

MiFID2 Legislative Tracker

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The Simmons & Simmons MiFID2 Legislative Tracker

This Legislative Tracker provides you with an update on the MiFID2 legislation, setting out:

- a high level summary of the main aims of MiFID2;
- a table of the key dates in the process of agreeing the Level 1 text (with links to the relevant documents);
- a table setting out what is currently known about the consultation process for Level 2 / Level 3 measures, and
- annexes A and B setting out (i) the specific Level 2 / Level 3 measures which ESMA must develop, and (ii) which ESMA discussion or consultation paper deals with these

Background

The Markets in Financial Instruments Directive (MiFID) came into effect in November 2007. Its overarching objective was to further the integration, competitiveness and efficiency of EU financial markets. However, the financial crisis in 2008 exposed weaknesses in the regime, including a lack of transparency, particularly in the non-equities market. In addition, market and technological advances had outpaced various provisions in MiFID, while innovation and ever growing complexity in financial instruments underlined the importance of high levels of investor protection.

As a result, the revision of MiFID after it had been in operation for two years (as envisaged by the original Directive) afforded the opportunity for reforms aimed at establishing a safer, sounder and more transparent financial system following the 2008 crisis.

This Tracker will be of relevance to EU regulated investment firms which are subject to MiFID.

Summary

The **Markets in Financial Instruments Directive 2** legislation consists of a “recast” Directive (commonly referred to as **MiFID2**) dealing primarily with authorisation, systems and conduct requirements in relation to investment business, and a separate Regulation, known as the **Markets in Financial Instruments Regulation (MiFIR)** dealing with transparency, transaction reporting, clearing, and supervision of positions.

The new legislation will form the legal framework governing the requirements applicable to investment firms, trading venues, data reporting service providers and third-country firms providing investment services or activities in the EU.

The MiFID2 legislation makes significant changes to the regulatory regime established by MiFID. The forthcoming amendments are designed, in particular, to:

- increase transparency in the equity markets through changes to the regime for systematic internalisers, and the application of pre- and post-trade transparency requirements to “equity-like” instruments such as depositary receipts (MiFIR)
- increase transparency in the non-equity markets through the application of pre- and post-trade transparency requirements to non-equity products including bonds, structured finance products, emissions trading allowances and certain derivatives (MiFIR)
- introduce a new regulatory regime for so-called “organised trading facilities” (OTFs) covering such things as broker crossing systems (MiFID2)
- extend transaction reporting requirements beyond financial instruments which are admitted to trading on a regulated market (MiFIR)
- provide an increased regulatory focus on commodity derivative markets (MiFID2 and MiFIR)
- tighten the criteria for professional client or eligible counterparty status (resulting in more clients being categorised as retail clients) (MiFID2)
- change the criteria for determining whether a financial instrument is complex or non-complex (with a view to increasing the scope of products regarded as being complex) (MiFID2), and
- introduce increased investor protection measures in respect of retail clients and complex financial instruments, including product intervention rules similar to those of the UK Financial Conduct Authority (FCA) (MiFID2 and MiFIR).

The MiFID2 legislation applies from **03 January 2018**.

As a Directive, MiFID2 had to be implemented into national law by Member States before it could take effect. MiFIR, on the other hand, had direct effect in all Member States.

Member States were to have transposed the legislation into their national law by **03 July 2017**.

Review of MiFID2 and MiFIR following the Commission's Proposal to reform the European System of Financial Supervision (ESFS)

On 20 September 2017, the Commission adopted (a) a *Proposal for a Regulation* to amend (among other measures) the Regulations which established the European Supervisory Authorities (ESAs) - i.e., the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority - and MiFIR and (b) a *Proposal for a Directive* to amend (among other measures) MiFID2.

The Proposals will now be subject to scrutiny by the EP and the Council.



Penny Miller
Partner – London
Financial Markets
D +44 20 7825 3532
E penny.miller@simmons-simmons.com



Charlotte Stalin
Partner – London
Financial Markets
D +44 20 7825 4180
E charlotte.stalin@simmons-simmons.com



Jonathan Melrose
Partner – London
Financial Markets
D +44 20 7825 4514
E jonathan.melrose@simmons-simmons.com



Darren Fox
Partner – London
Financial Markets
D +44 20 7825 4069
E darren.fox@simmons-simmons.com

Where are we in the process?

Table 1: Development of Level 1 text

Level 1 Text	Date
Commission proposals: <i>MiFID2</i> and <i>MiFIR</i>	20 October 2011
European Parliament reports: <i>MiFID2</i> and <i>MiFIR</i>	26 October 2012
Council General approach: <i>MiFID2</i> and <i>MiFIR</i>	21 June 2014
Political Agreement	14 January 2014
European Parliament adoption: <i>MiFID2</i> and <i>MiFIR</i>	15 April 2014
European Council adoption: <i>MiFID2</i> and <i>MiFIR</i>	13 May 2014
Publication in OJ: <i>MiFID2</i> and <i>MiFIR</i>	12 June 2016
MiFID2: <i>Corrigendum (1)</i>	13 July 2016
<i>Corrigendum (2)</i>	08 October 2016
<i>Corrigendum (3)</i>	10 March 2017
MiFIR: <i>Corrigendum (1)</i>	12 July 2016
<i>Corrigendum (2)</i>	27 October 2017
Entry into force	02 July 2014
Application Date	03 January 2018
<u>Proposals under reform of the ESFS</u>	
Commission <i>Proposal for a Regulation</i>	20 September 2017
Commission <i>Proposal for a Directive</i>	20 September 2017

Table 2: Development of legislation delaying application of MiFID2/ MiFIR

Level 1 Text	Date
Commission proposals: <i>MiFID2</i> and <i>MiFIR</i>	10 February 2016
European Parliament reports: <i>MiFID2</i> and <i>MiFIR</i>	11 April 2016
Council General approach: <i>MiFID2</i> and <i>MiFIR</i>	21 April 2016
Political Agreement: <i>MiFID2</i> and <i>MiFIR</i>	03 May 2016
European Parliament adoption: <i>MiFID2</i> and <i>MiFIR</i>	07 June 2016
European Council adoption	17 June 2016
Publication in OJ (<i>MiFID2</i> , <i>MiFIR</i>)	30 June 2016
Entry into force	01 July 2016

