility

Key questions
- What is your business?
- Who are your clients?
- Who else do you rely on?

Resourcing
- Need sufficient, deep organisation experience – use third parties to backfill BAU roles and second staff onto project
- Think ahead to what additional resources you may need
- Beware of split ops/ project roles – conflicts

Prioritisation:
- Where do we need to make decisions?
- What issues affect everything else?
- What dependencies do you have on others?
- Do you need to make any applications to regulators?
- Parallel options

What are we seeing? What are the challenges?

Different ways of dividing the work
- Markets v investor protection
- Different instruments / desks
- Organisation v transaction level
- Discrete projects – e.g. MTF / SI, terms of business

Complexity
- Leads to uncertainty in itself
- Cannot solve all problems upfront – look for iterative approaches
- Learn from mistakes – acknowledge and understand what doesn't work

Angles to consider
- Your own perspective
- What your clients need
- How your service providers may change – what do you need to know about their plans?

Beware of silos
- Existing organisational silos will impact MiFID II projects
- Avoid creating a further silo MiFID II project team or silos within the team
- Avoid silos of project v post-project operations

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MiFID Manager

MiFID I covered

High level impact statement

Hard copy booklet

Last Updated 1 January 2015

Will include RTS text once issued

Divided into topics

Includes change between initial and final advice as blackline

Local Implementation included

Will include summarised FCA CP commentary once issued

Will include Level 3

Either full text included or signpost included where no change from MiFID 1

MiFID Manager – Investor Protection

MiFID I		MiFID II		FCA
Conflicts of interest				
Levels 1 and 2	**Level 3 and Local Implementation**	**Level 1 (Final)**	**Level 2 (ESMA's Final Advice)**	•
(Art 13(3) and 18 MiFID and Arts 21 - 25 MiFID Imp Dir) ***Level 1 (summary):*** ▪ maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of [illegible]est from adversely affecting [illegible]nterests of its clients [illegible]entify conflicts of interest that [illegible] arise from the business [illegible]onflicts of interest' defined in [illegible]e 18 as including conflicts (i) [illegible]een themselves (their managers, employees and tied agents, or any persons linked to them by control) and their clients; or (ii) between one client and another ▪ where arrangements are not sufficient to ensure with reasonable confidence that the risk of damage to clients will be prevented, disclose the general nature and/or sources of conflicts before undertaking business ***Level 2 (summary):*** ▪ detail on how to identify a conflict of interest (ones that are potentially detrimental to clients) ▪ establish, implement and maintain a written conflicts of interest policy (proportionate) and detail on what it must address and	***Level 3*** Various CESR (now ESMA) recommendations on conflicts of interest ***Local Implementation*** *Summary* ▪ reflects MiFID almost verbatim ▪ extended to also apply to UCITS management companies and AIFMs ▪ all other firms to take various parts of it into account as 'guidance' ▪ over-reliance on disclosure, without adequate consideration of managing / preventing conflicts, is not permitted *Rules/Guidance* SYSC 10 COBS 6 and 12 Principle 8 Finalised Guidance (FG14/1) Finalised Guidance (FG 13/1) Finalised Guidance (FG 12/13) Policy Statement (PS 14/7) Finalised Guidance (FG 12/16)	No changes from MiFID 1 ***Text not replicated as no changes but location is:*** Article 16(3) - organisational and administrative arrangements. Article 23(1) - identify and prevent / manage conflicts. A conflict includes those caused by the receipt of inducements from third parties or by the firm's own remuneration and other incentive structures. Article 23(2) – disclosure (in a durable medium). Express statement that one type of conflict is the receipt of inducements from third parties or by the firm's own remuneration and other incentive structures. With MiFID II now applying to investment firms and credit institutions selling their own securities, enhanced conflicts.	~~Significant changes to Level 1~~ 1. ESMA considers that Article 22 of the MiFID Implementing Directive on conflicts of interest policies should be amended by inserting new provisions in relation to the disclosure of conflicts of interest. The following proposals are not intended to replace the existing provisions on conflicts of interest, but rather to clarify or supplement the existing regime. 2. Investment firms should ensure that disclosure to clients, pursuant to Article 23(2) of MiFID II, is a measure of last resort that can be used only where the effective organisational and administrative arrangements established by the investment firm to prevent or manage its conflicts of interest in accordance with Article 23 of MiFID II are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the client will be prevented. 3. When disclosure of specific conflicts of interest is required, the disclosure shall clearly state that the organisational and administrative arrangements established by the investment firm to prevent or manage that conflict are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the client will be prevented. The disclosure to clients	

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MiFID II/ MiFIR Academy

Pegasus and Regulation tomorrow

5 minute Videos

40 minute briefings and seminars

Webinar series

Events in our Paris, Frankfurt, Milan, Amsterdam and London offices

Briefing notes

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