Getting ready for MiFID II

An overview for investment managers

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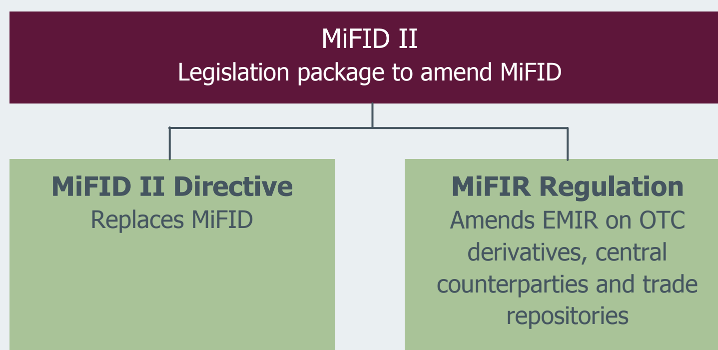
Background

When the European Commission's (the "**Commission**") review of the Markets in Financial Instruments Directive (2004/39/EC, **MiFID**) commenced in 2010, many in the market were optimistically hoping that MiFID II would focus on structural issues surrounding transparency and technological developments and that investment managers would be left alone. However, the review was undertaken against the backdrop of the global financial crisis and a desire to increase all forms of regulation. As a result, the finalised package of measures goes considerably further and revises or extends much of what was in the original MiFID. In this note, we focus on the points of greatest impact for investment managers.

Berwin Leighton Paisner's experience of dealing with the implementation of EU regulatory initiatives shows us that early preparation is essential for weathering any implementation challenges. Firms should not ignore MiFID II however much they may be fatigued by AIFMD, UCITS V, MAR and the wealth of other regulations that have been implemented in recent years. Although the implementation date has been pushed back to January 2018, that still does not leave long to analyse and implement the changes that may be required.

We have divided this note into four sections:

1. an overview of MiFID II;
2. a focus on the changes to firms' systems and controls and to their compliance functions;
3. an overview of the key conduct of business changes of relevance to investment managers; and
4. finally a look at some of the trading and market-facing aspects of MiFID II.



SECTION 1 - OVERVIEW OF MiFID II

What is MiFID II?

MiFID II is the package of legislative measures proposed by the Commission to amend MiFID. The package takes the form of: (i) a Directive that repeals and replaces MiFID (2014/65/EU, known as the **MiFID II Directive**); and (ii) a Regulation amending EMIR[1] on OTC derivatives, central counterparties and trade repositories (Regulation (EU) No. 600/2014, known as **MiFIR**).

MiFID II must be implemented by Member States by 3 January 2018. It had originally been scheduled for January 2017, but a 12-month postponement was confirmed during 2016. Unlike with the original MiFID (and with AIFMD) there is no grandfathering period so firms will need to be fully compliant by then.

What does it do?

MiFID II is the vehicle by which the EU will meet many of the G20 commitments made at the Pittsburgh summit in September 2009 to tackle the less regulated and more opaque areas of the financial system. It also seeks to address a number of other problems that emerged following the implementation of MiFID in 2007:

- **Market fragmentation**: the proliferation of new trading venues outside the scope of MiFID regulation and the lack of transparency in some trading
- **Competition issues**: the problem that the benefits of increased competition did not necessarily flow to end-investors
- **Market and technological developments**: the impact of product complexity and the explosion of algorithmic trading and its controversial subset, high frequency trading
- **Weaknesses in the regulation** of financial instruments other than shares
- **Protect investors**: The need to tighten investor protection provisions due to ever-growing complexity of financial instruments

At present, there still remains uncertainty on the finer details of how MiFID II will be applied and interpreted, although the picture is already sufficiently clear to allow firms to commence their implementation work in earnest. The MiFID II Directive and MiFIR set out the framework for the updated regime. In order to implement it, additional legislation and guidance is required. This takes the form of further directives and regulations (one implementing MiFID II Directive, one implementing MiFIR and further measures implementing specific aspects such as product governance (the **"Implementing Measures"**)) and a large number of regulatory and implementing technical standards (the **"RTSs"** and **"ITSs"**).

The European Securities and Markets Authority (**ESMA**) published a number of documents relating to its "Level 2" proposals for the Implementing Measures, the RTSs and ITSs along with "Level 3" guidelines for supervisory authorities. At the time of writing, the Implementing Measures have been adopted by the Commission based on ESMA's technical advice, along with twenty eight separate pieces of level 2 legislation covering the RTS and ITS. For ease of reference, we have listed them in the Annex.

In the UK, HM Treasury and the FCA have issued consultations on how MiFID II will be implemented in the UK. The FCA consulted on the market issues of MiFID II in December 2015, and issued two further consultations on organisational and conduct of business issues in July and September 2016. The FCA intends to publish its final policy statement on MiFID II implementation during the first half of 2017. The most relevant FCA consultations for investment managers are the second and third ones.

What does all this mean for me?

Firms should by now have undertaken a preliminary risk analysis to determine the extent to which MiFID II is likely to impact their business and the way in which they provide their services. This initial analysis should be kept under review and updated if necessary in line with further developments, guidance and

[1] EMIR is the EU regulation imposing requirements in relation to the clearing and reporting of OTC derivatives transactions.

consultations as they appear. Given the increased expectations on compliance standards of the FCA (and other EEA regulators) since 2007, it may also be worthwhile for some firms at least to undertake an audit to ensure that they are fully compliant with the requirements of MiFID I before commencing work on MiFID II.

The sections below provide an overview of the provisions of MiFID II likely to be of highest impact to investment managers. Each firm is of course different and, in addition to the areas outlined below, other MiFID II provisions may impact the wider business of a particular investment manager.

