

MEMORANDUM

TO: File Nos. S7-06-15, S7-08-12, S7-05-14

FROM: Richard B. Gabbert, Division of Trading and Markets

RE: Summary of meeting with Barclays

DATE: October 19, 2015

On October 14, 2015, representatives from the Securities and Exchange Commission participated in a meeting with representatives of Barclays. The SEC representatives present were Brian Bussey, Carol McGee, Paula Jenson, Tom McGowan, Bonnie Gauch, Sheila Swartz, Valentina Deng, Timothy Fox, Jonathan Shapiro, Margaret Rubin, and Richard Gabbert. The Barclays representatives present were Allison Parent, Keith Bailey, Alan Kaplan, and Bret Hester.

At the meeting, the SEC representatives and Barclays representatives discussed issues related to implementation of Title VII rules, particularly with respect to activity by non-U.S. persons in the United States, registration and recordkeeping requirements, and capital and margin requirements.

Access to Books and Records, and Onsite Inspection and Examinations of Non-resident SBS Entities – Points for Consideration

13 October 2015



Access to Books and Records and Examinations

Rule 15Fb2-4(c)

Rule 15Fb2-4(c) requires that each non-resident security-based swap dealer and non-resident major security-based swap participant shall:

- i. certify that it can, as a matter of law, and will provide the SEC with prompt access to its books and records and can, as a matter of law, and will submit to onsite inspection and examination by the SEC; and
- ii. provide an opinion of counsel that it can, as a matter of law, provide such prompt access to books and records and submit to such onsite inspection and examination.

Potential Data Privacy/Bank Secrecy Concern

Barclays is concerned that such requirements may conflict with local laws of confidence, data protection legislation and other bank secrecy requirements.

NFA Form 7-R, used in CFTC Swap Dealer registration, seemed to acknowledge this potential conflict. It states in pertinent part (on page 41):

subject to any applicable blocking, privacy or secrecy laws, the applicant's books and records will be available for inspection by the CFTC, the U.S. Department of Justice ("DOJ") and NFA for purposes of determining compliance with the Act, CFTC Regulations and NFA Requirements;

subject to any applicable blocking, privacy or secrecy laws, such books and records will be produced on 72 hours notice at the location in the United States stated in the Form 7-R or, in the case of an IB, CPO or CTA confirmed as exempt from registration pursuant to CFTC Regulation 30.5, at the location specified by the CFTC or DOJ, provided, however, if the applicant is applying for registration as an FCM, SD, MSP or RFED, upon specific request, such books and records will be produced on 24 hours notice except for good cause shown;

Considerations for Clarification/Limitation

Scope of certification and opinion should be limited to jurisdiction of organization and PPB of non-resident SBS Entities.

- Similar certifications are not required of US organized and headquartered SBS Entities.
- The laws of the “home jurisdiction(s)” of a non-resident SBS Entity are the primary distinguishing feature.
- Both US and non-resident SBS entities have the same data privacy/secrecy issues when acting or storing records outside their “home jurisdiction(s)”.
- From prior work in similar areas (Part 45 Reporting), it is not always clear which laws govern or apply. Obtaining opinions from counsel in every jurisdiction in which Barclays has clients is not practically feasible.

Relevant books and records should be limited to those required by the SBS Entity Recordkeeping Rule.

- These records are specifically relevant to the SEC’s regulation of SBS Entities.
- FN134 of the SBS Entity Registration Rule release seems to support this reading. It expressly refers sections of the Exchange Act that relate to SBS Entity recordkeeping and to the proposed SBS Entity Recordkeeping Rule.
- Records unrelated to SBSD activity (e.g., UK retail deposit records) may present greater challenges. Generally, retail records are afforded greater protection under law. Broader scope may make obtaining required consent more difficult.

Certification should be able to be qualified in line with legal opinion.

- For example, upon obtaining relevant consent, access to client data can be granted.
- We are reasonably confident that non-client/non-transaction specific data can be shared.
- We are reasonably confident that UK data privacy/bank secrecy issues for client data can be overcome via consent.
- It is not possible to obtain consent from 100% of clients (e.g., we can impose trading restrictions going forward on non-consenting clients, but will likely not obtain consent from dormant historic clients or those with whom we are engaged in active dispute).

Relevant transaction records should be limited to transactions that would be “counted” toward registration.

- We believe there will be significant overlap between “counted” transactions and transactions to which EBCS will apply.
- Protocol 1-like document may facilitate obtaining consent. Section 2.5 of Protocol 1 contained a confidentiality waiver.

Disclaimer

- This presentation is provided for information purposes only and does not constitute legal advice and should not be relied upon for that purpose.
- The subject matter of this presentation is described in summary form only and may contain material omissions.
- For a more detailed explanation of the issues highlighted in this presentation please contact your regular legal coverage advisor. Professional legal advice should be obtained before taking or refraining from taking any action as a result of the contents of this document.

Markets in Financial Instruments Directive / Regulation

MiFID II / MiFIR



October 2015

Overview of presentation

- Structure of European legislative and regulatory process
- Timeline
- Market Structure
 - Regulatory context of MIFIR/D
 - Venues , Systematic Internaliser and OTC
 - Trading obligation for shares and derivatives
 - Transparency
 - Algorithmic and High Frequency Trading
 - Direct Electronic access and acting as a clearing member
- Conduct of business and investor protection
- Commodities
- Derivative clearing and portfolio compression

Structure

EU legislative act requiring Member States to transpose into national law for implementation

Directive
(MiFID II)

Self-executing and uniformly binding across all Member States of EU, without need for transposition

Regulation
(MiFIR)

The 'MiFID II package' L1

To supplement or amend certain non-essential elements, without affecting the 'core' legislation

Delegated Acts

Issued by the Commission based on ESMA advice L2

Developed through ESMA public consultations on draft proposals & related cost benefit analysis