Table 3: Development of Level 2 / Level 3 measures

Paper	Published	Closed	Outcome
<i>CP1</i> : Delegated acts on: investor protection, transparency, data publication, microstructural issues, requirements applying on and to trading venues, commodity derivatives, portfolio compression	22 May 2014	01 Aug 2014	19 Dec 2014 <i>Final report</i> ; <i>Annex – Investor protection topics</i>
<i>DP</i> : Technical standards on: investor protection, transparency, microstructural issues, data publication and access, requirements applying on and to trading venues, commodity derivatives and market data reporting	22 May 2014	01 Aug 2014	(followed by CP2 – see below)
<i>CP2 (Annex A, Annex B)</i> : Technical standards on: investor protection, transparency, microstructural issues, data publication and access, requirements applying on and to trading venues, commodity derivatives, market data reporting and post-trading issues	19 Dec 2014	02 Mar 2015	29 June 2015 <i>Final report</i> ¹ 28 Sept 2015 <i>Final report Annex I Annex II</i> ²
<i>Addendum CP</i> : Complements CP2 in respect of transparency requirements for non-equity instruments not covered in the CP2	18 Feb 2015	20 Mar 2015	02 May 2016 <i>Opinion and Annex</i> ³ ; <i>Opinion and Annex</i> ⁴ 04 May 2016 <i>Final report</i> ⁵ 30 May 2016 <i>Opinion</i> ⁶ and <i>Annex</i> ⁷
<i>CP</i> : Draft ESMA guidelines on complex debt instruments and structured products	24 March 2015	15 June 2015	26 Nov. 2015 <i>Final report</i>
<i>CP</i> : Draft ESMA guidelines for the assessment of knowledge and competence	23 April 2015	10 Jul 2015	17 Dec. 2015 <i>Final report</i>
<i>CP</i> : Draft implementing technical standards under MiFID2	31 Aug. 2015	31 Oct. 2015	11 Dec. 2015 <i>Final report (revised ITS 4, 09 February 2017)</i>
<i>CP</i> : Indirect clearing arrangements under EMIR and MiFIR	05 Nov. 2015	17 Dec. 2015	26 May 2016 <i>Final report</i>

¹ Draft technical standards on authorisation, passporting, registration of third country firms and cooperation between competent authorities

² Draft regulatory and implementing technical standards MiFID2/ MiFIR

³ Draft RTS on transparency requirements in respect of bonds, structured finance products, emission allowances and derivatives under MiFIR (RTS 2)

⁴ Draft RTS on methodology for calculation and the application of position limits for commodity derivatives traded on trading venues and economically equivalent OTC contracts (RTS 21)

⁵ Amendment of ESMA draft RTS on reporting obligations under Article 26 of MiFIR (RTS 22)

⁶ Draft RTS on criteria for establishing when activity is to be considered ancillary to the main business

⁷ Amended draft RTS on criteria for establishing when an activity is to be considered to be ancillary to the main business

Paper	Published	Closed	Outcome
<i>Final report</i> : Guidelines on cross-selling practices	22 Dec. 2015	-	-
<i>CP</i> : Guidelines on transaction reporting, reference data, order record keeping & clock synchronisation	23 Dec. 2015	23 Mar. 2016	10 Oct. 2016 <i>Final report</i> <i>Guidelines</i>
<i>DP</i> : The trading obligation for derivatives under MiFIR	20 Sept. 2016	21 Nov. 2016	19 June 2017 <i>CP</i> (see below)
<i>CP</i> : RTS specifying the scope of the consolidated tape for non-equity financial instruments	03 Oct. 2016	05 Dec. 2016	31 March 2017 <i>Final Report</i>
<i>CP</i> : Draft guidelines on MiFID2 product governance requirements	05 Oct. 2016	05 Jan. 2017	02 June 2017 <i>Final Report</i>
<i>CP</i> : Guidelines on specific notions under MiFID2 related to the management body of market operators and data reporting services providers	05 Oct. 2016	05 Jan. 2017	28 Sept. 2017 <i>Final Report</i>
<i>CP</i> : Guidelines on the assessment of the suitability of members of the management body and key function holders under CRD IV and MiFID2	28 Oct. 2016	28 Jan. 2017	26 Sept. 2017 <i>Final Report</i>
<i>CP</i> : Guidelines on the calibration, publication and reporting of trading halts	06 Oct. 2016	06 Dec. 2016	06 April 2017 <i>Final Report</i> and <i>Guidelines</i>
<i>CP</i> : Draft RTS on package orders for which there is a liquid market	10 Nov. 2016	03 Jan. 2017	28 Feb. 2017 <i>Final report</i> and <i>RTS</i>
<i>CP</i> : Trading obligation for derivatives under MiFIR	19 Jun. 2017	31 July 2017	28 Sept. 2017 <i>Final report</i>
<i>CP</i> : Guidelines on certain aspects of the MiFID2 suitability requirements	13 July 2017	13 Oct. 2017	Awaited
<i>CP</i> : Amendments to RTS 1 - systematic internalisers' quote rules	09 Nov. 2017	25 Jan. 2018	26 Mar. 2018 <i>Final Report</i>

Table 4: Adopted Level 2 measures

Level 2 Measure	European Commission	Official Journal
Delegated Acts		
<i>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</i>	07 April 2016	31 March 2017
<i>Organisational requirements and operating conditions for investment firms and defined terms for the purposes of MiFID2</i>	25 April 2016	31 March 2017
<i>Commission Delegated Regulation amending Delegated Regulation (EU) 2017/565 on the specification of the definition of systematic internalisers for the purposes of MiFID2</i>	28 Aug 2017	13 Dec. 2017