Depending on the extent of the business conducted by a firm, structural changes may be required to achieve MiFID II compliance. System changes may be necessary to ensure that firms can comply with new obligations (for example, on reporting). Compliance procedures and client agreements are likely to need re-papering and ways of doing business may also need to be reviewed.

How does MiFID II apply to investment managers?

Perhaps more than any other sector, there is likely to be a huge difference in the ways and extent to which MiFID II will impact investment managers. Some firms may fall outside its scope almost entirely, whilst others may find that they need to undertake major changes to the way that they conduct their trading or reporting activities.

In theory at least, Alternative Investment Fund Managers (AIFMs) authorised under the Alternative Investment Fund Managers Directive (AIFMD[2]) will be outside the scope of MiFID II. This is the case when they are performing the role of managing or marketing the Alternative Investment Funds (AIFs) for which they act as AIFM. Similarly, UCITS Management Companies authorised under the Directive on Undertakings for Collective Investment in Transferable Securities (UCITS[3]) will also be outside the scope of MiFID II when managing or marketing the UCITS funds for which they act as UCITS Management Company.

However, many AIFMs are additionally authorised (under Article 6(4) of AIFMD) to carry on other activities that amount to providing MiFID II investment services (such as providing portfolio management services to managed accounts, providing investment advisory services or managing the assets of funds for which they do not act as AIFM) or form part of groups where there are MiFID investment firms which perform activities for the group and its funds. Where an AIFM performs additional MiFID activities, that will fall within the scope of MiFID II[4]. The position is similar for UCITS Management Companies in respect of other MiFID II-scope activities for which they have been additionally authorised under Article 6(3) of the UCITS Directive. AIFMs and UCITS Management Companies will need to comply in respect of these additional activities with MiFID II's organisational and conduct of business requirements and be subject to MiFID II sales and distribution rules.

Furthermore, many firms that an investment manager interacts with, such as brokers, distributors and custodians, will also be impacted (and which will also therefore have a consequential impact).

In any event, MiFID II provides some scope for national competent authorities to apply the MiFID II requirements to UCITS Management Companies and AIFMs. In its third MiFID II consultation paper (primarily dealing with conduct issues), CP 16/29, the FCA's proposed amendments to its Conduct of Business sourcebook (COBS) include proposed new sections in COBS 18.5, which specify which provisions of MiFID II and the updated COBS will apply to UCITS management companies and AIFMs when they are performing fund management activities. Given that many firms will be providing MiFID investment services alongside their fund management activities anyway, it may be prudent (and lead to less internal confusion) to apply equivalent standards to fund management activities where appropriate. Where organisational changes are required (as we discuss below, for example relating to number of directorships), it may not be possible to separate out between fund management activities and general MiFID investment activities.

The Commission is set to review AIFMD by 22 July 2017. The outcome of this review may result in alignment of AIFMD requirements with those of MiFID II.

[2] 2011/61/EU

[3] 2009/65/EC

[4] See in particular article 1 of the Commission Delegated Regulation imposing organisational and operational conditions for investment firms.

Key aspects of MiFID II for investment management firms

1
Market structure and trading requirements

Markets

Wider definition of a systematic internaliser (SI)

More firms to be captured by pre-trade transparency

Introduces a new type of regulated trading venue called an OTF

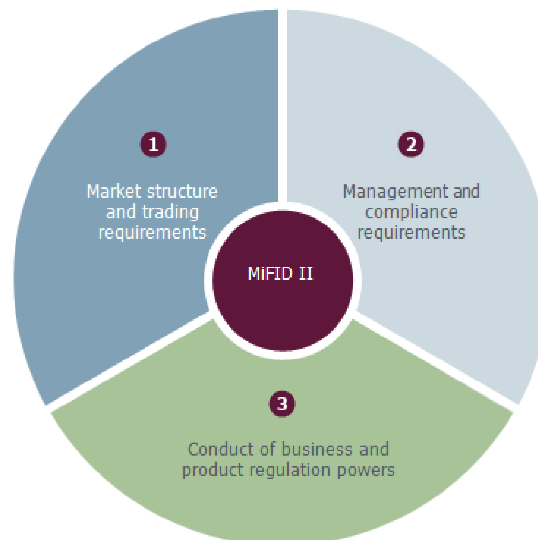
Trading on market

More transactions to take place on-market.

Pre- and post- trade transparency requirements and transaction reporting

Extension of the current transparency regime to non-equity investments such as bonds, derivatives, structured finance products, and ETFs

Clarification on reporting for firms who operate through branches in other EU member states



2
Management & compliance requirements

Management responsibility

- Stipulates the make-up of boards and management committees, and their organisational responsibilities

Compliance functions

Enhanced reporting

Better board access

3
Conduct of business and product regulation powers

Conduct of business requirements

- Enhanced conduct of business requirements, including on best execution and conflicts of interest
- Additional best execution disclosures

Product Design

- New product governance rules applying to both producers and distributors of all types of financial instrument
- Internal approval processes for new investments products

Investment research and other non-monetary benefits

- Restrictions on the use of soft commission and non-monetary benefits for investment research
- Unable to receive monetary or non-monetary benefits from 3rd parties in connection with services the firm provides to its clients

Client agreements

- Expansion of the existing requirement to enter into written agreements with retail clients to new professional clients and firms

ECPs

- Some conduct standards are being applied to eligible counterparty business

Client categorisation

- Changes to categorisation tests means difficulty in acting for some local authorities

SECTION 2 - MANAGEMENT AND COMPLIANCE REQUIREMENTS

Enhanced management responsibility

Key actions

- ✓ Consider the existing responsibilities and duties of the board and undertake a gap analysis to ascertain whether any additional responsibilities need to be added.
- ✓ Also consider the roles and outside interests of senior management to ensure that they meet the restrictions on non-executive directorships.
- ✓ Consider what additional processes you will need to train senior management and undertake the ongoing assessments required.
- ✓ Consider how the diversity requirements will impact the make-up of the board.
- ✓ Consider how these requirements will sit alongside the new Senior Managers Regime to mitigate the implications of the FCA applying the regime to investment firms (expected to take place in 2018).
- ✓ Look carefully at directorships, especially within private equity fund managers, to ensure you do not breach the maximum holdings tests.