Technical Standards

Drafted by ESMA, endorsed by the Commission L2

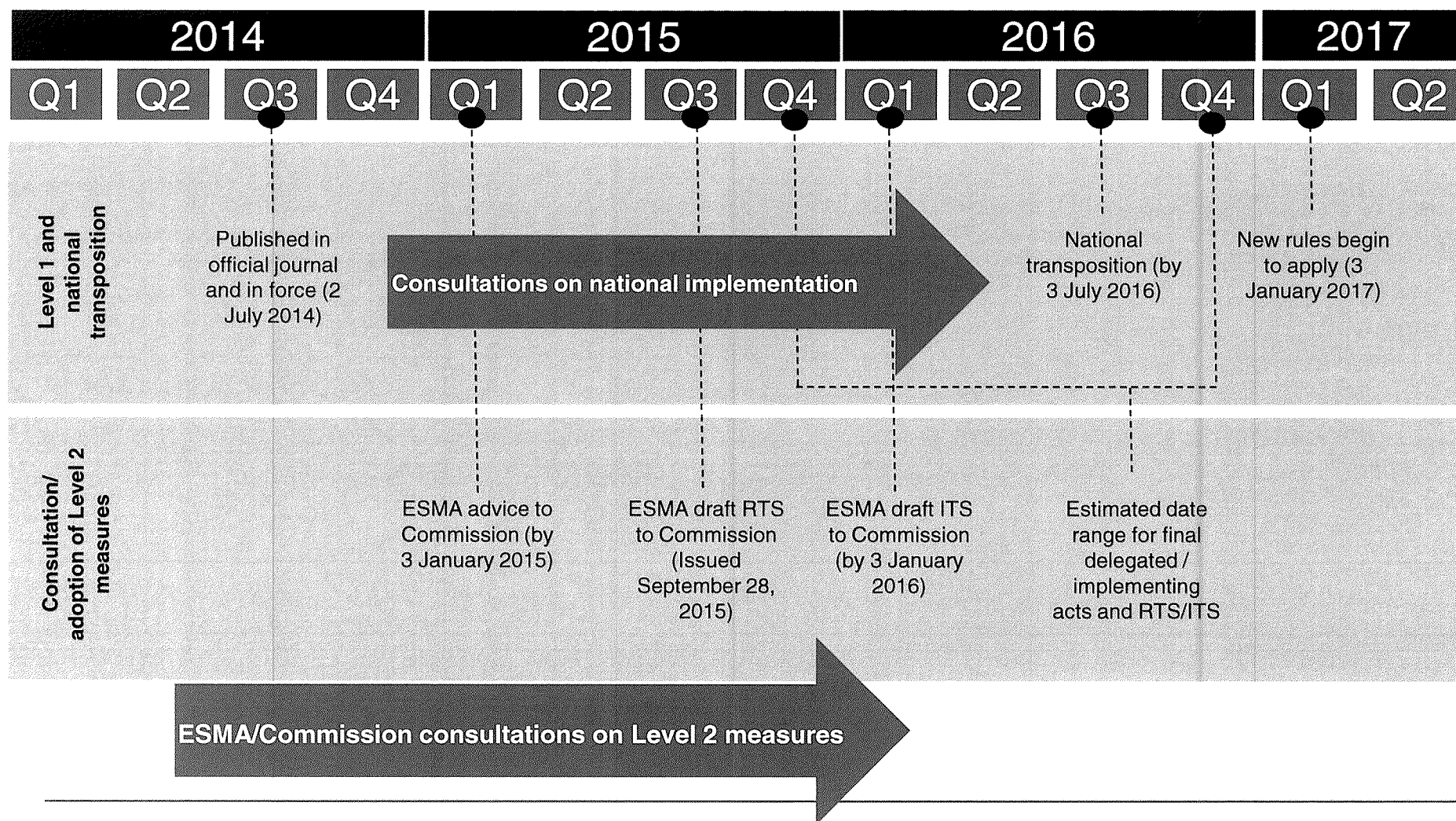
To promote a common approach by NCAs & the industry

Guidelines

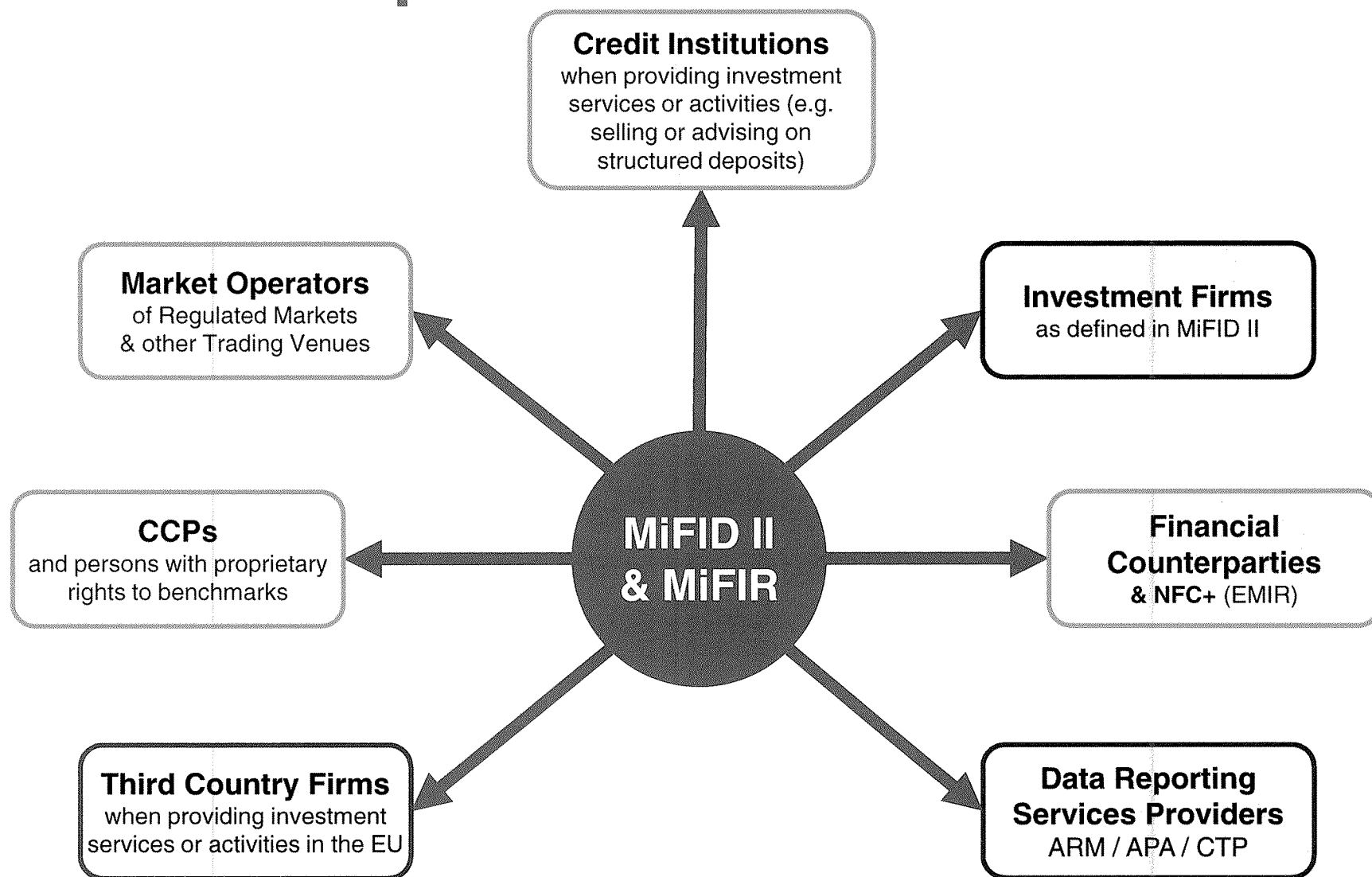
Issued by ESMA, generally following public consultation L3