Level 2 Measure	European Commission	Official Journal
<i>Definitions, transparency, portfolio compression and supervisory measures on product intervention and positions</i>	18 May 2016	31 March 2017
<i>Exemption of certain third countries central banks in their performance of monetary, foreign exchange and financial stability policies from pre- and post-trade transparency requirements</i>	12 June 2017	07 Oct. 2017
Regulatory Technical Standards		
RTS 1: <i>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</i>	14 July 2016	31 March 2017
<i>Corrigendum</i>	06 Nov. 2017	10 Nov. 2017
RTS 2: <i>Transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives</i>	14 July 2016	31 March 2017
RTS 3: <i>The volume cap mechanism and the provision of information for the purposes of transparency and other calculations</i>	13 June 2016	31 March 2017
RTS 4: <i>Criteria for determining whether derivatives subject to the clearing obligation should be subject to the trading obligation</i>	26 May 2016	19 Nov. 2016
RTS 5: <i>The direct, substantial and foreseeable effect of derivative contracts within the Union and the prevention of the evasion of rules and obligations</i>	13 June 2016	31 March 2017
RTS 6: <i>The organisational requirements of investment firms engaged in algorithmic trading</i>	19 July 2016	31 March 2017
RTS 7: <i>Organisational requirements of trading venues</i>	14 July 2016	31 March 2017
RTS 8: <i>The requirements on market making agreements and schemes</i>	13 June 2016	31 March 2017
RTS 9: <i>The ratio of unexecuted orders to transactions in order to prevent disorderly trading conditions</i>	18 May 2016	31 March 2017
RTS 10: <i>Requirements to ensure fair and non-discriminatory co-location services and fee structures</i>	06 June 2016	31 March 2017
RTS 11: <i>The tick size regime for shares, depositary receipts and exchange traded funds</i>	14 July 2016	31 March 2017
RTS 12: <i>The determination of a material market in terms of liquidity in relation to notifications of a temporary halt in trading</i>	26 May 2016	31 March 2017
RTS 13: <i>Authorization, organisational requirements and the publication of transactions for data reporting services providers</i>	02 June 2016	31 March 2017
<i>Amending RTS</i>	26 Sept. 2017	17 Jan. 2018
RTS 14: <i>The specification of the offering of pre-and post-trade data and the level of disaggregation of data</i>	02 June 2016	31 March 2017
RTS 15: <i>Clearing access in respect of trading venues and central counterparties</i>	24 June 2016	31 March 2017

Level 2 Measure	European Commission	Official Journal
RTS 16: <i>Access in respect of benchmarks</i>	02 June 2016	19 Nov. 2016
RTS 17: <i>The admission of financial instruments to trading on regulated markets</i>	24 May 2016	31 March 2017
RTS 18: <i>The suspension and removal of financial instruments from trading</i>	24 May 2016	31 March 2017
RTS 20: <i>Criteria for establishing when an activity is to be considered to be ancillary to the main business</i>	01 Dec. 2016	31 March 2017
RTS 21: <i>Methodology for the calculation and application of position limits for commodity derivatives traded on trading venues and economically equivalent OTC contracts</i>	01 Dec. 2016	31 March 2017
RTS 22: <i>The reporting of transactions to competent authorities</i>	28 July 2016	31 March 2017
RTS 23: <i>The data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made ESMA and competent authorities</i>	14 July 2016	31 March 2017
RTS 24: <i>The maintenance of relevant data relating to orders in financial instruments</i>	24 June 2016	31 March 2017
RTS 25: <i>The level of accuracy of business clocks</i>	07 June 2016	31 March 2017
RTS 26: <i>The obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing</i>	29 June 2016	31 March 2017
RTS 27: <i>The data to be published by execution venues on the quality of execution of transactions</i>	08 June 2016	31 March 2017
RTS 28: <i>The annual publication by investment firms of information on the identity of execution venues and on the quality of execution</i>	08 June 2016	31 March 2017
<i>Information to be notified by investment firms, market operators and credit institutions</i>	29 June 2016	17 June 2017
<i>The exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations</i>	14 July 2016	31 March 2017
<i>Information and requirements for the authorisation of investment firms</i>	14 July 2016	26 Oct. 2017
<i>The information for registration of third country firms and the format of information to be provided to clients</i>	14 July 2016	19 Nov. 2016
<i>Package orders</i>	14 August 2017	28 Nov. 2017
<i>Information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm</i>	11 July 2017	26 Oct. 2017
<i>Indirect clearing arrangements</i>	22 Sept. 2017	21 Nov. 2017
<i>Trading obligation for derivatives</i>	17 Nov. 2017	22 Dec. 2017
Implementing Technical Standards		
ITS 1: <i>Standard forms, templates and procedures for cooperation arrangements in respect of a trading venue whose operations are of substantial importance in a host Member State</i>	06 June 2017	13 June 2017

Level 2 Measure	European Commission	Official Journal
ITS 2: <i>Format and timing of the communications and the publication regarding the suspension and removal of financial instruments from trading on a Regulated Market, an MTF or an OTF</i>	15 June 2017	16 June 2017
ITS 3: <i>Standard forms, templates and procedures for the authorisation of data reporting services providers and related notifications</i>	22 June 2017	23 June 2017
ITS 4: <i>Position reporting</i>	20 June 2017	21 June 2017
ITS 5: <i>Format and timing of position reports by investment firms and market operators of trading venues</i>	06 June 2017	07 June 2017
ITS 6: <i>Standard forms, templates and procedures for cooperation in supervisory activities, for on-site verifications, and investigations and exchange of information between competent authorities in accordance with MiFID2</i>	07 June 2017	10 June 2017
ITS 7: <i>Standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation in accordance with MiFID2</i>	07 June 2017	10 June 2017
ITS 8: <i>Procedures and forms for submitting information on sanctions and measures</i>	22 June 2017	23 June 2017
ITS 19: <i>The content and format of the description of the functioning of multilateral trading facilities and organised trading facilities and the notification to the ESMA according to MiFID2</i>	25 May 2016	26 May 2016
<i>Passporting (status: ESMA Final Report)</i>	Awaited	Awaited
<i>Standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm</i>	13 June 2017	26 Oct. 2017
<i>Notifications by and to applicant and authorised investment firms</i>	19 June 2017	26 Oct. 2017
<i>Standard forms, templates and procedures for the transmission of information and Corrigendum</i>	14 December 2017	20 December 2017

Table 5: Adopted Level 3 measures

Level 3 Measure	Published
<i>Guidelines on complex debt instruments and structured deposits</i>	04 February 2016
<i>Guidelines on cross-selling practices</i>	11 July 2016
<i>Guidelines on transaction reporting, order record keeping and clock synchronisation under MiFID2</i>	10 October 2016 (Corrected 07 August 2017)
<i>Guidelines for the assessment of knowledge and competence</i>	03 January 2017
<i>Guidelines on calibration of circuit breakers and publication of trading halts under MiFID2</i>	06 April 2017

Level 3 Measure	Published
<i>Guidelines on the management body of market operators and data reporting services providers</i>	28 September 2017
<i>Guidelines on product governance requirements</i>	05 February 2018