MiFID II imposes greater burdens on senior management within firms through a number of different measures. It includes an obligation on senior management to be more closely involved in the design of new products and to ensure that a better quality of information is reported to the board. In addition, the corporate governance provisions imposed by CRD IV will be applied to MiFID investment firms (subject to some minor changes). The chairman must not act as CEO of the same firm without the prior express approval of the FCA. Firms must also devote adequate resources to the induction and training of senior management on their regulatory responsibilities. The MiFID II Directive also stipulates that the board must be sufficiently diverse to "avoid group thinking and facilitate independent opinions and critical challenge". The imposition of CRD IV requirements means that firms will also be required to assess the knowledge, skills and experience of senior management at least once a year.

The CRD IV requirements replicated under MiFID II also impose restrictions on the number of board positions that can be held by members of the management body of a MiFID investment firm. This is likely to be of particular relevance to firms with private equity style investment structures, where members of the management team may hold multiple directorships in investee companies. Under MiFID II, however, regulators may permit a director to hold one more non-executive directorship than is permitted under CRD IV (unless the firm is a market operator, in which case the same restriction applies as under CRD IV). A director of a MiFID firm will be able to hold either: one executive directorship and up to three non-executive directorships; or up to five non-executive directorships. Multiple directorships within a single group will only count as a single directorship for the purposes of these requirements (although note here that investee companies are unlikely to be in a group with the manager firm so this will not help here). These requirements will not apply to any directorships that they hold in organisations that do not pursue commercial objectives (such as not-for-profit organisations or charities) but would apply to all other directorships.

The expectation is that the FCA will be applying the senior managers and certification regime to investment management firms in 2018. Whilst the details of this are not yet known, the regime for PRA-authorised firms is sufficiently well-established to enable firms to consider its impact as part of their planning.

Strengthened compliance functions

Key actions

- ✓ Consider the structure of existing compliance arrangements and the level (and quality) of reporting provided to senior management to ascertain whether additional powers or procedures are required to be implemented.
- ✓ Note: many UK firms will already meet MiFID II requirements.

Whilst the text in the MiFID II Directive does not expand the requirements on compliance procedures from the existing MiFID provisions, the implementing measures go further than those required under Article 6 of the current MiFID implementing directive (2006/73/EC). For example, Article 22 of the relevant Level 2 regulation[5] provides that the compliance function must be able to report directly in to the board on an ad hoc basis and to provide annual compliance reports to the board. In order to produce the annual compliance report, the compliance function must conduct an assessment of all areas of the firm's investment services and ancillary activities. The board is also required directly to appoint the compliance officer and is responsible for the compliance function of the firm.

5 Draft Commission delegated regulation of 25 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (Article 22) https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-2398-EN-F1-1.PDF

SECTION 3 – CONDUCT AND COMPLIANCE REQUIREMENTS

Conduct of business requirements - introduction

Key actions

- ✓ Consider the existing responsibilities and duties of the board and undertake a gap analysis to ascertain whether any additional responsibilities need to be added.
- ✓ Check existing distribution arrangements, and hold discussions with non-UK advisory teams, to consider what impact these changes may have on business and revenue.
- ✓ Review policies and procedures to confirm whether they meet the more stringent standards imposed by MiFID II.
- ✓ Ensure any re-papering exercise mandated by new MiFID II conduct of business rules is built into the MiFID II implementation project timetable and budget.

MiFID II makes significant changes to conduct of business requirements. The precise details of these conduct of business requirements are expanded on in the Implementing Measures. It is important to note that a lot of the changes that will have the biggest impact are set out in the Implementing Measures rather than the Level 1 texts. Some of the notable changes to the original MiFID requirements of relevance to investment managers include:

- expanded requirements on best execution (including increasing the amount of information to be included in best execution policies – see below);
- restricting the circumstances when firms can provide execution-only services without conducting an appropriateness assessment;
- imposing strict rules on payment of commissions (this is discussed further below);
- require firms to monitor and notify clients receiving discretionary portfolio management services if the value of their portfolio depreciates by more than 10%; and
- increasing disclosure requirements for different categories of client (by expanding disclosure requirements to cover professional clients as well as retail clients).

MiFID II will prevent the payment of commissions by product producers in respect of products sold on an advised basis. Payment of commissions in such circumstances has, of course, already been banned in the UK following the implementation of the Retail Distribution Review. This change will apply similar standards across the rest of the EEA.

Best execution

Key actions

- ✓ Carefully check your best execution policy and include additional provisions where necessary.
- ✓ Identify your main trading venues ready for the disclosure requirement.

In relation to best execution, the Commission’s draft Implementing Measures will require firms to make a number of changes to their current policies and procedures on best execution. As a result, investment managers will be likely to need to include significantly more detail in their policies, including detail of venues and brokers used and the firm’s selection criteria. They will also be required to monitor execution quality and provide more information to clients on request about the execution of their trades.