Timeline

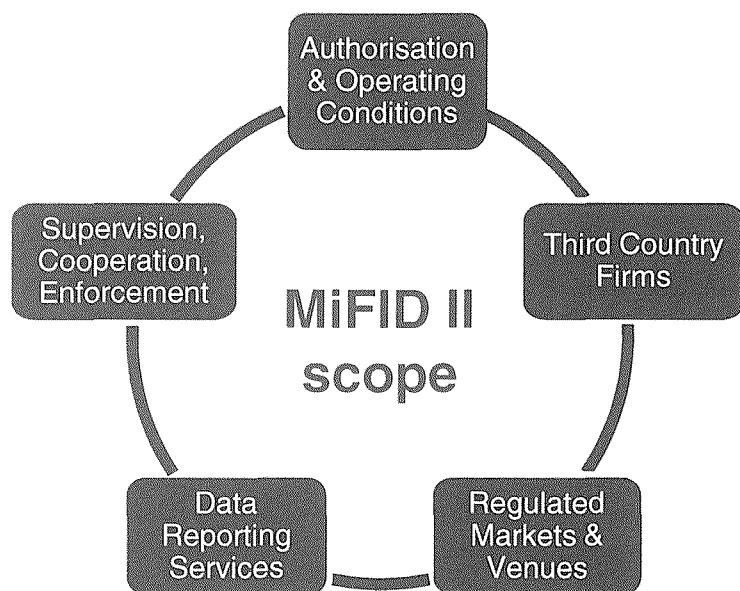
30 months



Entities in Scope



Definitions



APA, CTP & ARM,
associated with management and
distribution of market
transparency & reporting data

**‘Algorithmic’ & ‘High Frequency
Algorithmic Trading’,**
against specific technical criteria

In-scope entities
(‘investment firm’, ‘credit
institution’, ‘financial/ non-financial
counterparty’ & ‘market operator’)

Venue types,
including RM, MTF plus new OTF

‘Liquid Market’, being measured
against frequency & size of
transactions, number & type of
participants & average spreads

‘Financial Instrument’ as outlined
in the Annex (see ‘Products in
Scope’ to the right)

Products in scope

Transferable securities

Money-market instruments

Units in collective investment
undertakings

Cash-settled options, futures,
swaps, FRAs & other derivatives

Derivatives for the transfer of
credit risk (i.e. CDS)

Contracts for Difference (CFDs)

Climate / freight / inflation / other
statistic / asset / indices-based
derivatives

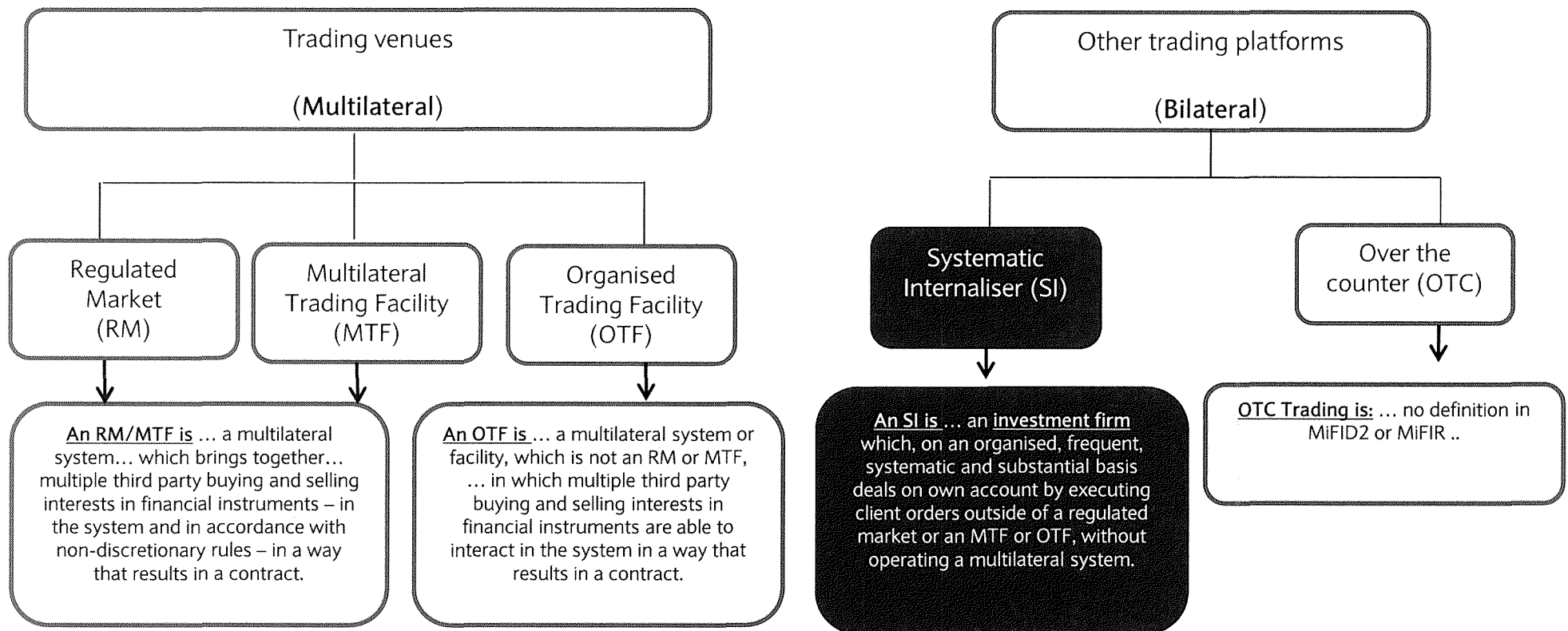
Commodity derivatives (including
physically settled; exemption for
commercial hedging)