Table 6: Other documents

Questions and Answers (Q&As)/ Opinions / Instructions/ Procedures	Published
Q&As	
EC <i>FAQs</i> on interaction with third country broker-dealers	26 October 2017
ESMA <i>Q&As</i> on post trading topics	14 December 2017
ESMA <i>Q&As</i> on data reporting	18 December 2017
ESMA <i>FAQs</i> on interim transparency calculations	19 January 2018
ESMA <i>Q&As</i> on investor protection and intermediaries topics	23 March 2018
ESMA <i>Q&As</i> on commodity derivatives topics	27 March 2018
ESMA <i>Q&As</i> on market structures topics	28 March 2018
ESMA <i>Q&As</i> on transparency topics	28 March 2018
Opinions	
ESMA <i>Opinion</i> on OTC derivatives traded on a trading venue	22 May 2017
ESMA Opinions on position limits on <i>rapeseed, corn</i> and <i>milling wheat</i> contracts	10 August 2017
ESMA Opinions on position limits on <i>London cocoa, robusta coffee, white sugar, aluminium, copper, lead, nickel, tin</i> and <i>zinc</i>	24 October 2017
ESMA <i>Opinion</i> on determining third-country trading venues for the purpose of position limits under MiFID2	15 December 2017
ESMA <i>Opinion</i> on determining third-country trading venues for the purpose of transparency under MiFID2/ MiFIR	15 December 2017
ESMA <i>Opinion</i> on ancillary activity – market size calculation	22 December 2017
ESMA <i>Opinion</i> on the treatment of packages under the trading obligation for derivatives	21 March 2018
Instructions/ Procedures	
<i>Double Volume Cap System Reporting Instructions</i>	26 October 2016
<i>FIRDS Transparency System Reporting Instructions</i>	26 October 2016
<i>FIRDS Reference Data System Reporting Instructions</i>	26 October 2016
<i>FIRDS Transparency non-equity conditional completeness table</i>	05 April 2017
<i>Technical Reporting Instructions</i>	17 July 2017
<i>FIRDS Instructions on access and download of full and delta reference data files</i>	06 October 2017
<i>FIRDS Transparency System: Instructions on download and use of full</i>	18 December 2017

and delta transparency results

<i>Double Volume Cap System: Instructions on download and use of double volume cap results files</i>	18 December 2017
<i>Reporting of circuit breakers' parameters by NCAs to ESMA</i>	19 December 2017
<i>MiFID2 Transitional transparency calculation</i>	18 April 2018

Table 7: UK implementation

Paper	Published	Closed	Outcome
<i>FCA DP: DP15/3: Developing our approach to implementing MiFID2 conduct of business and organisational requirements</i>	March 2015	26 May 2015	<i>FCA CP1: MiFID2 implementation</i>
<i>HMT CP: Transposition of MiFID2</i>	March 2015	18 June 2015	09 February 2017 <i>Policy Statement</i>
<i>FCA CP1 : MiFID2 implementation</i>	Dec. 2015	08 March 2016	31 March 2017 <i>Policy Statement</i> 03 July 2017 <i>Policy Statement</i>
<i>PRA CP1: MiFID2 implementation: Part 1</i>	March 2016	27 May 2016	27 Oct. 2016 <i>Policy Statement</i>
<i>HMT PS: Transposition of MiFID2 – response to the consultation</i>	09 February 2017	-	-
<i>FCA CP2: MiFID2 implementation</i>	July 2016	28 Oct. 2016	31 March 2017 <i>Policy Statement</i> 03 July 2017 <i>Policy Statement</i>
<i>FCA CP3: MiFID2 implementation</i>	Sept. 2016	31 Oct. 2016 (Chapter 16) 04 Jan. 2017	03 July 2017 <i>Policy Statement</i>
<i>PRA CP2: MiFID2 implementation: Part 2</i>	Nov. 2016	27 Feb. 2017	28 April 2017 <i>Policy Statement</i>
<i>FCA CP4: MiFID2 implementation</i>	Dec. 2016	17 Feb. 2017 (Chapter 7 – 16 Jan. 2017)	03 July 2017 <i>Policy Statement</i>
<i>FCA CP5: MiFID2 implementation</i>	March 2017	12 May 2017 (chapter 3 and 4) 23 June 2017 (chapter2)	03 July 2017 <i>Policy Statement</i>
<i>FCA CP6: MiFID2 implementation</i>	03 July 2017	07 Sept. 2017	-
<i>FCA CP 17/34: Joint PRA and FCA form, PRA Rulebook, and FCA Handbook changes</i>	03 Oct. 2017	03 Nov. 2017	-
<i>PRA CP: Occasional Consultation Paper</i>	03 Oct.2017	03 Nov. 2017	15 Dec. 2017 <i>Policy Statement</i>

Table 8: Adopted UK implementing measures

1. *The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No 2) Regulations 2017* (SI 2017/1255)
2. *The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017* (SI 2017/488)
3. *The Data Reporting Services Regulations 2017* (SI 2017/699)
4. *The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017* (SI 2017/701)

Table 9: Equivalence decisions

1. *Commission Implementing Decision* (EU) 2017/2238 of 05 December 2017 on the equivalence of the legal and supervisory framework applicable to designated contract markets and swap execution facilities in the United States of America
2. *Commission Implementing Decision* (EU) 2017/2320 of 13 December 2017 on the equivalence of the legal and supervisory framework of the United States of America for national securities exchanges and alternative trading systems
3. *Commission Implementing Decision* (EU) 2017/2318 of 13 December 2017 on the equivalence of the legal and supervisory framework in Australia applicable to financial markets
4. *Commission Implementing Decision* (EU) 2017/2319 of 13 December 2017 on the equivalence of the legal and supervisory framework applicable to recognised exchange companies in Hong Kong Special Administrative Region
5. *Commission Implementing Decision* (EU) 2017/2441 of 21 December 2017 on the equivalence of the legal and supervisory framework applicable to stock exchanges in Switzerland

Table 10: Other developments

European Commission *Report* to the European Parliament and Council on exemptions for third-country central banks and other entities under MiFIR (*Annex*) (09 June 2017) and a proposed *Delegated Regulation* supplementing MiFIR as regards the exemption of certain third countries central banks in their performance of monetary, foreign exchange and financial stability policies from pre- and post-trade transparency requirements (*Annex*) (12 June 2017).