In particular, an investment firm is required to disclose details of the top five execution venues that it uses, which has caused concern in the industry that firms may have to disclose commercially sensitive information. The FCA has confirmed that it will apply this to full-scope AIFMs[6]

Portfolio managers and firms carrying out reception and transmission of orders are given specific obligations[7] to act in the client's best interest when placing orders with other entities for execution, where those orders result from decisions by the investment firm to deal in financial instruments on behalf of its client. In its consultation on implementation of MiFID II's best execution provisions, the FCA was of the view that the main impact for firms will be the reporting requirements, and that firms are likely to need to update their systems, processes and disclosures in order to comply with the obligations to provide information on order routing decisions and execution quality over the year.

Product design

Key actions

- ✓ Look carefully at your existing product sign-off and design processes and identify what additional steps need to be made.
- ✓ Identify what products the firm designs or distributes (noting the broad application of these requirements). Note that, although product design is an area that the FCA has looked at recently in the UK, the changes expected to be brought in by MiFID II are likely to bring further compliance burdens, not least of which in the range of securities and products that will be subject to these obligations.
- ✓ Consider which products which were being sold prior to MiFID II implementation will also be caught by the MiFID II requirements for an annual review.

MiFID II imposes new, more prescriptive, product governance rules, in particular on the design and internal approval processes for new investment products. These rules will impose significant burdens on firms at all stages of the product development and sales process. Firms will need to assess the target market in designing and developing products, and distributors will be required to consider what products they should offer.

Whilst many of these requirements will not be new for FCA-regulated firms in the UK (or, at least, those used to designing fund products for distribution to retail customers), the range of products that these rules apply to and the detailed requirements are significantly broader than firms' existing policies. Currently, the FCA's guidance, "The Responsibilities of Providers and Distributors for the Fair Treatment of Customers" (the RPPD) relates to firms involved in the distribution of funds to retail customers. The MiFID II product governance provisions apply to sales to professional customers as well as retail. And perhaps even more fundamentally, they apply to the issuance of all securities, including shares and bonds as well as funds and fund-like products.

ESMA is consulting on guidance relating to the items that firms will need to consider when both designing and distributing in-scope securities. These are likely to result in investment managers needing to prepare considerably more paperwork prior to launching a product, and having much greater interaction with distributors of their products (both before and after sale).

The FCA has proposed[8] the creation of a new sourcebook (PROD) in which the product governance obligations applying to manufacturers and distributors will be clearly set out. ESMA has also consulted on guidelines for manufacturers and distributors in relation to identification of the target market for products[9].

6 See paragraph 9.43 of CP 16/29.

7 Commission draft Delegated Regulation of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive. https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-2398-EN-F1-1.PDF, Article 65.

8 FCA consultation (CP 16/29), published 29 September 2016.

9 ESMA consultation (ESMA/2016/1436), published 5 October 2016. This consultation is open until 5 January 2017.

Restrictions on soft commission for investment research and other non-monetary benefits

Key actions

- ✓ Review any existing commission sharing arrangements, or other uses of soft commission, with brokers, and consider how best to obtain investment research under MiFID II.
- ✓ Keep aware of broader developments in the market - soft commission and conflicts of interest around broker-manager relationships are, of course, key areas for scrutiny by the FCA and other regulators.
- ✓ Firms with operations in the US: consider how the new rules on investment research correspond to the US soft dollar regime.
- ✓ Minor non-monetary benefits: look carefully at existing policies and practices to see what changes will need to be made - there will be a narrower range of permitted non-monetary benefits under MiFID II than the list of items currently permitted by the FCA under Section 11.6 of COBS.
- ✓ For investment managers that currently make use of soft commission, early interaction with both brokers and clients will be key.

One area that could have a significant impact for investment managers is in relation to commission sharing arrangements to pay for investment research. Under MiFID II, fund managers will face heavy restrictions on the types of third party payments and benefits that they can receive. The practical effect of the MiFID II proposals will be to significantly restrict the use of soft commission. A crucial first step for investment managers will be to identify whether they currently make use of soft commission arrangements, with whom, and how they operate.

Firms providing portfolio management services or providing investment advice on an independent basis will not be permitted to retain any monetary or non-monetary benefit received from third parties in connection with services that the firm provides to its clients. The only exception to this is that firms will be permitted to accept "minor non-monetary benefits" provided that such benefits are capable of enhancing the quality of service to the client and are reasonable and proportionate and of such a scale that they are unlikely to influence the investment firm's behaviour in any way that is detrimental to the interests of the relevant client. The Implementing Measures[10] set out an exhaustive list of items that will be considered to fall within this exemption, which will include: product literature; participation in conferences and seminars; minimal hospitality; and any other minor non-monetary benefits which are deemed by a Member State as meeting the test for quality enhancement. The FCA proposes to set out the list in full in a new chapter of COBS (COBS 2.3A), but does not propose to make any further additions to the list.

Investment research may only be received by firms in limited circumstances. Currently, provided that the arrangements meet the FCA's guidance on dealing commission and the MiFID disclosure requirements on inducements, fund managers have been permitted to receive investment research from their brokers. Under MiFID II, firms may only receive investment research from brokers where either: (a) the manager pays for the advice from its own resources; or (b) the payment is made from a separate Research Payment Account (RPA) established by the fund manager and funded by a specific research charge paid by the client. If a firm chooses to establish an RPA under option (b), it must set the budget and agree the charge with the client – it will not be possible to link the research charge to the volume or value of trades. Some industry bodies are anticipating that the costs and administrative burden of operating under option (b) are prohibitive to the point where firms will simply not be able to offer this approach.

