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MiFID II Academy: Spotlight on markets and third country provisions

Financial Services Team
Norton Rose Fulbright LLP

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Agenda

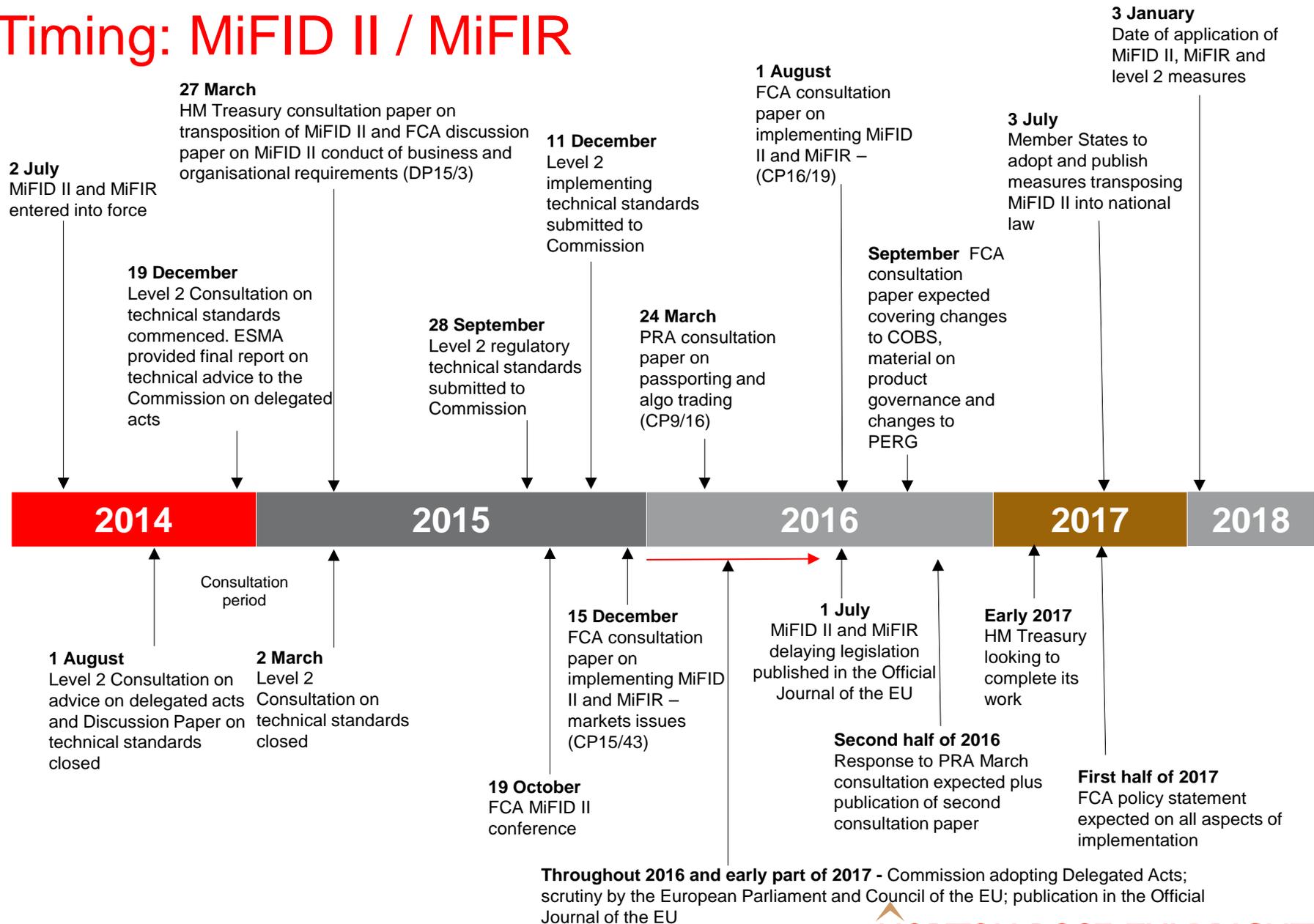
**The trading
environment of
the future**

**Critical issues
that firms need
to consider**

**The Brexit
dimension:
thinking from a
third country
perspective**

Update on MiFID II

Timing: MiFID II / MiFIR



Timings

Revised dates

- 3 July 2017: Member States to adopt and publish measures transposing MiFID II into national law
- 3 January 2018: Date of application of MiFID II, MiFIR and level 2 measures
- FCA statement of 24 June 2016 said: “Firms must continue to abide by their obligations under UK law, including those derived from EU law and continue with implementation plans for legislation that is still to come into effect”
- FCA stated in the consultation that MiFID II is in the category of legislation that is still to come into effect “so both firms and we need to continue with implementation plans”
- MAR provisions referring to MiFID II concepts (OTFs, SME growth markets, emission allowances or auctioned products) will not apply until 3 January 2018
- Again, the concepts and rules as set out in MiFID I should be used until 3 January 2018

Secondary legislation

- All RTS are now adopted by the Commission save RTS 20 and RTS 21 on commodity derivatives.
- No RTS have been published in the Official Journal despite most having passed the scrutiny period and despite the publication in the Official Journal of the Corrigendum on MiFID II Directive (8 October 2016)
- Most ITS await formal adoption by the Commission but ITS on MTFs and OTFs has been published in the Official Journal
- Both Delegated Directive and Delegated Regulation have been adopted and are awaiting publication in the Official Journal
- ESMA Discussion Paper on the trading obligation for derivatives under MiFIR released on 20 September 2016
- ESMA released a Consultation Paper on RTS specifying the scope of the consolidated tape for non-equity products under MiFID II (3 October 2016)
- MiFIR RTS on indirect clearing have been submitted and are waiting to be adopted by the Commission following ESMA's Final Report on 26 May 2016