Emission allowances (recognised
under Emissions Trading
Scheme)

Market Structure

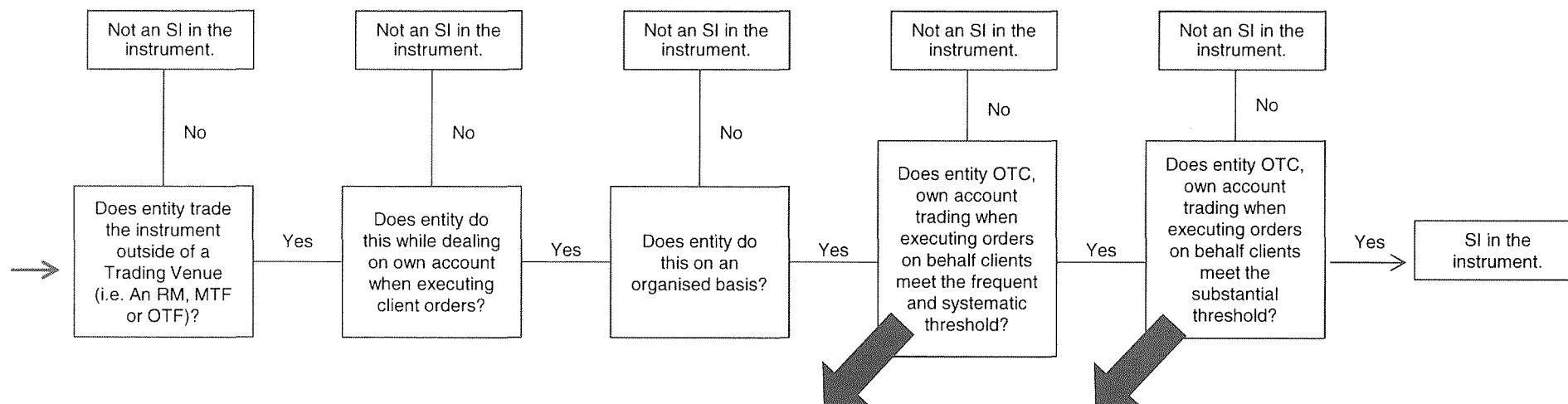
Articles

MiFID, Article 4, 19 & 20



Classification as a Systematic Internaliser

On an instrument by instrument basis in relation to all in-scope MiFID 2 financial instruments:



		Shares etc.	Bonds	Structured finance products	Derivatives	Emission allowances
Frequent & Systematic (Liquid instruments)	No. of own account OTC transactions when executing client orders/total no. transactions in same instrument/class in the EU	0.4% and at least once a day	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 & Systematic (Illiquid instrument)	Minimum own account OTC trading frequency	at least once per week	at least once per week	at least once per week	at least once per week	at least once per week
Substantial basis criteria 1 (only one substantial basis criteria need be met)	Size of own account OTC trading when executing client orders/firm's total volume in same instrument/class	15%	25%	30%	25%	30%
Substantial basis criteria 2 (only one substantial basis criteria need be met)	Size of own account OTC trading when executing client orders/total EU volume in same instrument/class	0.4%	1%	2.25%	1%	2.25%

What does it mean to be an SI ?

Impact/Obligation	Comments
SIs cannot operate a multilateral trading system	<ul style="list-style-type: none"> Currently much debate around what constitutes the operation of a multilateral trading system
Application of SI status is on a legal entity basis:	<ul style="list-style-type: none"> Registration with NCA is on a legal entity basis in respect of each instrument for which the investment firm is an SI
Ability to perform SI assessment calculation quarterly	<ul style="list-style-type: none"> Necessary to perform the SI assessment calculation quarterly based on previous 6 months data. Need systems to capture data required to perform this calculation. Dependency on EU wide data for the denominator of the calculation. Given bias toward trading on venue for instruments in relation to which an SI (at least in small sizes) potential for SI classification to fluctuate quite considerably (i.e. SI therefore trade on venue, which may mean not an SI at next calculation).
Registration requirement	A firm which meets the SI definition must notify their national competent authority (NCA)., The test is conducted every quarter
Pre-trade transparency	<ul style="list-style-type: none"> SIs are subject to pre-trade transparency requirements in relation to instruments in which they are an SI, which are also traded on an EU trading venue, (broadly to make public firm quotes provided and, in relation to equities, to quote continuously). More limited obligations apply in relation to illiquid instruments and obligations disapplied in relation to trades below specified size. Bias to trading small sizes (i.e. below SMS/SSTI) on venue: <ul style="list-style-type: none"> although transparency obligations apply to operators of trading venues an SI's identity would not be disclosed when quoting on-venue; and the requirement for a non equity SI to make its firm quotes available for execution to all its other clients does not apply when trading on venue.
Best execution quality reporting	<ul style="list-style-type: none"> SIs are required to publish quarterly reports containing detailed information on execution quality. Report requires information in relation to all instruments available to trade on the SI (i.e. <u>all instruments in which the firm is an SI</u>, whether traded on a trading venue, illiquid/liquid and regardless of size).
Reference data reporting	<ul style="list-style-type: none"> SIs must provide reference data to their NCA, daily by 21:00CET, in relation to all instruments traded on the SI (including orders/quotes placed) on that day before 18:00CET.
Satisfaction of the on-venue mandate for liquid shares	<ul style="list-style-type: none"> Trading obligations for shares is met by trading with an SI. Deratives are subject to the trading obligation cannot be traded on SI (only RM, MTF or OTF).
Post-trade transparency	<ul style="list-style-type: none"> Although all investments firms (i.e. including non-SIs) are subject to the post-trade transparency obligation, MIFIR introduces a reporting hierarchy.

Trading Obligation: Shares

Product Scope

Shares admitted to trading on a regulated market or traded on a trading venue.

Articles

MiFIR, Article 23 & RTS 8

Obligation

- All investment firms are required to ensure trades in in-scope shares take place on a Regulated Market, Multilateral Trading Facility or through a Systematic Internaliser (unless an exemption is available).
- Non-investment firms will be able to continue to execute off-venue between themselves.

Exemptions

A trade will be exempt from the trading obligation if it is:

1. Non-systematic, ad-hoc, irregular and infrequent; or
2. Carried out:
 - between eligible and/or professional counterparties; and
 - does not contribute to the price discovery process.