Importantly for investment managers, it should be noted that the FCA announced in its third MiFID II consultation (CP 16/29) that it plans to apply many, but not all, of these requirements to full-scope AIFMs, small authorised AIFM, residual CIS operators and UCITS management companies through a new Annex 1 to Chapter 18 of COBS[11].

10 Draft Commission delegated directive of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits, (Chapter IV) https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-2031-EN-F1-1.PDF

11 See chapters 2 and 3 of CP 16/29, and in particular paragraphs 2.46 and 3.30 to 3.34 which discuss the application of the rules to investment managers.

Additional need for written client agreements

Key actions

- ✓ Consider if there are circumstances where new client relationships are not currently being properly documented.
- ✓ Ensure that the firm's systems and controls record which terms have been sent to clients and collate client confirmations of acceptance.
- ✓ Review the firm's template client agreements against contents requirements to ensure that they contain all the necessary information and disclosures.
- ✓ To the extent you need to engage in re-papering, factor this into your project timing.

MiFID requires investment firms to enter into a written client agreement with retail clients. MiFID II will expand this requirement to new professional clients of firms. Whilst most firms will have detailed agreements with all customers, it will nonetheless be important to identify: (a) whether there are any arrangements or types of arrangement with professional clients that are not currently being documented; and (b) carefully review template agreements to ensure that they contain all required information and do not need amendment.

The flipside is that the brokers, custodians and other firms that investment managers contract with (either directly or on behalf of their funds or individual clients) may also be engaging in re-papering exercises. Investment managers should therefore ensure that they are ready for this and, where possible, have already identified the existing agreements to be able fully to assess the changes being requested.

Conflicts of interest

Key actions

- ✓ Review and fully understand the firm's existing processes in place to identify and mitigate potential conflicts of interest.
- ✓ Identify where the firm's organisational and administrative arrangements need to be updated, in particular in order to comply with MiFID II's more extensive requirements around the content and quality of conflicts disclosures.

MiFID II and the delegated regulation supporting it carries through the MiFID I requirements on conflicts management but considerably strengthens them. The revised rules:

- require firms to take all 'appropriate' steps to identify, prevent or manage conflicts of interest from arising (an enhancement to the 'reasonable' steps firms are required to take under MiFID I);
- explicitly state that firms need to identify, prevent or manage the conflicts caused by inducements and remuneration or other incentive structures;
- increase the reporting obligations on firms and reviews to be carried out by senior management; and
- significantly enhance the content and quality of the disclosure made to clients when firms cannot manage or prevent conflicts of interest from arising, including a new requirement to include in each disclosure a specific description of the conflicts of interest that arise, the steps undertaken to mitigate those risks, and the risks to the client.

The FCA consulted in July 2016 on amendments to its Senior Management, Systems and Controls sourcebook to implement the requirements of MiFID II and the directly applicable Level 2 regulation with which firms must comply. It is intended that the enhanced conflicts of interest rules will apply to all firms, whether MiFID firms or not.

Whilst the provisions of MiFID II and its Implementing Measures do go further than what is currently required under MiFID I, in practice it is likely that many investment management firms will not have to undertake significant change in this area. This is because the FCA has already made it clear to firms that it expects them to take more proactive steps to manage conflicts than simply including disclosures in their documentation, and also because of the requirements of UCITS V and AIFMD in this regard. Nonetheless, investment managers should still revisit existing policies, disclosures and conflicts logs to ensure that they are fully compliant with MiFID II.

Appropriateness

Key actions

- ✓ Consider the nature of funds and securities that you issue and the potential impact for distribution.

Under MiFID I, a firm must conduct a suitability assessment where it is providing advice to customers, or managing a portfolio of investments on a discretionary basis. Where the firm is dealing in a security on a non-advised basis (i.e., selling it without advice, whether as principal or agent) it should obtain information from the client to ensure that they are sufficiently knowledgeable and experienced such that the transaction is appropriate for them. Even the appropriateness assessment is not required, however, where the security being sold is "non-complex". Under MiFID II the boundaries for being a non-complex instrument are changing, with more securities expected to be treated as complex. As a result, it may be more difficult for some funds to be distributed to clients on an execution-only basis. This, combined with the enhanced product governance requirements referred to above, mean that distributors and firms selling directly to investors, may need to obtain more information from prospective investors.

Under the Level 1 text, it seemed that the only types of funds that would be non-complex, non-structured UCITS . In particular, non-UCITS retail schemes, qualified investors schemes, AIFs and non-AIF collective investment schemes would all potentially be complex instruments and so be subject to the appropriateness

assessment. The Implementing Measure setting out organisational requirements and operating conditions has included some additional categories of non-complex instrument. However these are only for open-ended structures that have frequent opportunities to redeem (with no explicit or implied exit charges) and so this is likely to be of little comfort to many investment managers.

Record keeping, reporting and recording of telephone and electronic communications

Key actions

- ✓ Complete a gap analysis to identify changes to systems and policies around record keeping.
- ✓ Ensure you can monitor and notify clients of 10% devaluations.

The transaction record keeping requirements of MiFID II considerably expand on the record keeping requirements under the current rules and also impose rules on the recording of telephone and electronic communications relating to (at least): (a) transactions concluded when dealing on own account; and (b) client order services relating to reception, transmission and execution of client orders.

Investment managers are likely to find the new requirements onerous in terms of initial and ongoing resources to ensure compliance. In particular, face to face meetings will be treated as equivalent to telephone calls, meaning that a contemporaneous record will need to be kept. Additionally, records must be kept of relevant internal telephone conversations and electronic communications that relate to concluded transactions or that are intended to result in a concluded transaction[12]. This is a departure from the current requirements, under which FCA rules require firms to keep records of external communications.