Level 3: Work is in progress

In differing stages across various standing committees

Investor protection and intermediaries

- ESMA Consultation Paper: Draft guidelines on MiFID II product governance requirements released on 5 October 2016
- ESMA Q&A on MiFID and MiFIR investor protection topics released on 10 October 2016. Topics covered include: coverage on topics such as best execution, suitability, appropriateness, tapering, investment advice on an independent basis

Transaction reporting

- ESMA guidelines on transaction reporting, order record keeping and clock synchronisation under MiFID II released on 10 October 2016
- ESMA Technical Reporting Instructions: MiFIR Transaction Reporting released on 26 October 2016

Commodity Derivatives

- Working on Q&A but timeline unknown given that the relevant RTS have not yet been finalised
- Task Force is said to be working on interpretation and practical questions on ancillary activity and position limits regime

Market Infrastructure

- ESMA Consultation Paper: Guideline on specific notions under MiFID II related to the management body of market operators and data reporting services providers released on 5 October 2016
- ESMA Consultation Paper: Guidelines on the calibration, publication and reporting of trading halts released on 6 October 2016

Secondary Markets

- ESMA is expected to publish the Q&A for secondary markets at some point after summer. Q&A topics will include: (1) the definition of multilateral system; (2) the difference between MTFs and OTFs; (3) the meaning of 'traded on a trading venue'; (4) transparency requirement, organisational requirements for investment firm and trading venues engaged in algo trading; and (5) access to market infrastructure and benchmarks

Transparency

- ESMA Q&A on MiFID II and MiFIR transparency topics released on 3 October 2016. Topics include the application of double volume cap mechanism regarding MTF only shares, depositary receipts, certificates and newly issued instruments; and clarifications of what data has to be taken into consideration in respect of volumes traded under MiFID I waivers in 2017
- ESMA Reporting Instructions on double cap system and transparency reporting released on 26 October 2016
- Questions on territorial application of transparency to non-EU branches of EU investment firms thought to be under consideration

The UK papers: A quick recap

HM Treasury Consultation Paper on transposition of MiFID II

- Covers third countries, data reporting services, position limits and reporting, unauthorised persons, structured deposits, power to remove board members, OTFs and binary options; draft SIs found in Annexes
- UK Government not currently minded to exercise the discretion to apply the regime specified in Article 39 MiFID II

FCA Discussion Paper on conduct of business and organisational requirements (DP15/3)

- Discusses the implications of certain MiFID II conduct of business and organisational requirements for firms primarily contained within Articles 24 and 25

FCA Consultation Paper on implementing MiFID II and MiFIR – markets issues (CP15/43)

- Consults on issues concerning the regulation of secondary trading of financial instruments
- Appendix II contains draft MiFID II Handbook Guide that will sit alongside the Handbook changes
- Notes that MiFIR and RTS and ITS are directly applicable so it is not consulting on certain issues including the double volume cap mechanism to restrict the 'dark' trading of equity and equity-like financial instruments

PRA Consultation Paper on passporting and algo trading (CP9/16)

- Proposal for a new Algorithmic Trading Part of the PRA Rulebook; proposals closely mirror those in FCA consultation but there are subtle differences due to the regulators' different statutory objectives

PRA Policy Statement: MiFID II: Response to CP9/16 (PS 29/16)

- Sets out final rules on passporting and algo trading (27 October 2016)
- The PRA intends to publish a further CP in due course to cover other areas of MiFID II

FCA second Consultation Paper on MiFID II implementation (CP16/19)

- Closed for comments on 28 October 2016
- First half of 2017, there will be a Policy Statement to *Consultation Paper 15/43: MiFID II implementation*
- Early 2017, there will be a Policy Statement to *Consultation Paper 16/19: MiFID II implementation*

FCA third Consultation Paper on MiFID II implementation (CP16/29)

- The consultation closes on 4 January 2017, except for chapter 16 (Supervision Manual, authorisation and approved persons) which closed on 31 October 2016

The trading environment of the future

Trading obligation: shares and derivatives

Shares

- **What?** Shares admitted to trading on a regulated market or traded on an MTF
- **Where?**
 - Regulated Market, MTF, Systematic Internaliser (SI)
 - Equivalent third country trading venue
- **Who?**
 - Investment Firms
 - Only Investment Firms can be direct members of trading venues