The following types of trades are proposed (as an exhaustive list) of those that will not contribute to the price discovery process:

- Benchmark trades (e.g. Volume-weighted average price/time-weighted average price);
- Portfolio trades that involve 10 or more shares for the same client at the same time and the single components of the trade are meant to be executed only as a single lot;
- Transactions contingent on a derivative contract having the same underlying and where all the components of the trade are meant to be executed only as a single lot;
- Transfers of equities between funds under common management;
- Give-ups and give-ins;
- Collateral management transactions where shares are accepted as collateral;
- Transactions resulting in the delivery of shares in the context of the exercise of convertible bonds, options, covered warrants or other similar derivatives; or
- Securities financing transactions.

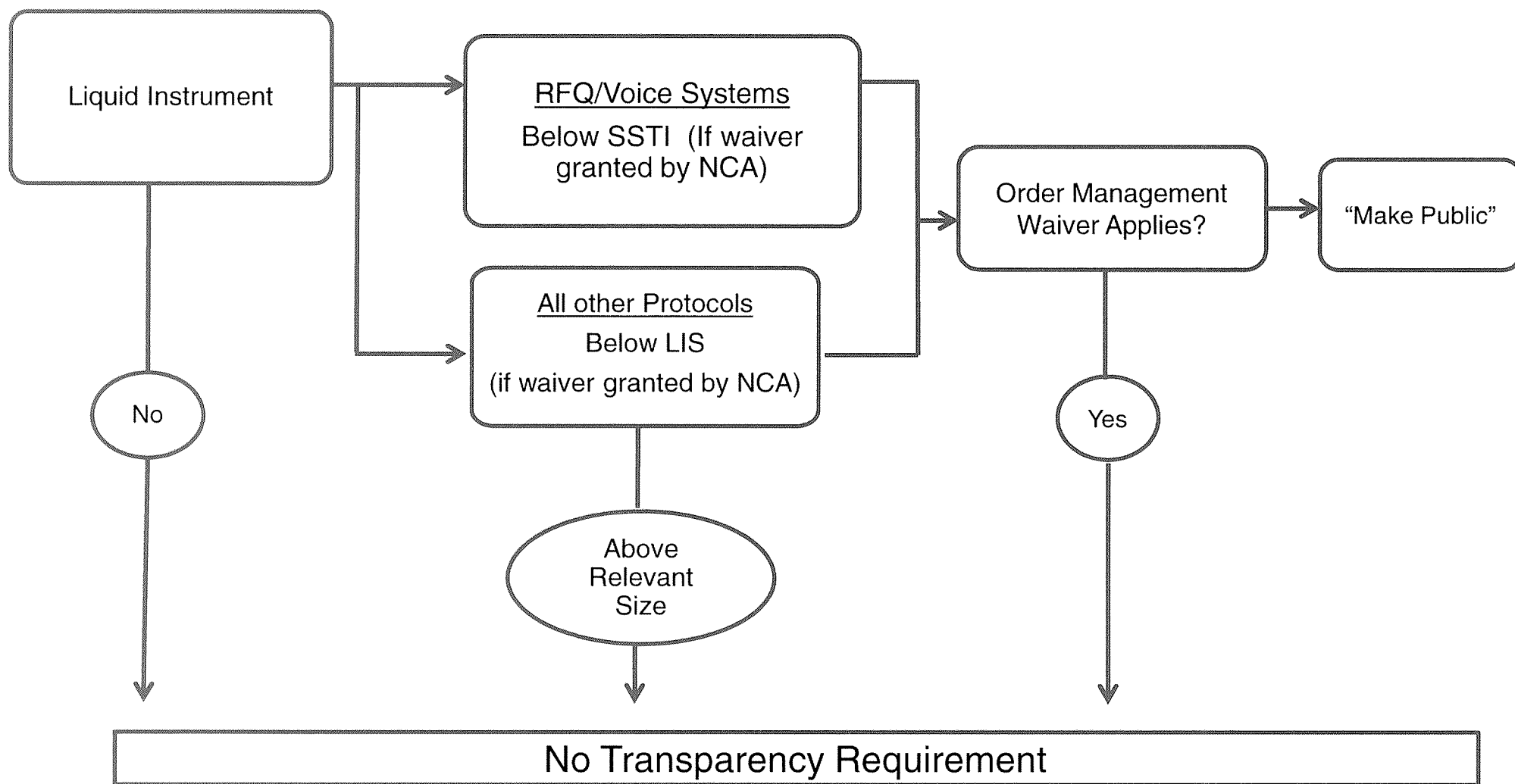
Trading Obligation: Derivatives

Core Obligation	In-scope derivatives entered into between in-scope counterparties must be executed on a Regulated Market, Multilateral Trading Facility, Organised Trading Facility or a third country trading venue that has been deemed equivalent.	Articles	MiFIR, Article 28 & 32, RTS 11 & 12
Product Scope	<ul style="list-style-type: none"> Derivatives subject to the clearing obligation under EMIR which are deemed, by ESMA, to be sufficiently liquid to trade only on a trading venue. <p>Determining a derivative to be “in-scope”:</p> <ul style="list-style-type: none"> <i>Bottom Up Approach:</i> ESMA will review derivatives declared subject to the clearing obligation under EMIR to determine whether they should also be subject to the Trading Obligation (as a result of being “sufficiently liquid to trade only a trading venue”). <ul style="list-style-type: none"> Current derivatives to be subject to clearing obligation: Certain categories of vanilla IRS and CDS. <i>Top Down Approach:</i> ESMA can independently identify derivatives which are not subject to the clearing obligation as needing to be subject to the Trading Obligation. Current expectation is that ESMA is unlikely to use the top down approach. ESMA is required to consult publically on any derivatives it is proposing to be in-scope of the Trading Obligation. Liquidity assessment for the purposes of Trading Obligation is a higher threshold than that used for the transparency rules. Unlike CFTC SEF regime, trading mandate is regulator, rather than venue, driven. 		
Transaction Scope	<ul style="list-style-type: none"> As EMIR Mandatory Clearing: Transactions between (i) FCs or NFC+s; and (ii) Other FCs, NFC+s or third country entities that would be FCs or NFC+s were they established in the Union. Also applies to transactions between two third country entities which have a “direct, substantial and foreseeable” effect in the EU. Intragroup transactions and those subject to the EMIR Article 89 transitional provisions (i.e. with pension fund arrangements) are out of scope. 		