There are also additional general reporting and monitoring obligations. Whilst many investment managers will already comply with some of these requirements, others may require enhancements to monitoring and reporting systems. For example, there is a new requirement for firms providing discretionary portfolio management services to notify clients (including professional clients) by the end of the next following business day if their portfolios have depreciated by 10% (and at subsequent 10% intervals) from the beginning of the reporting period. For firms that operate a large number of portfolios incorporating difficult to value investments, this could give rise to a considerable logistical challenge.

12 Commission draft Delegated Regulation of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, Article 76.

SECTION 4 - MARKET STRUCTURE AND TRADING REQUIREMENTS

Markets

Key actions

- ✓ **Consider the scope and extent of the firm's trading activities**
  to ascertain whether the firm is likely to have a systematic internaliser (under the new definition) or an OTF within the group. This is likely to include looking in detail at trading volumes and ascertaining whether securities that the firm trades in are illiquid or not.
- ✓ **Where there is an OTF or a systematic internaliser**
  consider whether it is necessary to apply for additional permissions and build new systems for transparency and/or whether an internal reorganisation is necessary to meet new requirements on the separation of activities.

Part of the impetus behind the MiFID II proposals for markets and market operators has been anti-avoidance. One of the criticisms of the existing MiFID regime is that too much trading now takes place in "dark-pools" or is otherwise not subject to the transparency obligations. We would anticipate that these issues will not affect many investment managers, however some will have significant trading functions within their group, or will at least interact with brokers who are affected by these issues, and so we include a high level overview of these provisions below.

Systematic internalisers

The concept of a "systematic internaliser" ("**SI**") was introduced by MiFID to cover certain firms acting as market makers. MiFID requires firms meeting the definition of an SI to comply with pre-trade transparency requirements. At present, the term applies to a firm which "*on an organised, frequent and systematic basis*" deals on its own account when executing client orders outside a regulated market or other forms of regulated trading platform (in other words, instead of matching a buy and a sell order from two clients, the firm trades OTC against its own book).

The key operational requirement for SIs is that they must publish firm quotes in shares admitted to trading on a regulated market for which there is a liquid market, and for which the deal size is up to standard market size. Under MiFID II SIs will be required to publish firm quotes for a wider range of transactions including equity-like instruments (such as ETFs) and non-equity instruments (such as derivatives, bonds and structured finance products).

Currently, national regulators and firms have discretion to determine whether or not particular activities are sufficiently substantial for a firm to become an SI. As result, very few firms are currently subject to those requirements. Under MiFID II it is expected that more firms will fall within the definition of an SI.

In its draft delegated regulation of 25 April 2016[13], the Commission adopted a detailed set of guidelines to ascertain when a firm is dealing on an "organised, frequent systemic and substantial basis" by reference to different types of instrument. By way of example, in the context of shares where there is a liquid market, a firm will be considered to deal on a frequent and systematic basis where it has executed OTC 0.4% or more of the trades taking place on an EU venue or OTC on its own account over the previous six months (and it executes the relevant OTC trades on average on a daily basis). Where there is no liquid market for those shares[14], the firm must have traded in such shares on average on a daily basis over the previous six months. The measure for trading shares on a substantial basis is that either: (a) 15% of the firm's total trading activity for those shares are executed by the firm on an internalised basis (rather than, for example, through the market), or it is the amount of trades conducted by the firm in those shares on an internalised basis

[13] https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-2398-EN-F1-1.PDF (Article 12).

[14] In its draft delegated regulation of 18 May 2016 (http://ec.europa.eu/finance/securities/docs/isd/mifid/160518-delegated-regulation_en.pdf), the Commission set out what constitutes a liquid market (Article 1). In summary, shares will have a liquid market where: they are traded daily; there is a free float of not less than Euros 100m admitted to trading on a regulated market (Euros 200m for shares only admitted to trading on an MTF such as AIM); there are at least an average of 250 trades in such shares on a daily basis; and the average daily turnover of not less than Euros 1m. There are transitional tests for shares newly admitted to market.

represents 0.4% of the total turnover of those shares in the EU. Different measures are specified for other types of instrument.

Under MiFIR, Member States will be able to disapply the requirement for SIs to meet pre-trade transparency requirements where transactions involve illiquid securities, which may remove some of the burden (if the UK or other Member States in which you conduct business apply this exclusion). However it is still uncertain where the line will be drawn between liquid and illiquid securities for these purposes.

Organised Trading Facility – a new category of regulated venue for non-equities

MiFID II aims to move all organised trading onto regulated venues. To help achieve this, MiFID II introduces the concept of an "organised trading facility" (**OTF**), a new type of regulated trading venue for the trading of non-equities. An OTF is defined as, "a multilateral system which is not a regulated market or an MTF [multilateral trading facility] and in which multiple third-party buying and selling in bonds, structured finance products, emissions allowances or derivatives are able to interact in the system in a way that results in a contract". The definition is drafted very broadly and will essentially catch most systems, including dark pools, that are not captured elsewhere.

OTF operators cannot carry on proprietary trading. In addition, the same entity cannot be both an OTF and a systematic internaliser, which may result in some firms needing to undertake a group reorganisation to separate out their trading activities into different entities. Since any new entity into which trading activities are transferred is likely to need to become authorised, this process will need to be commenced soon to ensure that the transfers can be fully effected in time for the implementation of MiFID II.

Provided that a firm is not an OTF, it will not be prohibited from dealing on its own account under MiFID II; however the changes MiFID II brings mean that firms who deal on their own account and execute client orders in the same entity may be more likely to be SIs and so become subject to the pre-trade transparency rules.