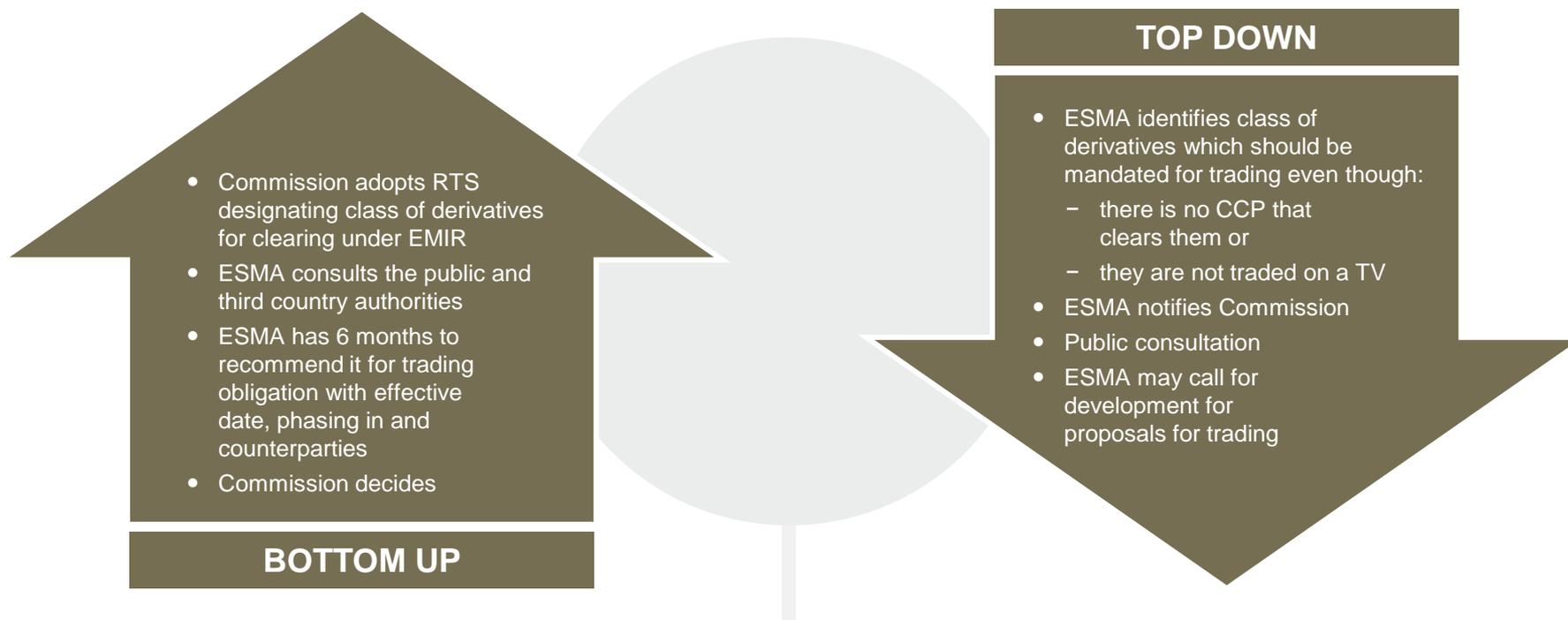
- **Trading obligation does not apply to trades that are:**
 - Non-systematic, ad hoc, irregular and infrequent;
 - Carried out between eligible and / or professional counterparties and do not contribute to price discovery;
 - In shares or equity instruments not admitted to trading on a regulated market or traded on an MTF; or
 - By non-Investment Firms (only)These parties / instruments can trade OTC

Derivatives

- **What?** Derivatives that are traded on a trading venue that are sufficiently liquid and declared subject to the trading obligation
- **Where?**
 - Regulated Market, MTF, OTF
 - Equivalent third country trading venue
- **Who?** Transactions between:
 - An FC and another FC
 - An FC and an NFC+
 - An NFC+ and another NFC+(and third country entities that would be subject to clearing obligation in certain cases)

- **Trading obligation does not apply to:**
 - Non-equity instruments that have not been declared subject to the trading obligation
 - Any trade with an NFC- (including if it trades with an FC or NFC+)These parties / instruments can trade OTC or on an SI

Trading obligation: Mandated classes



To determine whether there is sufficient liquidity:

- ESMA must consider these criteria:
 - Average frequency and size of trades
 - Number and type of active market participants
 - Average size of spreads
 - Anticipated impact on liquidity
 - Impact on commercial activities of non-financial end users
- According to the final RTS, while ESMA will take into account whether a derivative class is liquid for transparency purposes, they will not automatically be deemed liquid for these purposes
- It proposes to retain flexibility and consult on:
 - Whether derivatives are only liquid below a certain size
 - How to deal with package transactions
- It also warns about moving trading into economically equivalent OTC contracts

Trading venues: New concepts and boundaries



MTFs

MTF: "a *multilateral system*, operated by an investment firm or a market operator, which *brings together* multiple third-party buying and selling interests in financial instruments – in the system and in accordance with *non-discretionary rules* – in a way that *results in a contract*"

Multilateral system

- Not bilateral: can't enter into every (any) trade on own account, even as riskless principal
- Multiple third party interests can interact
- Does every order need to interact with all other orders or can there be some segmentation?
- Non-discrimination
- Could it accommodate some 1:1 trades?

Brings together multiple interests

- To be understood in broad sense
- Includes orders, quotes and indications of interest
- User ratification does not undermine this
- What is a firm quote or an indication of interest?

In the system

- A set of rules - no need for a technical system for matching orders
- Includes systems where users can execute against multiple quotes requested
- Bring interests together under the rules, protocols or operating procedures
- Could some parts of the functionality fall outside the system?

In accordance with non-discretionary rules

- Rules leave the operator with no discretion as to how interests may interact
- Limited development on this
- Users can have discretion

OTFs

OTF: "a *multilateral system...* in which *multiple third-party buying and selling interests* in bonds, structured finance products, emission allowances or derivatives are able to *interact in the system* in a way that *results in a contract* in accordance with Title II of MiFID II"

Markets facing requirements

- Non-discrimination and transparency
- Conflicts management
- Monitoring compliance with the rules and orderly trading
- Market surveillance
- System resilience and tick sizes
- Position reporting

Client facing obligations

- Clients' best interests
- Appropriate information requirements
- Suitability and appropriateness
- Best execution
- Prompt and fair execution of orders
- Publication of limit orders in shares

Other differences from MTFs

- Only for non-equities
- Must exercise discretion by deciding to place or retract orders on the OTF and / or deciding not to match an order with other available orders at a given point in time
- May facilitate negotiation between clients
- Not subject to mandatory CCP clearing – will FCA allow a bit more flexibility?