Annex A

MiFID2 Level 2 & 3 Measures

Level 1 Reference	Level 1 text setting out scope of Level 2/ Level 3 measure	ESMA Technical Advice/ Final Report	European Commission Adoption
Title I: Scope and definitions			
Article 2 Exemptions			
2(3)	Delegated acts to clarify when an investment service is provided in an incidental manner in the course of a regulated professional activity.	19 December 2014	25 April 2016
2(4)	Regulatory technical standards to specify the criteria for establishing when an activity is to be considered to be ancillary to the main business at a group level when the main business is not the provision of investment services or acting as a market-maker in relation to commodity derivatives.	28 September 2015 30 May 2016	01 December 2016
Article 4 Definitions			
4(1)(2)	Delegated acts specifying: <ul style="list-style-type: none"> (a) the derivative contracts referred to in Section C.6 of Annex I that have the characteristics of wholesale energy products that must be physically settled and C.6 energy derivative contracts; (b) the derivative contracts referred to in Section C.7 of Annex I that have the characteristics of other derivative financial instruments; (c) the derivative contracts referred to in Section C.10 of Annex I that have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, an MTF or an OTF. 	19 December 2014	25 April 2016
4(2)	Delegated acts to specify some technical elements of the MiFID2 definitions to adjust them to market developments, technological developments and experience of behaviour that is prohibited under the Market Abuse Regulation, and to ensure the uniform application of MiFID2.	19 December 2014	25 April 2016
Title II: Authorisation and operating conditions for investment firms			
Chapter I: Condition and procedures for authorisation			
Article 7 Procedures for granting and refusing requests for authorisation			
7(4)	Regulatory technical standards to specify: <ul style="list-style-type: none"> (a) the information to be provided to the competent authorities so they are satisfied that the investment firm has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations, including the 	29 June 2015	RTS: 14 July 2016

Level 1 Reference	Level 1 text setting out scope of Level 2/ Level 3 measure	ESMA Technical Advice/ Final Report	European Commission Adoption
7(5)	<p>programme of operations;</p> <p>(b) the requirements applicable to the management of investment firms, and the information for the notifications to competent authorities of membership of a management body and any changes to it;</p> <p>(c) the requirements applicable to shareholders and members with qualifying holdings, as well as obstacles which may prevent effective exercise of the supervisory functions of the competent authority.</p> <p>Implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information to competent authorities so they are satisfied that the investment firm has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations, and of information for the notifications to competent authorities of membership of a management body and any changes to it.</p>	29 June 2015	19 June 2017
Article 12 Assessment period (for notification of proposed acquisitions)			
12(8)	Regulatory technical standards to establish an exhaustive list of information that is necessary to carry out the assessment, to be included by proposed acquirers in their notification.		11 July 2017
12(9)	Implementing technical standards to determine standard forms, templates and procedures for the modalities of the consultation process between the relevant competent authorities.		
Article 13 Assessment (of notification of proposed acquisitions)			
13(1)	Delegated acts which adjust the criteria for appraising the suitability of the proposed acquirer and the financial soundness of the proposed acquisition.		
Article 16 Organisational requirements			
16(12)	Delegated acts to specify the concrete organisational requirements relating to policies and procedures to ensure compliance with MiFID2 and to the requirement to not conclude title transfer financial collateral arrangements with retail clients to be imposed on investment firms and on branches of third-country firms performing different investment services and/or activities and ancillary services or combinations thereof.	19 December 2014	07 April 2016 25 April 2016
Article 17 Algorithmic trading			
17(7)	<p>Regulatory technical standards to specify the following:</p> <p>(a) the details of organisational requirements to be imposed on investment firms providing different investment services and/or activities and ancillary services, whereby the specifications in relation to the organisational requirements relating to systems and controls will set out specific requirements for direct market access and for sponsored access in such a way as to ensure that the controls applied to sponsored access are at least equivalent to those applied to direct market access;</p>	28 September 2015	RTS 8 and RTS 6 (Annex)
	<p>(b) the circumstances in which firms would be required to engage in market making agreement, and the content of such agreements including the proportion of the trading venue's trading hours;</p>		RTS 8

Level 1 Reference	Level 1 text setting out scope of Level 2/ Level 3 measure	ESMA Technical Advice/ Final Report	European Commission Adoption
	(c) the situations constituting exceptional circumstances, including circumstances of extreme volatility, political and macroeconomic issues, system and operational matters, and circumstances which contradict the investment firm's		RTS 8
	(d) ability to maintain prudent risk management practices;		RTS 6 (Annex)
	(e) the content and format of the approved form for storing records of all firm's placed orders, and the length of time for which such records must be kept by the investment firm.		
Article 18 Trading process and finalisation of transactions in an MTF and an OTF			
18(11)	Implementing technical standards to determine content and format that market operators of OTF and MTF need to comply with to publicise how the relevant market functions	28 September 2015	ITS 19
Chapter II: Operating conditions for investment firms			
Section 1: General provisions			
Article 21 Regular review of conditions for initial authorisation			
21(2)	ESMA may develop guidelines regarding the monitoring methods.		
Article 23 Conflicts of interest			
23(4)	Delegated acts to: (a) define the steps that investment firms might reasonably be expected to take to identify, prevent, manage and disclose conflicts of interest when providing various investment and ancillary services and combinations thereof; (b) establish appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the clients or potential clients of the investment firm.	19 December 2014	25 April 2016
Section 2: Provisions to ensure investor protection			
Article 24 General principles and information to clients			
24(11)	Guidelines for the assessment and the supervision of cross-selling practices indicating, in particular, situations in which cross-selling practices are not compliant with obligations laid down in Article 24 MiFID2.	22 December 2015	
24(13)	Delegated acts to ensure that investment firms comply with the principles set out in Article 24 MiFID2 when providing investment or ancillary services to their clients, including: (a) the conditions with which the information must comply in order to be fair, clear and not misleading; (b) the details about content and format of information to clients in relation to client categorisation, investment firms and their services, financial instruments, costs and charges; (c) the criteria for the assessment of a range of financial instruments available on the market; (d) the criteria to assess compliance of firms receiving inducements with the obligation to act honestly, fairly and	19 December 2014	07 April 2016 25 April 2016