Trading on the Market

Key actions

- ✓ **Conduct trading desk review**
  Consider whether the firm currently operates, or arranges for execution of trades through, an internal matching system. If so, will broking arrangements need to be changed to comply with the requirement that trades take place on market?
- ✓ **Market Abuse Regulation**
  Continue to monitor how the EU Market Abuse Regulation interacts with these (and other) requirements under MiFID II.

MiFIR imposes a new requirement that trading in all shares admitted to trading on or through either a regulated market or a trading venue must take place on a regulated market, an MTF, through an SI, or a third-country equivalent. There are limited exemptions from this requirement for: (a) non-systematic, ad-hoc, irregular and infrequent transactions; or (b) where they are carried out between eligible or professional counterparties and the transaction does "not contribute to the price discovery process". The Commission has set out an exhaustive list of circumstances when a firm will be trading in a way that does not contribute to the price discovery basis.[15]

In addition, Article 23(2) of MiFIR stipulates that any firm operating an internal matching system to execute client orders in shares, depositary receipts, ETFs, certificates and other financial instruments on a multilateral basis must become authorised as an MTF.

[15] Article 2 of Commission draft Delegated Regulation of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser.

Extension of pre- and post- trade transparency requirements

Key actions

- ✓ Consider what trading activity the firm undertakes in bonds, depositary receipts and the other types of instrument covered by the extended regime.
- ✓ Review trading strategy to identify any implications that may result from the restrictions on the use of pre-trade transparency waivers.
- ✓ Note the MiFID II implementation date of 3 January 2018: developing systems and controls to undertake this reporting took considerable efforts last time around – extending it to new areas is also likely to be a major undertaking. In particular, consider whether new software or IT systems will need to be developed or bought in – this can result in considerable costs and delays.

Under the existing MiFID regime, there are detailed requirements providing for transparency of pricing. Market operators (and firms providing trading venues) must publish the current bid and offer prices and the depth of trading interest for instruments that are offered on their trading systems. They must also provide information on trades that have taken place.

MiFIR extends the pre-trade transparency regime to cover not only equities and equity-like instruments but also non-equity investments such as bonds, derivatives and structured finance products, as well as to ETFs. These pre-trade requirements will not apply to OTC transactions unless they take place through an SI (in respect of which, see above). As noted above, an area of significant uncertainty here is in which securities will be treated as liquid (and so subject to the transparency requirements) and which can be treated as illiquid. MiFIR imposes restrictions on the use of pre-trade reference price waivers and negotiated price waivers by means of a volume cap which caps trading under these waivers at 4% per venue and 8% EU-wide. MiFIR also imposes a shorter deadline for publication of information and reduces the length of time for which it is possible to delay publication. Investment managers will see a benefit from the availability of more price information. They may however need to make adjustments to any trading strategies that make use of the transparency waivers, and should also be considering the systems and IT changes they will need to comply with the extended scope of the transparency regime.

Post-trade, MiFID I obliged MiFID firms dealing on an OTC basis in EU-listed shares to make certain details of the transaction public as close to real time as possible (within three minutes unless the trade is of larger than average size, in which case up to 4 days' delay is permitted for the publication of the information). MiFIR extends this requirement to include non-equities and some investment managers may find themselves having to make public post-trade information where previously they had relied on sell-side counterparts to meet this obligation. This is because under MiFIR it will not be possible for firms to agree amongst themselves to displace the default hierarchy (seller, seller's agent, buyer's agent, seller) for meeting the transparency obligation. It is likely that many investment managers will face considerable costs from establishing or adapting their internal systems to comply with the obligation to make post-trade information public.

With respect to the transaction reporting obligations for firms who operate through branches in other EU Member States, there has been confusion under current MiFID rules as to which branch should submit reports – often resulting in multiple reports being made. The default position under MiFID II will be that reports should be submitted to the home Member State, with additional rules being put in place to prevent duplication of reporting obligations.[16]

[16] Draft Commission Delegated Regulation of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities., Article 14.

Transaction reporting

Transaction reporting is considered an important tool for EU regulators to be able to monitor for market abuse and insider dealing. Under MiFID I, investment firms are required to report to their regulator prescribed details of transactions in financial instruments admitted to trading on EU regulated markets and related instruments (such as derivatives). MiFIR will extend this reporting requirement to all instruments admitted to trading or traded on regulated markets, MTFs or OTFs (or, in the case of related instruments, the underlying is so admitted). MiFIR will also significantly increase the amount of detail that should be reported. Reports to the regulator must be made no later than the close of the following business day.

The MiFIR transaction reporting provisions will affect all investment managers, in particular those that currently benefit[17] from the general portfolio manager exemption under which sell-side EU MiFID investment firms (which are themselves subject to the transaction reporting obligations) can make the report on behalf of the firm. The exemption is being narrowed under MiFIR, using the concept of a "transmitting firm"[18]. A transmitting firm is an investment firm which has transmitted an order where:

- the order was received from the investment firm's client or results from a dealing decision made pursuant to a discretionary mandate;
- the firm has transmitted certain information to the "receiving firm" (another MiFID investment firm, for example the investment manager's broker, with whom the firm has a formal "transmission agreement" in place); and
- the receiving firm agrees to report the transaction that results from the transmitted order (or alternatively, to transmit the order details to another investment firm).

Investment managers may find the transaction reporting obligation burdensome in terms of IT costs, time and resources. The ability to rely on a report made by a receiving firm will depend on the transmitting firm having systems that can generate the prescribed information, and on it transmitting the information within the relevant deadline. There will also be cases where even the more restricted "transmitting firm" exemption is not available, such as cases where the investment manager transmits an order to a broker that is domiciled outside the EU.