Venue Transparency Requirements – What has to be “Made Public”

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|--|--|
| 1. Continuous Auction Order Book | For each instrument, aggregate numbers of orders and volume and price level for at least best five bid and offer price levels. |
| 2. Quote Driven System | Best bid and offer for each market maker, together with volumes. |
| 3. Periodic Auction System | Price at which system could best satisfy its trading algorithm and potential volume. |
| 4. Request for Quote System | The bids and offers and attaching volumes submitted by each responding party. |
| 5. Voice Trading System | Bids and offers and attaching volumes from any participant which, if executed, would lead to a transaction. |
| 6. Trading System not covered by 1 – 5 above | Adequate information as to orders or quotes – the best bid and offer levels. |

Venue Transparency – Waivers



Pre-Trade Transparency: Overview of Obligations: Equities

Articles

MiFIR, Article 14, 15, 16, 17 and RTS 8

Product Scope

Shares, depositary receipts, ETFs, certificates, and other similar financial instruments when also traded on a trading venue.

Core obligations

	Obligation	Detail
Liqud	Make public firm quotes on a regular and continuous basis during normal trading hours	<ul style="list-style-type: none"> • Possible to decide size/sizes at which to quote, subject to minimum quote size of 10% of SMS. • Quotes to be made public in a manner which is <u>easily accessible</u> and on a <u>reasonable commercial basis</u>. • Quotes to include firm bid and offer price for a size and <u>reflect prevailing market conditions</u>, meaning they must be close in price to comparable quotes for the same or similar financial instruments. • Quotes can be updated at any time and withdrawn in exceptional circumstances.
	Execute orders received from clients at quoted prices at time order received	<ul style="list-style-type: none"> • Possible, in <u>justified cases</u> to execute orders at a better price provided that price falls within a <u>public range close to market conditions</u>. • Possible to execute orders received from professional clients at prices different from quoted prices in respect of transactions where execution of several instruments is part of one transaction or in respect of orders that are <u>subject to conditions other than the current market price</u>. • Possible to limit on the basis of <u>commercial policy and in an objective and non-discriminatory way</u>, the clients to which give access to quotes. Must have clear standards governing access to quotes. • Possible to impose limits on number of transactions will enter into on any given quote with the same client. • Possible to limit (in a non-discriminatory way) total number of transactions from different clients at the same time, where <u>number/volume of orders considerably exceeds the norm</u>. • Must regularly update published bid and offer prices and maintain prices which reflect <u>prevailing market conditions</u>.
Illiquid	Disclose quotes to clients on request	<ul style="list-style-type: none"> • Must disclose quotes to clients upon request. No waiver available. • Quotes to include firm bid and offer price for a size and <u>reflect prevailing market conditions</u> in relation to prices at which transactions are concluded for the same or similar financial instruments.
Waivers		Pre-trade transparency obligations do not apply to transactions (i) above Standard Market Size (SMS) which will be specified in Level 2 rules or (ii) with European Central Banks (ECBs) and where the transaction is entered into in the performance of monetary, foreign exchange and financial stability policy which that ECB is legally empowered to pursue and where that <u>member has given prior notification to its counterparty that the transaction is exempt.</u>

Pre-Trade Transparency: Overview of Obligations: Non-equities

Articles

MiFIR, Articles 1(6), 18 and RTS 9

Product Scope

Bonds, Structured Finance Products, Emissions Allowances and Derivatives when also traded on a trading venue.

Core obligations

	Obligation	Detail
Liquid Instrument	Make public firm quotes made to a client if quote is provided	<ul style="list-style-type: none"> • Quotes to be made public in a manner which is <u>easily accessible</u> and on a <u>reasonable commercial basis</u>. • Quotes must comply with best execution obligations and reflect <u>prevailing market conditions</u> in relation to prices at which transactions are concluded for the same or similar financial instruments on a trading venue. • Quotes can be updated at any time and withdrawn in exceptional circumstances.
	Make firm quotes provided to a client available for execution to other clients	<ul style="list-style-type: none"> • Must enter into transactions under the conditions published with any other client to whom the quote has been made available. • Possible to limit, on the basis of <u>commercial policy and in an objective and non-discriminatory way</u>, the clients to whom access to quotes is given. Must have clear standards governing access to quotes. • Possible to impose <u>non-discriminatory and transparent limits</u> on number of transactions will enter into on any quote. • In <u>justified cases</u>, possible to execute orders at a better price provided that price falls within a <u>public range close to market conditions</u>.
Illiquid Instrument	Disclose quotes to clients on request if agree to provide a quote	<ul style="list-style-type: none"> • Where agree to provide a quote to one client, must provide that quote to other clients should they request to see it. • National regulators able to waiver requirement in certain circumstances (e.g. Illiquid instruments – potentially circular). • Quotes must comply with best execution obligations and reflect <u>prevailing market conditions</u> in relation to prices at which transactions are concluded for the same or similar financial instruments on a trading venue.
Waivers		Pre-trade transparency obligations do not apply to transactions (i) above the Size Specific to the Instrument (SSTI) which will be specified in Level 2 rules or (ii) with European Central Banks (ECBs) and where the transaction is entered into in the performance of monetary, foreign exchange and financial stability policy which that ECB is legally empowered to pursue and where that member has given prior notification to its counterparty that the transaction is exempt.

Post-Trade Transparency: Overview of Obligations

Product Scope	(i) Shares, depositary receipts, ETFs, certificates, and other similar financial instruments (“ Equity and Equity-like Instruments ”); and (ii) Bonds, Structured Finance Products, Emissions Allowances and Derivatives (“ Non-equity Instruments ”), <u>traded on a trading venue</u> .	Articles	MiFIR, Article 20 & 21
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Core obligations

All investments firms must make public price, volume and time of transaction as close to real-time as possible. I.e. Applies to trading in all financial instruments traded on a trading venue (irrespective of whether investment firm is an SI in that instrument).

Detail

Obligations

- As close to real time as possible requires:
 - **Equities:** Within 1 minute.
 - **Non-Equities:** Within 15 minutes (reducing to 5 minutes after 3 years).
- Trade details must be made public either by reference to an individual transaction or in a form aggregating the volume and price of all transactions in the same instrument taking place at the same time and same price.
- Must report cancellations and amendments to trades.
- Transactions between investment firms: selling firm is responsible for making the report public through an APA.
- Transactions where only one party is an SI in the financial instrument: SI is responsible for making the report public through an APA.
- Reporting firm must take “all reasonable steps” to report trades as a single transaction. 2 matching trades entered into at the same time and same price with a single party interposed should be reported as a single transaction.