Questions without answers (yet)

- Who might become an OTF?
- What will OTF rules look like?
- How much discretion will clients accept?

Systematic Internalisers

Definition:

“An investment firm which, on an organised, frequent, systematic and substantial basis deals on own account by executing client orders outside a RM, MTF or OTF ”

Quantitative tests and opt in:

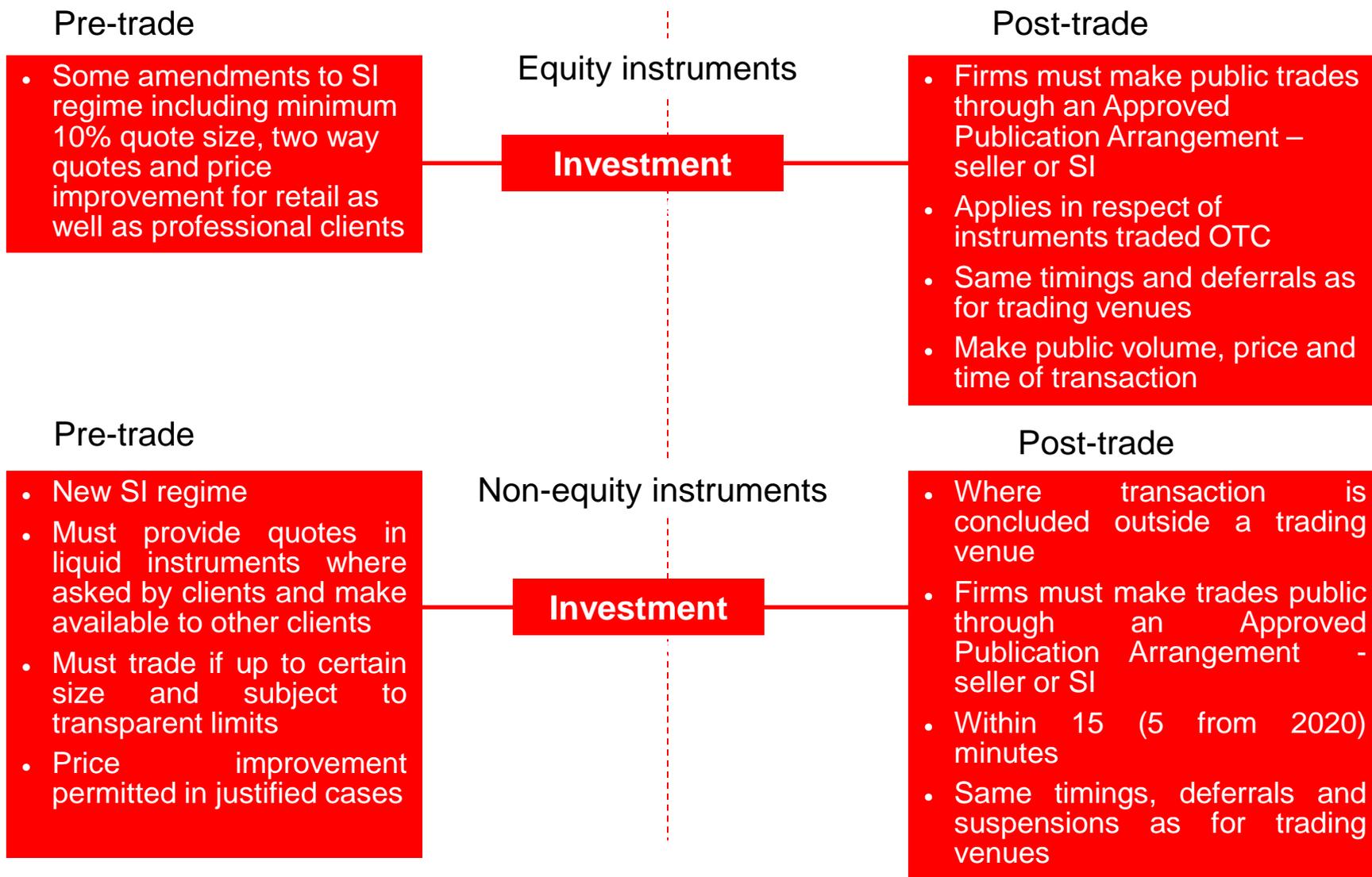
- Firms exceeding both thresholds are caught but others can opt into the regime
- Must notify competent authority

		Equities	Bonds	Structured Finance Products	Derivatives	Emission allowances
Frequent and systematic basis threshold (liquid instruments) OR	Number of transactions executed by the investment firm on own account OTC / total number of transaction in the same financial instrument in the EU	Equal to or more than 0.4% and daily	2.5% and at least once a week	4% and at least once a week	2.5% and at least once a week	4% and at least once a week
Frequent and systematic basis threshold (illiquid instruments) AND	Minimum trading frequency (average during last 6 months)	Daily	At least once a week	At least once a week	At least once a week	At least once a week
Substantial basis threshold criteria 1 OR	Number of OTC trades by investment firm in a financial instrument on own account when executing client orders of equal to or larger than in comparison to the number / nominal amount traded in that financial instrument and executed This is on own account or on behalf of clients executed on a trading venue or OTC	15%	25%	30%	25%	30%
Substantial basis threshold criteria 2	Number of OTC trades by investment firm in a financial instrument on own account when executing client orders/ total volume / nominal amount in financial instrument executed in the EU with or on a trading venue or OTC	0.4%	1%	2.25%	1%	2.25%