[17] FCA Handbook, SUP 17.2.1R

[18] See further, draft Commission Delegated Regulation of 28 July 2016, supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities (Article 4). https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-4733-EN-F1-1.PDF

Annex

Implementing Measures – Keeping Track of Level 2

Commission draft Delegated Regulation of 25 April 2016[19] supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

Commission draft Delegated Directive of 7 April 2016[20] supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits.

Commission draft Delegated Regulation of 18 May 2016[21] supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions.

Implementing Technical Standards (ITS)

Commission Implementing Regulation (EU) 2016/824 of 25 May 2016[22] laying down implementing technical standards with regard to the content and format of the description of the functioning of multilateral trading facilities and organised trading facilities and the notification to the European Securities and Markets Authority according to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments.

Regulatory Technical Standards (RTS)

Draft Commission Delegated Regulation of 25 April 2016[23] supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the suspension and removal of financial instruments from trading.

Draft Commission Delegated Regulation of 18 May 2016[24] supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards for the ratio of unexecuted orders to transactions in order to prevent disorderly trading conditions.

Draft Commission Delegated Regulation of 24 May 2016[25] supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the admission of financial instruments to trading on regulated markets.

Draft Commission Delegated Regulation of 26 May 2016[26] supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards for the determination of a material market in terms of liquidity in relation to notifications of a temporary halt in trading.

Draft Commission Delegated Regulation of 26 May 2016[27] supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory

[19] https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-2398-EN-F1-1.PDF

[20] https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-2031-EN-F1-1.PDF

[21] http://ec.europa.eu/finance/securities/docs/isd/mifid/160518-delegated-regulation_en.pdf

[22] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0824&from=EN

[23] http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-3014-EN-F1-1.PDF

[24] https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-2775-EN-F1-1.PDF

[25] http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-3017-EN-F1-1.PDF

[26] http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-3020-EN-F1-1.PDF

[27] http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-2710-EN-F1-1.PDF

technical standards on criteria for determining whether derivatives subject to the clearing obligation should be subject to the trading obligation.

Draft Commission Delegated Regulation of 2 June 2016[28] supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorization, organisational requirements and the publication of transactions for data reporting services providers.

Draft Commission Delegated Regulation of 2 June 2016[29] supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on the specification of the offering of pre-and post-trade data and the level of disaggregation of data.

Draft Commission Delegated Regulation of 2 June 2016[30] supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on access in respect of benchmarks.

Draft Commission Delegated Regulation of 6 June 2016[31] supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on requirements to ensure fair and non-discriminatory co-location services and fee structures.

Draft Commission Delegated Regulation of 7 June 2016[32] supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks.

Draft Commission Delegated Regulation of 8 June 2016[33] supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions.

Draft Commission Delegated Regulation of 8 June 2016[34] supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution.

Draft Commission Delegated Regulation of 13 June 2016[35] supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying the requirements on market making agreements and schemes.

Draft Commission Delegated Regulation of 13 June 2016[36] supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations.

Draft Commission Delegated Regulation of 13 June 2016[37] supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the direct, substantial and foreseeable effect of derivative contracts within the Union and the prevention of the evasion of rules and obligations.

[28] http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-3201-EN-F1-1.PDF

[29] http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-3206-EN-F1-1.PDF

[30] http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-3203-EN-F1-1.PDF

[31] http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-3266-EN-F1-1.PDF

[32] http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-3316-EN-F1-1.PDF

[33] http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-3333-EN-F1-1.PDF

[34] http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-3337-EN-F1-1.PDF

[35] http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-3523-EN-F1-1.PDF

[36] http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-2711-EN-F1-1.PDF

[37] http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-3544-EN-F1-1.PDF

Draft Commission Delegated Regulation of 24 June 2016[38] supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the maintenance of relevant data relating to orders in financial instruments.

Draft Commission Delegated Regulation of 24 June 2016[39] supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on clearing access in respect of trading venues and central counterparties.

Draft Commission Delegated Regulation of 29 June 2016[40] supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying information to be notified by investment firms, market operators and credit institutions.

Draft Commission Delegated Regulation of 29 June 2016[41] supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing.

Draft Commission Delegated Regulation of 14 July 2016[42] supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on information and requirements for the authorisation of investment firms.

Draft Commission Delegated Regulation of 14 July 2016[43] supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying organisational requirements of trading venues.

Draft Commission Delegated Regulation of 14 July 2016[44] supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange traded funds.

Draft Commission Delegated Regulation of 14 July 2016[45] supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives.

Draft Commission Delegated Regulation of 14 July 2016[46] supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser.

Draft Commission Delegated Regulation of 14 July 2016[47] supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made by the European Securities and Markets Authority and competent authorities.

[38] https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-3821-EN-F1-1.PDF

[39] http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-3807-EN-F1-1.PDF

[40] http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-3917-EN-F1-1.PDF

[41] http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-3944-EN-F1-1.PDF

[42] http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-4417-EN-F1-1.PDF

[43] https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-4387-EN-F1-1.PDF

[44] http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-4389-EN-F1-1.PDF

[45] https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-4301-EN-F1-1.PDF

[46] http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-4390-EN-F1-1.PDF

[47] https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-4405-EN-F1-1.PDF

Draft Commission Delegated Regulation of 14 July 2016[48] supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards concerning the information for registration of third country firms and the format of information to be provided to the clients.

Draft Commission Delegated Regulation of 28 July 2016[49] supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities.

48 http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-4407-EN-F1-1.PDF

49 https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-4733-EN-F1-1.PDF

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