Post-Trade Transparency: Waivers and Out-of-scope Transactions

Waivers

- NCAs are able to grant waivers from post-trade transparency based on size and/or liquidity of instruments.
- **Equity:** Possible for waiver when dealing on own account other than on a matched principal basis above “minimum qualifying size”.
 - the minimum qualifying size is specified and varies between Shares, Depositary Receipts, ETFs and Certificates.
 - Deferral period ranges from 60 minutes to end of trading day, depending on size.
- **Non-equity:**
- Possible for waiver when:
 - dealing on own account other than on a matched principal basis above the size-specific-to-the-instrument;
 - dealing above the large-in-scale level; or
 - dealing in illiquid instruments.
- **Standard deferral period** is 48 hours: during this period NCA may require publication of (i) no trade information; (ii) limited trade information; or (iii) trade information on an aggregated basis.
- Deferral of volume information available for **extended deferral period of up to 4 weeks** (with or without aggregation).
- Sovereign debt – possible to omit volume indefinitely.

Out of scope transactions

- The following transaction types are expressly specified to be out of scope of the post-trade transparency requirements:
- certain types of transaction specified in the Transaction Reporting RTS;
 - the relevant cross references seem to be incorrect in the equities RTS (RTS8) but we expect these transactions to be those set out in Art 3(3) of RTS 32 which include, for example, contracts arising for clearing and settlement purposes, post-trade assignments and novations and portfolio compressions.
 - securities financing transactions;
 - the exercise of options, covered warrants or convertible bonds;
 - primary markets transactions (such as the issuance, allotment or subscription, placements and the exercise of pre-emption rights);
 - give-ups and give-ins; and
 - transfers of financial instruments as segregated collateral in bilateral transactions or in the context of CCP margin and collateral requirements.

Algorithmic & High-Frequency Trading

Product Scope	All MiFID 2 Financial Instruments which include: Shares, Bonds and other securitised debt, Depositary receipts on shares/bonds, Treasury Bills, Certificates of Deposit, Commercial Paper, Units in UCITs, Private Equity and Hedge Funds; and Equity, Bond, FX, Interest Rate and Commodity, Options, Futures, Swaps and Forwards; and Emission Allowances.	Articles	MiFID, Article 17 and RTS 13
Core Obligations			
Trading Type	Definition	Overview of Obligations	
Algorithmic Trading	<ul style="list-style-type: none"> • Computer algorithm automatically determines individual parameters of orders (e.g. whether to initiate an order, timing, price or quantity). • With limited or no human intervention (i.e. Once a buy/sell decision has been made by human intervention, the system make decisions at any stage of the process (e.g. initiating, routing or executing)). • Does not include any system only for routing, processing or confirmation. 	<ul style="list-style-type: none"> • Significant systems and controls requirements including trading controls and limits, business continuity arrangements and onerous live and non-live testing. • Notifications and disclosures to national regulators (including of details of algorithmic trading strategies). • Record-keeping requirements in relation to strategies, trading parameters, risk and controls processes and systems testing. • Algorithmic trading status applies on a legal entity basis. 	
High Frequency Trading	<ul style="list-style-type: none"> • An Algorithmic Trading Technique. • Infrastructure intended to minimise latencies including at least one of the following for algo order entry: (i) Co-location; (ii) Proximity Hosting; or (iii) High-speed DEA. • System determination of order initiation, generation, routing/execution <u>without human intervention on a trade by trade basis</u>. • At least <u>4 messages per second</u> across all instruments on a trading venue or <u>2 per second</u> across a single instrument. • Only messages submitted for orders when dealing on own account and in relation to liquid instruments are to be included in the HFT assessment. 	<ul style="list-style-type: none"> • A more heavily regulated subset of Algorithmic Trading. • Subject to the same obligations as Algorithmic Trading AND extended record-keeping obligations which require the storing of time-sequenced records of all orders placed, cancelled and executed as well as quotations. • HFT status applies on a legal entity basis. In practice the only impact of this is the prescriptive format in which records must be stored. 	
Algorithmic / High-Frequency Trading pursuing a Market Making Strategy	<p>Algorithmic Trading/HFT AND:</p> <ul style="list-style-type: none"> • Deals on own account involving the posting of firm, simultaneous two-way quotes of comparable size at competitive prices: <ul style="list-style-type: none"> • On a single trading venue for no less than 30% of the daily trading hours in one day. • May include quotes that are not symmetrical around the mid-point of the current bid-ask range. • With the result of providing liquidity on a regular and frequent basis to the market. 	<ul style="list-style-type: none"> • Requirement to carry out market making continuously during a specified proportion of a trading venue's trading hours. • Must communicate intention to carry out market making strategy to relevant venues. • Requirement to enter into a binding written agreement with trading venues obliging firm to pursue market making strategy for no less than 50% of daily trading hours. • Effective systems and controls requirements to ensure that comply with obligations. 	