Systematic Internalisers: Pre-trade transparency

	Equity like instruments	Non-equity like instruments
Make public quotes for liquid instruments	On a regular and continuous basis during normal trading hours	<ul style="list-style-type: none"> - When prompted by client - When agreed to provide a quote and, if illiquid, on request from the client if they agree to provide a quote
Quotes requirements	Must achieve best execution and reflect prevailing market conditions	
Update / withdraw	Can update any time but can only withdraw in exceptional conditions. Article 14 Delegated Regulation 18/5/2016 details when exceptional conditions are deemed to exist	
Access to quotes	Must make available to other clients but can have commercial policy on access provided objective and non-discriminatory	
Obligation	Execute at quoted price in sizes up to standard market size – minimum quote size	Enter transactions under published conditions if at or below size specific to instrument
Acceptable limits	Number of trades with same client and total trades at same time provided non-discriminatory and transparent	Number of trades at any quote provided non-discriminatory and transparent
Price improvement	Same but carve out for professional clients where several securities in one trade	Only in justified cases if it falls within public range close to market conditions

Transparency for equity and non-equity instruments



Transaction reporting: Investment firms

Which trades?	<p>Investment firms that execute transactions in financial instruments close of T + 1:</p> <ul style="list-style-type: none"> • 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	<p>Transaction means an acquisition, disposal or modification subject to various exceptions</p> <ul style="list-style-type: none"> • Execute means : <ul style="list-style-type: none"> - reception and transmission of orders in relation to one or more financial instruments; - execution of orders on behalf of clients - dealing on own account - making an investment decision in accordance with a discretionary mandate given by a client - Transfer of financial instruments to or from accounts • Acquisition means any purchase, entering into derivative, increase in notional amount • Disposal sale means any closing out of derivative, decrease in notional amount
“Non-transactions”	<ul style="list-style-type: none"> • Not deemed execution: transmission of an order (RTS 22 includes exhaustive list of ‘non-transactions’) • 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?	<ul style="list-style-type: none"> • ESMA has attempted to simplify the reports – 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 – eg. waivers, short sales
How?	<ul style="list-style-type: none"> • Firms can report themselves or through an 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?	<ul style="list-style-type: none"> • 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?	<ul style="list-style-type: none"> • Transactions reported to a trade repository under EMIR count provided: <ul style="list-style-type: none"> - that trade repository is also an ARM - the report contains all the required details - trade repository transmits information to competent authority

Critical issues that firms need to consider

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:

- Decide which venue(s) to send an order to
- Process orders where there is no determination of parameters other than venue
- Confirm orders or process transactions post-trade

Delegated Regulation:

- A system has no or limited human intervention where:
 - Automated system makes decisions at any of the stages of initiating, generating, routing or executing orders or quotes according to pre-determined parameters
 - Includes both automatic generation of orders and optimisation of order execution
 - Includes smart order routers (which use algorithms to optimise order execution where they determine parameters other than just venue) but not automated order routers (that determine venue but don't change any other parameters of order)
 - Algorithmic trading and DEA are not mutually exclusive

Algorithmic trading: Market making strategy

“An investment firm that engages in algorithmic trading shall be considered to be pursuing a market making strategy when, as a member or participant of one or more trading venues, its strategy when dealing on own account, involves posting firm, simultaneous two-way quotes of comparable size and at competitive prices relating to one or more financial instruments on a single trading venue or across different trading venues, with the result of providing liquidity on a regular and frequent basis to the overall market”

RTS 8

- Market making strategy is a strategy where, during half of the trading days over a one month period, the firm:
 - Posts firm, simultaneous two-way quotes of comparable size and competitive prices
 - Deals on their own account in at least one financial instrument on one trading venue for at least 50% of the daily trading hours of continuous trading at the respective trading venue, excluding opening and closing auction
- **Firm** – orders and quotes that under the rules of a trading venue can be matched against an opposite order or quote
- **Simultaneous, two-way** – posted in such a way that both the bid and the ask-price are present in the order book at the same time
- **Comparable** – size of each quote does not diverge by more than 50% from each other
- **Competitive** – posted at or within the maximum bid-ask range set by the trading venue and imposed on investment firms that have signed a market making agreement

Algorithmic trading: HFT

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
- High message intraday rates which constitute orders, quotes or cancellations

Why is this important?

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

A high message intraday rate consists of the submission on average of:

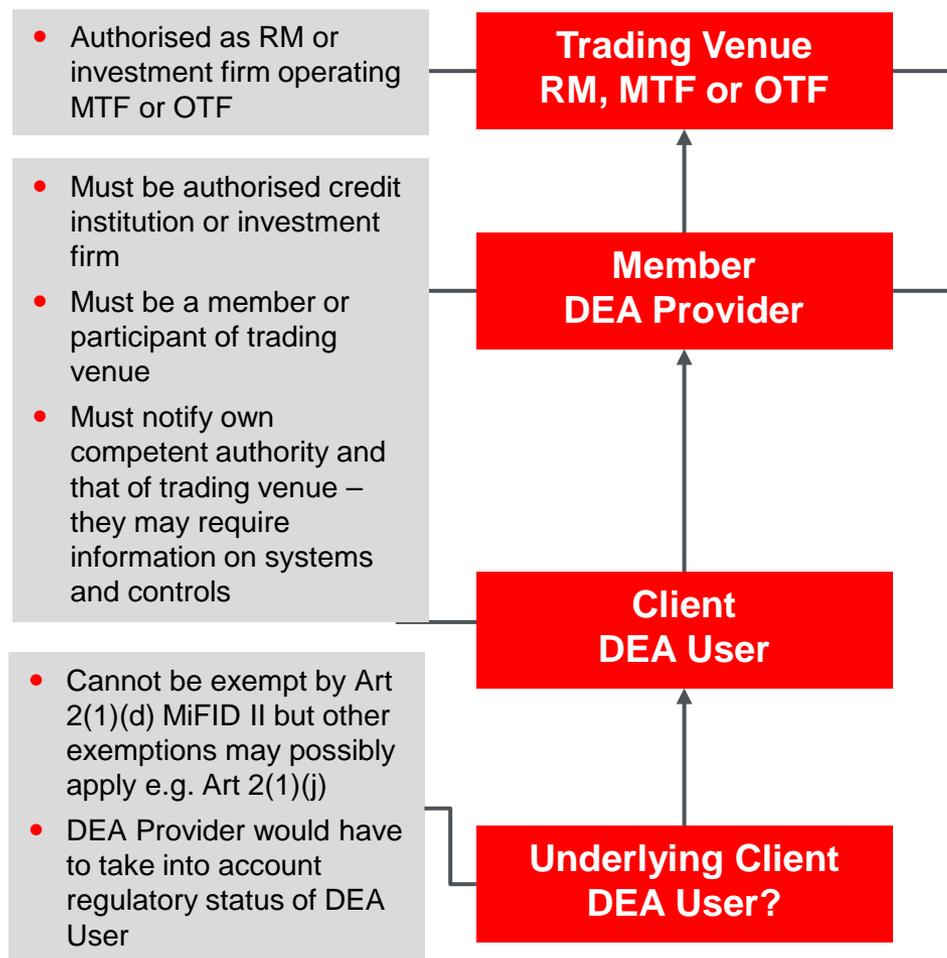
- At least 2 messages per second for any single financial instrument
- At least 4 messages per second for all financial instruments traded on a trading venue

Delegated Regulation:

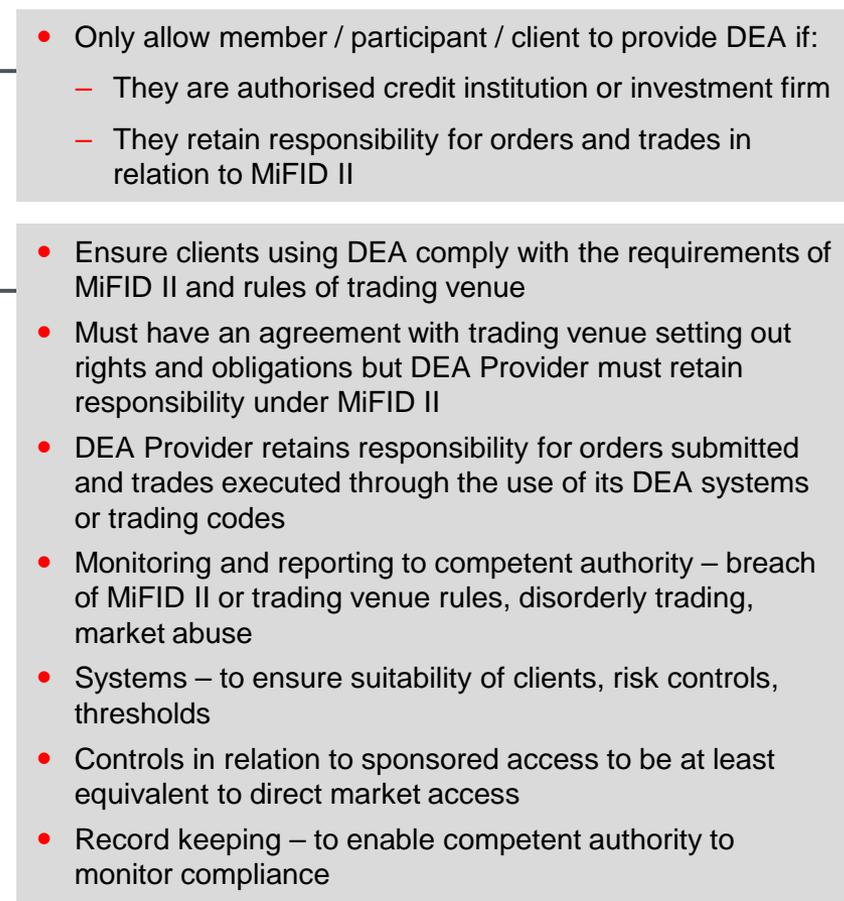
- Only liquid instruments
- Include market making activity
- Only proprietary orders and orders structured to avoid this
- Don't include messages from DEA clients
- Trading venues must make available monthly estimates of the average messages per second taking into account the preceding 12 months
- Engaging in HFT on one trading venue or through one trading desk triggers requirements

DEA: The chain

Regulatory status



Main responsibilities



Key areas of regulator focus and risk

Risk

- Sustainability and rigour of trading infrastructures
- Robustness of business continuity and disaster recovery arrangements
- Volume of messages expected is significant
- Limited market condition adaptation
- Inaccurate algorithms
- 'Fat finger' episodes cause significant market impact
- Material price movements are not identified/reported and/or acted upon
- There are insufficient controls in firms providing DEA to a trading venue

Organisational considerations

- Importance of aligning SYSC requirements with practical requirements under MAR
- Risk framework needs to be commensurate with potential exposure
- Robustness of infrastructure to deal with peak deal flows
- Can the system handle instances of stress? Has IT been stress tested for such scenarios?
- Volatility assessments are built into capability thus flagging/rejecting trades that breach expected scenarios
- Algorithms are properly tested by people with the skills to do so – in an effective test environment
- Is monitoring and surveillance of transactions effective, targeted and risk based?