Level 1 Reference	Level 1 text setting out scope of Level 2/ Level 3 measure	ESMA Technical Advice/ Final Report	European Commission Adoption
	professionally in accordance with the best interest of the client.		
Article 25 Assessment of suitability and appropriateness and reporting to clients			
25(8)	Delegated acts to ensure that investment firms comply with the principles of assessment of suitability and appropriateness, and reporting to clients when providing investment or ancillary services to their clients, including information to obtain when assessing the suitability or appropriateness of the services and financial instruments for their clients, criteria to assess non-complex financial instruments, the content and the format of records and agreements for the provision of services to clients and of periodic reports to clients on the services provided.	19 December 2014	25 April 2016
25(9)	Guidelines specifying criteria for the assessment of knowledge and competence required from natural persons giving investment advice.	17 December 2015	
25(10)	Guidelines for the assessment of: (a) financial instruments incorporating a structure which makes it difficult for the client to understand the risk involved, such as bonds and other forms of securitised debt admitted to trading on a regulated market or on an MTF, and money market instruments; (b) structured deposits incorporating a structure which makes it difficult for the client to understand the risk of return or the cost of exiting the product before term.	26 November 2015	
25(11)	ESMA may develop guidelines, and update them periodically, for the assessment of financial instruments being classified as non-complex, taking into account the delegated acts adopted under Article 25(8) (see above).		
Article 27 Obligation to execute orders on terms most favourable to the client			
27(9)	Delegated acts concerning: (a) the criteria for determining the relative importance of the different factors that may be taken into account for determining the best possible result taking into account the size and type of order and the retail or professional nature of the client; (b) factors that may be taken into account by an investment firm when reviewing its execution arrangements and the circumstances under which changes to such arrangements may be appropriate. In particular, the factors for determining which venues enable investment firms to obtain on a consistent basis the best possible result for executing the client orders; (c) the nature and extent of the information to be provided to clients on their execution policies.	19 December 2014	25 April 2016
27(10)	Regulatory technical standards to determine: (a) the specific content, the format and the periodicity of data relating to the quality of execution taking into account the type of execution venue and the type of financial instrument concerned;	28 September 2015	RTS 28 (Annexes)
	(b) the content and the format of information to be published by investment firms in relation to the top execution venues and information on the quality of execution obtained.		RTS 27 (Annex)

Level 1 Reference	Level 1 text setting out scope of Level 2/ Level 3 measure	ESMA Technical Advice/ Final Report	European Commission Adoption
Article 28 Client order handling rules			
28(3)	Delegated acts to define: (a) the conditions and nature of the procedures and arrangements which result in the prompt, fair and expeditious execution of client orders and the situations in which or types of transaction for which investment firms may reasonably deviate from prompt execution so as to obtain more favourable terms for clients; (b) the different methods through which an investment firm can be deemed to have met its obligation to disclose not immediately executable client limit orders to the market.	19 December 2014	25 April 2016
Article 30 Transactions executed with eligible counterparties			
30(5)	Delegated acts to specify: (a) the procedures for requesting treatment as clients; (b) the procedures for obtaining the express confirmation from prospective counterparties that they agree to be treated as eligible counterparties; (c) the pre-determined proportionate requirements, including quantitative thresholds that would allow an undertaking to be considered to be an eligible counterparty.	19 December 2014	25 April 2016
Section 3: Market transparency and integrity			
Article 31 Monitoring of compliance with the rules of the MTF or the OTF and with other legal obligations			
31(4)	Delegated acts to determine circumstances that trigger an information requirement in cases of significant infringements of the rules, disorderly trading conditions, market abuse or system disruption.	19 December 2014	25 April 2016
Article 32 Suspension and removal of financial instruments from trading on an MTF or an OTF			
32(2)	Regulatory technical standards to further specify the cases in which the connection between a derivative relating or referenced to a financial instrument suspended or removed from trading and the original financial instrument implies that the derivative is also to be suspended or removed from trading, in order to achieve the objective of the suspension or removal of the underlying financial instrument.	28 September 2015	RTS 18
32(3)	Implementing technical standards to determine the format and timing of the communications on suspension or removal of the financial instrument and the publication referred to in paragraph 2 (see above).	11 December 2015 (ITS 2)	15 June 2017 (ITS 2)
32(4)	Delegated acts to list situations constituting significant damage to the investors' interests and the orderly functioning of the market that could be caused by suspension or removal of financial instruments and of any related derivative from trading on an MTF or an OTF.	19 December 2014	25 April 2016
Section 4: SME growth markets			
Article 33 SME growth markets			
33(8)	Delegated acts further specifying the requirements for MTFs registered as an SME growth markets. The measures shall	19 December 2014	25 April 2016

Level 1 Reference	Level 1 text setting out scope of Level 2/ Level 3 measure	ESMA Technical Advice/ Final Report	European Commission Adoption
	take into account the need for the requirements to maintain high levels of investor protection to promote investor confidence in those markets while minimising the administrative burdens for issuers on the market and that de-registrations do not occur nor shall registrations be refused as a result of a merely temporary failure to meet the conditions that at least 50 % of the issuers whose financial instruments are admitted to trading on the MTF are SMEs at the time when the MTF is registered as an SME growth market and in any calendar year thereafter.		
Chapter III: Rights of investment firms			
Article 34 Freedom to provide investment services and activities			
34(8)	Regulatory technical standards to specify the information <ul style="list-style-type: none"> • to be notified by any investment firm wishing to provide services within the territory of another Member State for the first time, or which wishes to change the range of services so provided, or in the event of a change in any of the particulars communicated, • to be communicated by any credit institution wishing to provide investment services as well as ancillary services through tied agents – the identity of those tied agents, • to be communicated by the investment firm or the market operator operating an MTF or an OTF – the Member State in which it intends to provide such arrangements. 	29 June 2015	RTS 29 June 2016
34(9)	Implementing technical standards to establish standard forms, templates and procedures for the transmission of information from the competent authority of the home Member State to the competent authority of the host Member State.	29 June 2015	
Article 35 Establishment of a branch			
35(11)	Regulatory technical standards to specify the information <ul style="list-style-type: none"> • to be notified by any investment firm wishing to establish a branch within the territory of another Member State or to use tied agents established in another Member State in which it has not established a branch, or in the event of a change in any of the information communicated, • relating to details of the accredited compensation scheme of which the investment firm is a member, and that need to be communicated by the competent authority of the home Member State to the competent authority of the host Member State, • to be notified by any credit institution wishing to use a tied agent established in a Member State outside its home Member State • to be notified in the event of a change in any of the information communicated 	29 June 2015	RTS 29 June 2016
35(12)	Implementing technical standards to establish standard forms, templates and procedures for the transmission of information from the competent authority of the home Member State to the competent authority of the host Member State.	29 June 2015	
Title III: Regulated markets			
Article 45 Requirements for the management body of a market operator			