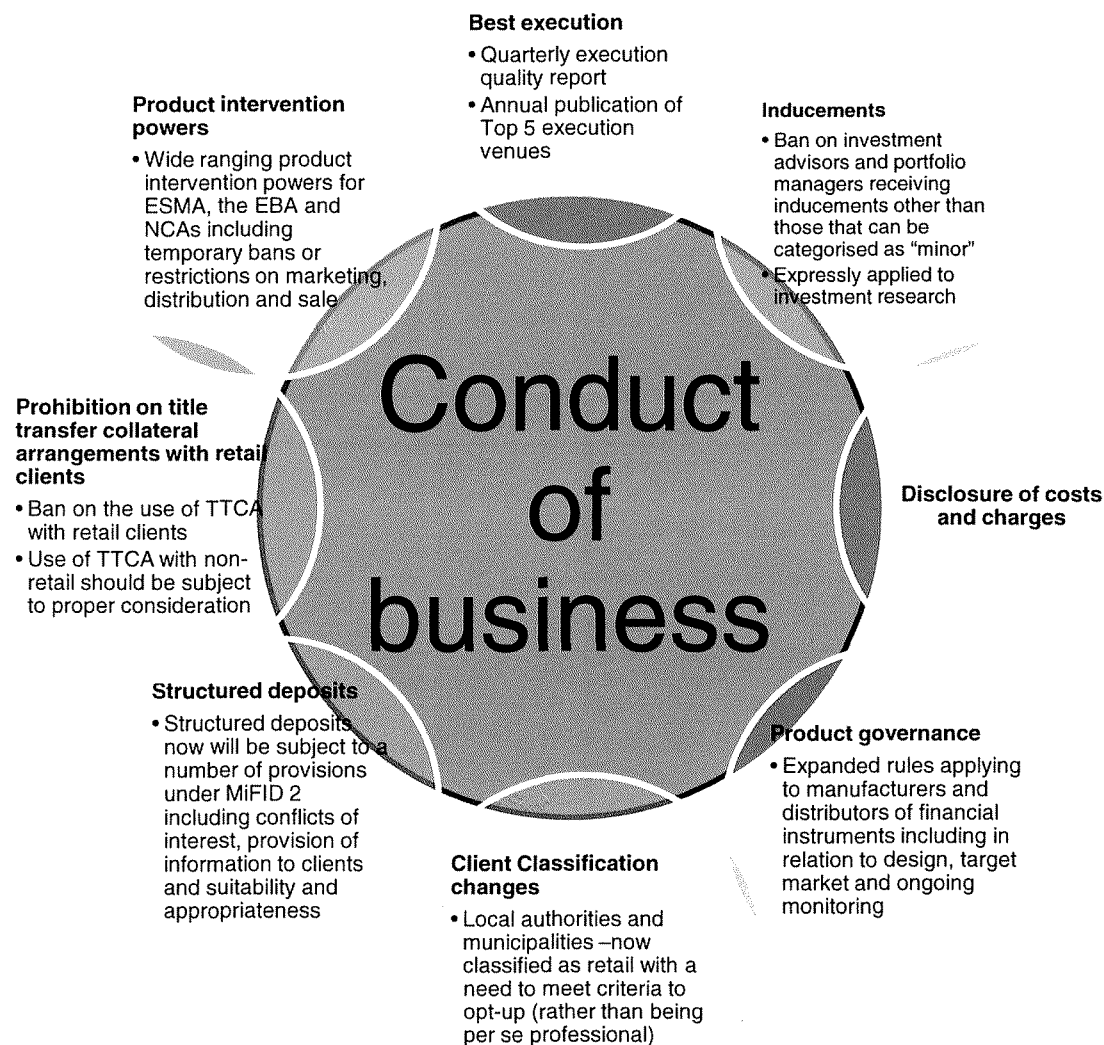
Algo Trading & HFT

Authorisation Regime	Market Making	Order to Trade Ratio	Minimum Tick Size	Venue Pricing
High Frequency Algorithmic Trading (HFAT)	Systems & controls requirements on use of algorithms	Venues must set and enforce OTR limits	Minimum increments by which prices can change	Controls being placed on fee structures
Absent from MiFID I: added to MiFID II	Algo market-making requires agreements with venues	Maximum number of orders vs. number of trades	All EU Regulated Markets will have to implement	Must be transparent, fair & non-discriminatory
Notification to NCAs & venues of any algo trading	Must provide liquidity on a consistent basis	HFT / high OTR can attract higher venue fees	ESMA to specify minimum tick sizes in RTS	Can be used to penalise excessive messaging

Direct Electronic Access and Acting as a General Clearing Member

Product Scope	All MiFID 2 Financial Instruments which include: Shares, Bonds and other securitised debt, Depositary receipts on shares/bonds, Treasury Bills, Certificates of Deposit, Commercial Paper, Units in UCITs, Private Equity and Hedge Funds; and Equity, Bond, FX, Interest Rate and Commodity, Options, Futures, Swaps and Forwards; and Emission Allowances.	Articles	MiFID, Article 17 and RTS 13
Trading Type	Definition	Overview of Obligations	
Direct Electronic Access	<ul style="list-style-type: none"> • Member or participant of a trading venue, permits a person to use its trading code so that person can electronically transmit orders directly to the venue (i.e. that person can exercise discretion regarding the exact fraction of a second of order entry and regarding the lifetime of the order). • Includes arrangements where the person uses the infrastructure of the firm/any connecting system (direct market access) and where no infrastructure used (sponsored access). 	<ul style="list-style-type: none"> • Significant systems and controls requirements including assessment and review of suitability of client using the DEA service, pre-set limits /thresholds for trading and controls to ensure not breached, real-time monitoring of DEA client's activities and risk controls to prevent disorderly trading. • Due diligence and ongoing review of DEA clients. • Monitoring of DEA clients' transactions to identify infringements of regulation/disorderly trading/market abuse. • Binding written agreement with client. • Notification to regulator that provide DEA and to which venues. • Regular/ad-hoc disclosure requirements to regulator re: relevant systems and controls. 	
General Clearing Member	<ul style="list-style-type: none"> • Acting as a general clearing member for other persons. 	<ul style="list-style-type: none"> • Effective systems and controls requirements including that clearing services are only provided where appropriate requirements are imposed on the client to minimise risk to the firm and market and that systems used are subject to due diligence, controls and monitoring. • Requirement for a binding written agreement. • Suitability requirements to make an initial assessment of any prospective clearing client against minimum specified criteria. • Establish and communicate trading positions and limits and monitor client's activity against these limits in real-time. • Public disclosure of general framework of fees and conditions. 	

Conduct of Business and Investor Protection



Commodities

Exemptions

- Existing exemptions for commercial firms being significantly narrowed
- Only exemptions for non-financial firms where commodities are ancillary to main business

'Financial Instruments'

- Emission allowances become recognised as financial instruments
- Physically settled contracts (except electricity & gas) traded on an OTF also financial instruments

Position Limits

- Methodology being developed for position limits on venue-traded or economically equivalent contracts
- Exemptions for NFCs for 'objectively measurable' commercial (hedge) positions

Position Reporting

- Daily position reporting to venues; weekly reporting by venues to ESMA; aggregated reports published
- IFs must report OTC commodity positions to their NCA (daily)

Impact

Spot emissions allowances & all derivatives in them are brought into scope

Significant burden on IFs in monitoring limits; market participants must report own positions & those of clients (& clients of clients, etc.)

Mandatory Clearing & Portfolio Compression

Portfolio Compression

- Compression cycles are **not subject to best execution** requirements
- Compression termination / replacement trades not subject to requirement to execute on venue
- Volumes and times of compression cycle transactions must be published via an APA (as per T+1 timeframe)
- **Complete and accurate records of all compressions must be retained (5yrs)**

Indirect Clearing (ETDs only)

- Permitted provided arrangements do not increase counterparty risk (CCP, clearing members, clients)
- **Must ensure assets & positions benefit from protection equivalent to that required by EMIR (Art. 39 & 48)**

All operators of RM must ensure that all derivatives transactions concluded on that RM are cleared by CCP

**Investment firms acting as clearing members
(as per EMIR, Article 2.14)**

Require “effective systems, procedures & arrangements” to facilitate clearing

Transactions to be submitted & accepted for clearing “as quickly as technologically practicable” using automated systems

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