The broader questions

- Is trade surveillance robust, targeted and driving the proper decisions?
- Is trade surveillance independent, and undertaken by the right personnel?
- Has trade surveillance considered the impact of HTF and any growth in algo trading?
- Is there reliance on the surveillance mechanisms without over-reliance on judgement calls?
- Has a MAR risk assessment been undertaken and key risks mitigated?
- If you are a market maker, is your strategy robust and reasonable?
- If you offer DEA, has client suitability been assessed?
- Are proper records being kept of trading?
- Is there clarity around when to report matters to competent authorities?
- Is there the right organisational culture around algo trading?
- Are broader system innovations considered in the context of their impact on algos?

The Brexit dimension: thinking from a third country perspective

Key points to remember in the Brexit debate

UK is still in the EU and will be for some time:

- Whilst the UK is negotiating its exit it remains a full member of the EU and is subject to EU legislation
- For example the EU Market Abuse Regulation came into effect in the UK (and the rest of the EU) on 3 July 2016
- FCA announcement on 24 June 2016: “Firms must continue to abide by their obligations under UK law, including those derived from EU law and continue with implementation plans for legislation that is still to come into effect”
- The reference to legislation still to come into effect is interesting and has one eye to MiFID II and MiFIR that apply from 3 January 2018

International commitments:

- Much of financial services EU legislation is derived from standards and principles produced by international standard setting bodies: the G20, the Basel Committee, the Financial Stability Board, the International Organization of Securities Commissions
- An important analysis may be where EU legislation diverges from international standards e.g. the remuneration provisions in CRD IV are outside Basel III

Equivalence:

- Key concept in a number of EU Directives and Regulations including the European Market Infrastructure Regulation and Solvency II
- Importantly MiFIR contains equivalence provisions for third country investment firm access to the EU Single Market

Brexit questions that UK financial institutions face

The deal:

- Not even a broad outline yet of the UK's 'deal' with the EU: Prime Minister Teresa May has repeatedly stated that "Brexit means Brexit" but it's not clear what that means
- There are various exit options but it all depends on what the EU and UK can agree on
- Retail financial services in the UK are not very much affected by the EU Single Market but the biggest impacts would be around wholesale services
- FCA data indicates that of 359,953 EU passports – 23,532 are in-bound and 336,421 are outbound

Preliminary analysis:

- Many firms have, for the first time, been mapping what they do and working out exactly what it means if the UK lost EU passporting rights; in other words "Which of your business lines, which of the transaction chains and which of the bundles of services you operate use some or all of the passporting permissions?"
- Where possible firms have also been reviewing the regulatory permissions of their EU subsidiaries or establishing an EU subsidiary
- Firms have been assessing so called 'equivalence' provisions in EU legislation and the possible impact a positive UK determination would have
- All of this work is still some way away from the actual moving of activity, staff or business

The next phase of the analysis:

- Once the UK's future relationship with the EU becomes clearer the next phase for a firm will be an analysis of what mitigation measures it has to take and how much they would cost

The basics of the MiFID II / MiFIR third country regime

Article 39 MiFID II sets out certain conditions for a Member State's authorisation of a branch, which apply where a Member State chooses to require third country firms to establish a local branch in order to provide investment services or perform investment activities with or without any ancillary services to retail and/or elective professional clients in its territory

HM Treasury consulting on not implementing Article 39 MiFID II

Article 46(1) MiFIR sets out a requirement for certain third country firms to register with ESMA. Subject to an equivalence assessment being undertaken by the Commission, Article 46(1) MiFIR provides that a third country firm may provide investment services or perform investment activities with or without any ancillary services to ECPs and per se professional clients established in the EU without the establishment of a branch where it is registered in the register of third country firms kept by ESMA

Third country rules - Equivalence (Article 46 and 47 MiFIR)

Cross border business

- A third country firm may provide investment services or activities to eligible counterparties and per se professional clients without establishing a branch BUT must be registered with ESMA
- European Commission must adopt an equivalence decision concerning home state regime of firm before registration can occur
- A third country firm must be subject to authorisation, sufficient capital requirements, organisational requirements and conduct of business, market integrity and transparency
- A third country firm must submit to the jurisdiction of a court or tribunal of the Member State relating to services and activities provided in that Member State
- Co-operation arrangements between ESMA and third country regulator
- RTS will be developed specifying the information that third country firms must supply to ESMA (currently set out in draft RTS 5)
- Note odd linkage of Article 28 for equivalent markets and Article 46 for third country firms: what about position of markets?

Exclusive initiative of the client

- Reverse solicitation carve out applies to both MiFID II and MiFIR
- But note – wider exclusion under the RAO - Article 72, which includes exclusions for particular investment services and activities carried on in the context of a “legitimate approach” or carried on “with or through” an authorised or exempt UK person

Third country rules – Transition (Article 54 MiFIR)

Transitional provisions

Where there is no Commission equivalence decision in respect of a third country, Member States may allow third country firms to continue to provide investment services to eligible counterparties and per se professional clients, if permitted by (and in accordance with) the relevant national regime

MiFIR provides that firms will be able to continue to provide services and activities in accordance with national regimes until three years after the adoption of an equivalence decision in respect of the relevant third country

This is permissive and does not stop the new registration regime being used during the three year transitional period