Level 1 Reference	Level 1 text setting out scope of Level 2/ Level 3 measure	ESMA Technical Advice/ Final Report	European Commission Adoption
45(9)	<p>Guidelines on the following:</p> <ul style="list-style-type: none"> (a) the notion of sufficient time commitment of a member of the management body to perform that member's functions, in relation to the individual circumstances and the nature, scale and complexity of activities of the market operator; (b) the notion of adequate collective knowledge, skills and experience of the management body; (c) the notions of honesty, integrity and independence of mind of a member of the management body; (d) the notion of adequate human and financial resources devoted to the induction and training of members of the management body; (e) the notion of diversity to be taken into account for the selection of members of the management body. 		
Article 48 Systems resilience, circuit breakers and electronic trading			
48(12)	<p>Regulatory technical standards further specifying:</p> <ul style="list-style-type: none"> (a) the requirements to ensure trading systems of regulated markets are resilient and have adequate capacity; (b) the ratio of unexecuted orders to transactions in order to prevent disorderly trading conditions; (c) the controls concerning direct electronic access in such a way as to ensure that the controls applied to sponsored access are at least equivalent to those applied to direct market access; (d) the requirements to ensure that co-location services and fee structures are fair and non-discriminatory and that fee structures do not create incentives for disorderly trading conditions or market abuse; (e) the determination of where a regulated market is material in terms of liquidity in that financial instrument; (f) the requirements to ensure that market making schemes are fair and non-discriminatory and to establish minimum market making obligations that regulated markets must provide for when designing a market making scheme and the conditions under which the requirement to have in place a market making scheme is not appropriate, taking into account the nature and scale of the trading on that regulated market, including whether the regulated market allows for or enables algorithmic trading to take place through its systems; (g) the requirements to ensure appropriate testing of algorithms so as to ensure that algorithmic trading systems including high-frequency algorithmic trading systems cannot create or contribute to disorderly trading conditions on the market. 	28 September 2015	<p>RTS 8 and RTS 7 (Annex)</p> <p>RTS 9</p> <p>RTS 7 (Annex)</p> <p>RTS 10</p> <p>RTS 12</p> <p>RTS 8</p> <p>RTS 7 (Annex)</p>
48(13)	Guidelines on the appropriate calibration of trading halts.		
Article 49 Tick sizes			
49(3)	Regulatory technical standards to specify minimum tick sizes or tick size regimes for specific shares, depositary receipts, exchange-traded funds, certificates, and other similar financial instruments where necessary to ensure the orderly functioning of markets, and the price, spreads and depth of liquidity of the financial instruments.	28 September 2015	RTS 11 (Annex)

Level 1 Reference	Level 1 text setting out scope of Level 2/ Level 3 measure	ESMA Technical Advice/ Final Report	European Commission Adoption
49(4)	Regulatory technical standards to specify minimum tick sizes or tick size regimes for specific financial instruments other than those listed above where necessary to ensure the orderly functioning of markets, and the price, spreads and depth of liquidity of the financial instruments.	28 September 2015	RTS 11 (Annex)
Article 50 Synchronisation of business clocks			
50(2)	Regulatory technical standards to specify the level of accuracy to which clocks are to be synchronised in accordance with international standards.	28 September 2015	RTS 25 (Annex)
Article 51 Admission of financial instruments to trading			
51(6)	Regulatory technical standards which: (a) specify the characteristics of different classes of financial instruments to be taken into account by the regulated market when assessing whether a financial instrument is issued in a manner consistent with the conditions laid down for admission to trading on the different market segments which it operates; (b) clarify the arrangements that the regulated market is required to implement so as to be considered to have fulfilled its obligation to verify that the issuer of a transferable security complies with its obligations under Union law in respect of initial, ongoing or ad hoc disclosure obligations; (c) clarify the arrangements that the regulated market has to establish in order to facilitate its members or participants in obtaining access to information which has been made public under the conditions established by Union law.	28 September 2015	RTS 17
Article 52 Suspension and removal of financial instruments from trading on a regulated market			
52(2)	Regulatory technical standards to further specify the cases in which the connection between a derivative relating or referenced to a financial instrument suspended or removed from trading and the original financial instrument implies that the derivative are also to be suspended or removed from trading, in order to achieve the objective of the suspension or removal of the underlying financial instrument.	28 September 2015	RTS 18
52(3)	Implementing technical standards to determine the format and timing of the communications and publications relating to suspension and removal of financial instruments from trading on a regulated market.	11 December 2015 (ITS 2)	15 June 2017 (ITS 2)
52(4)	Delegated acts to specify the list of circumstances when suspension or removal would be likely to constitute significant damage to the investors' interests and the orderly functioning of the market.	19 December 2014	25 April 2016
Article 54 Monitoring of compliance with the rules of the regulated market and with other legal obligations			
54(4)	Delegated acts to determine circumstances that trigger an information requirement i.e. when the market operators of the regulated markets are required to immediately inform their competent authorities of significant infringements of their rules or disorderly trading conditions or conduct that may indicate market abuse or system disruptions in relation to a financial instrument.	19 December 2014	25 April 2016
Title IV: Position limits and position management controls in commodity derivatives and reporting			
Article 57 Position limits and position management controls in commodity derivatives			

Level 1 Reference	Level 1 text setting out scope of Level 2/ Level 3 measure	ESMA Technical Advice/ Final Report	European Commission Adoption
57(3)	Regulatory technical standards to determine the methodology for calculation that competent authorities are to apply in establishing the spot month position limits and other months' position limits for physically settled and cash settled commodity derivatives based on the characteristics of the relevant derivative.	28 September 2015 02 May 2016	01 December 2016
57(12)	Regulatory technical standards to determine: (a) the criteria and methods for determining whether a position qualifies as reducing risks directly relating to commercial activities; (b) the methods to determine when positions of a person are to be aggregated within a group; (c) the criteria for determining whether a contract is an economically equivalent OTC contract to that traded on a trading venue, in a way that facilitates the reporting of positions taken in equivalent OTC contracts to the relevant competent authority; (d) the definition of what constitutes the same commodity derivative and significant volumes; (e) the methodology for aggregating and netting OTC and on-venue commodity derivatives positions to establish the net position for purposes of assessing compliance with the limits. Such methodologies shall establish criteria to determine which positions may be netted against one another and shall not facilitate the build-up of positions; (f) the procedure setting out how persons may apply for the exemption and how the relevant competent authority will approve such applications; (g) the method for calculation to determine the venue where the largest volume of trading in a commodity derivative takes place and significant volumes.	28 September 2015 02 May 2016	01 December 2016
Article 58 Position reporting by categories of position holders			
58(5)	Implementing technical standards to determine the format of weekly reports with aggregate positions held by different categories of persons for different commodity derivatives or emission allowances, and of the breakdowns of positions taken.	11 December 2015 (revised ITS 4, 09 February 2017)	20 June 2017
58(6)	Delegated acts to specify the minimum thresholds for position reporting, having regard to the total number of open positions and their size and the total number of persons holding a position.	19 December 2014	25 April 2016
58(7)	Implementing technical standards to specify the measures to require all weekly reports to be sent to ESMA at a specified weekly time, for their centralised publication.	11 December 2015 (ITS 5)	
Title V: Data reporting services			
Section 1: Authorisation procedures for data reporting services providers			
Article 61 Procedures for granting and refusing requests for authorisation			
61(4)	Regulatory technical standards to determine: (a) the information to be provided to the competent authorities, including the programme of operations; (b) the information included in the notifications that the data reporting services provider is required to make to the competent authority of all members of its management body and of any changes to its membership.	28 September 2015	RTS 13