Focus on MiFID II / MiFIR equivalence provisions

Sector/ Legislation	Requirements	Consequences of failure to achieve equivalence
<p>Investment firms</p> <p>Articles 46 and 47 of MiFIR</p>	<p>Under MiFID II, the third country access regime depends on the type of clients an investment firm intends to provide services to.</p> <p><i>Retail and elective professional clients</i></p> <p>Third country investment firms may provide services subject to the relevant national regime provided that:</p> <ul style="list-style-type: none"> (a) the third country is not listed as a non-cooperative country and territory by the Financial Action Task Force; (b) a co-operation agreement is in place; (c) tax agreements are in place; and (d) the services will be subject to on-going supervision by the third country regulator. <p>No passport to provide services through the EU will be available. Member states have the option to require the establishment of a branch.</p> <p><i>Per se professional clients and eligible counterparties</i></p> <p>Third country investment firms may provide services without establishing a branch in the EEA, provided that they register with ESMA and provide certain information to EU clients. Such registration is subject to the following conditions :</p> <ul style="list-style-type: none"> (a) an equivalence decision; (b) the firm is authorised in its country of establishment to provide investment services; and (c) co-operation arrangements between ESMA and the third country regulator are in place. <p>If there is no equivalence decision, national EU authorisation regimes remain valid.</p>	<p>UK investment firms would not be able to provide investment services to any EEA clients, to the extent that services or activities are truly cross-border and are locally regulated under a relevant national EU law, without subsidiarisation or obtaining state-by-state licences for local EU branches.</p>
<p>Trading platforms, including exchanges – Derivatives trading obligation</p> <p>Article 28 MiFIR</p>	<p>Derivatives trading for instruments subject to mandatory trading venue execution requirements may be carried out on a third country trading venue provided that the following conditions are satisfied:</p> <ul style="list-style-type: none"> (a) an equivalence decision; (b) the third country provides for an effective equivalent system for the recognition of trading venues authorised under MiFID II; and (c) the trading venue has clear, transparent rules on the admission of financial instruments to trading. 	<p>UK trading venues, including exchanges, would not be suitable trading venues and therefore may not benefit from possible business resulting from the introduction of the mandatory trading in Europe or may cease to be used by existing EU customers.</p>

Focus on MiFID II / MiFIR equivalence provisions

Sector/ Legislation	Requirements	Consequences of failure to achieve equivalence
<p>Trading platform, including exchanges – Investment firm trading obligation for shares</p> <p>Article 23 of MiFIR</p>	<p>Investment firms may trade shares that are subject to mandatory trading venue execution requirements on a third country market provided that an equivalence decision has been adopted which confirms that:</p> <ul style="list-style-type: none"> (a) The third country markets are subject to authorisation and effective supervision and enforcement on an ongoing basis (equivalent to MiFID II); (b) The trading venue has clear, transparent rules on the admission of securities to trading (equivalent to MiFID II); (c) Securities issuers are subject to disclosure obligations (equivalent to the Prospectus Directive); and (d) Market transparency and integrity is ensured by the prevention of market abuse by insider dealing and market abuse (equivalent to the Market Abuse Regulation (MAR)). 	<p>UK trading venues, including exchanges would not be suitable trading venues and therefore may not benefit from possible business resulting from the introduction of the mandatory trading requirement in Europe or may cease to be used by existing EU customers.</p>
<p>Derivatives trading and clearing</p> <p>Article 28 of MiFIR</p>	<p>If a non-EU entity is established in a jurisdiction which has been determined as equivalent, EU or non-EU brokers could comply with the equivalent rules in that country rather than the MiFID II trading and clearing requirements for derivatives.</p> <p>No co-operation agreement is required. However, the third country will need to assist ESMA in preparing its technical advice on equivalence.</p>	<p>EU financial counterparties would need to apply EU standards when trading with UK counterparties until the UK's regulatory regime was determined to be equivalent. Given the regulatory standards in the UK, it would likely only be a matter of time whilst negotiations are undertaken with the EU to ensure that an equivalence decision is rendered.</p>

Focus on MiFID II / MiFIR equivalence provisions

Sector/ Legislation	Requirements	Consequences of failure to achieve equivalence
<p>Trading venues and CCPs – Access rights</p> <p>Article 38 of MiFIR</p>	<p>A third country trading venue may only request access to an EU CCP if an equivalence decision relating to the trading obligation for derivatives has been made.</p> <p>A third country CCP may only request access to an EU trading venue if it has been recognised by ESMA under the European Market Infrastructure Regulation (EMIR).</p> <p>Third country trading venues and CCPs may only make use of the access rights under MiFIR if the following conditions are satisfied:</p> <ul style="list-style-type: none"> (a) an equivalence decision; (b) the third country provides for mutual access for foreign trading venues and CCPs to its trading venues, CCPs, benchmarks and licenses; and (c) the third country regime provides for authorisation, supervisions and enforcement for trading venues on an ongoing basis. <p>No co-operation agreement is required. However, the third country will need to assist ESMA in preparing its technical advice on equivalence.</p>	<p>UK trading venues and CCPs would not have rights of access to EU trading venues, CCPs, benchmarks and licenses.</p>
<p>Exchanges for shares, bonds and certain securitised debt instruments</p> <p>Article 25 of MiFID II</p>	<p>Investment firms may make use of the exemption from certain of the appropriateness and suitability requirements in relation to shares, bonds or other securitised debt admitted to trading on a third country exchange provided that an equivalence decision has been adopted which confirms that:</p> <ul style="list-style-type: none"> (a) the third country markets are subject to authorisation and effective supervision and enforcement on an ongoing basis (equivalent to MiFID II); (b) the trading venue has clear, transparent rules on the admission of securities to trading (equivalent to MiFID II); (c) securities issuers are subject to disclosure obligations (equivalent to the Prospectus Directive) ; and (d) market transparency and integrity is ensured by the prevention of market abuse by insider dealing and market abuse rules (equivalent to MAR) <p>No co-operation agreement is required. However, the third country will need to assist ESMA in preparing its technical advice on equivalence.</p>	<p>UK exchanges would potentially lose business where EU investment firms wished to make use of the exemptions.</p>

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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