Level 1 Reference	Level 1 text setting out scope of Level 2/ Level 3 measure	ESMA Technical Advice/ Final Report	European Commission Adoption
61(5)	Implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information relating to the authorisation process and the implementation of the governance arrangements.	11 December 2015 (ITS 3)	ITS 3
Article 63 Requirements for the management body of a data reporting services provider			
63(2)	Guidelines for the assessment of the suitability of the members of the management body, taking into account different roles and functions carried out by them and the need to avoid conflicts of interest between members of the management body and users of the APA, CTP or ARM.		
Section 2: Conditions for APAs			
Article 64 Organisational requirements			
64(6)	Regulatory technical standards to determine common formats, data standards and technical arrangements facilitating the consolidation of information with similar data from other sources.	28 September 2015	RTS 13
64(7)	Delegated acts clarifying what constitutes a reasonable commercial basis to make information public.	19 December 2014	25 April 2016
64(8)	Regulatory technical standards specifying: (a) the means by which an APA may comply with the information obligation; (b) the content of the information published, including at least some details specified in MiFID2 in such a way as to enable the publication of information; (c) the concrete organisational requirements, namely effective administrative arrangements designed to prevent conflicts of interest; sound security mechanisms to guarantee the security of the means of transfer of information, minimise the risk of data corruption and unauthorised access, and to prevent information leakage before publication; systems that can effectively check trade reports for completeness, identify omissions and obvious errors, and request retransmission of erroneous reports.	28 September 2015	RTS 13
Section 3: Conditions for CTPs			
Article 65 Organisational requirements			
65(6)	Regulatory technical standards to determine data standards and formats for the information to be published in accordance with post-trade transparency and disclosure requirements under MiFIR, including financial instrument identifier, price, quantity, time, price notation, venue identifier and indicators for specific conditions the transactions was subject to as well as technical arrangements promoting an efficient and consistent dissemination of information in a way ensuring for it to be easily accessible and utilisable for market participants, including identifying additional services the CTP could perform which increase the efficiency of the market.	28 September 2015	RTS 13
65(7)	Delegated acts clarifying what constitutes a reasonable commercial basis to provide access to data streams.	19 December 2014	25 April 2016
65(8)	Regulatory technical standards specifying: (a) the means by which the CTP may comply with the information obligation; (b) the content of the information published;	28 September 2015	RTS 13

Level 1 Reference	Level 1 text setting out scope of Level 2/ Level 3 measure	ESMA Technical Advice/ Final Report	European Commission Adoption
	<ul style="list-style-type: none"> (c) the financial instruments data of which must be provided in the data stream and for non-equity instruments the trading venues and APAs which need to be included; (d) other means to ensure that the data published by different CTPs is consistent and allows for comprehensive mapping and cross-referencing against similar data from other sources, and is capable of being aggregated at Union level; (e) the concrete organisational requirements, namely effective administrative arrangements designed to prevent conflicts of interest, and sound security mechanisms to guarantee the security of the means of transfer of information, minimise the risk of data corruption and unauthorised access. 	31 March 2017	
Section 4: Conditions for ARMs			
Article 66 Organisational requirements			
66(5)	Regulatory technical standards specifying: <ul style="list-style-type: none"> (a) the means by which the ARM may comply with the information obligation; and (b) the concrete organisational requirements, namely effective administrative arrangements designed to prevent conflicts of interest; sound security mechanisms to guarantee the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage, maintain the confidentiality of the data; and systems that can effectively check transaction reports for completeness, identify omissions and obvious errors, and request retransmission of erroneous reports. 	28 September 2015	RTS 13
Title VI: Competent authorities			
Chapter I: Designation, powers and redress procedures			
Article 71 Publication of decisions			
71(7)	Implementing technical standards concerning the procedures and forms for submitting information by competent authorities on all imposed sanctions and measures.	11 December 2015 (ITS 8)	ITS 8
Chapter II: Cooperation between the competent authorities of the Member States and with ESMA			
Article 79 Obligation to cooperate			
79(8)	Delegated acts to establish the criteria under which the operations of a trading venue in a host Member State could be considered to be of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State.	19 December 2014	25 April 2016
79(9)	Implementing technical standards to establish standard forms, templates and procedures for the cooperation arrangements that the host and home competent authorities of a trading venue are required to establish when the operations of a trading venue that has established arrangements in a host Member State have become of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State.	11 December 2015 (ITS 1)	13 June 2017 (ITS 1)
Article 80 Cooperation between competent authorities in supervisory activities, for on-site verifications or investigations			

Level 1 Reference	Level 1 text setting out scope of Level 2/ Level 3 measure	ESMA Technical Advice/ Final Report	European Commission Adoption
80(3)	Regulatory technical standards to specify the information to be exchanged between competent authorities when cooperating in supervisory activities, on-the-spot-verifications, and investigations.	29 June 2015	RTS 14 July 2016
80(4)	Implementing technical standards to establish standard forms, templates and procedures for competent authorities to cooperate in supervisory activities, on-site verifications, and investigations.	11 December 2015 (ITS 6)	10 June 2017 (ITS 6)
Article 81 Exchange of information			
81(4)	Implementing technical standards to establish standard forms, templates and procedures for the exchange of information.	11 December 2015 (ITS 6)	10 June 2017 (ITS 6)
Article 84 Consultation prior to authorisation			
84(4)	Implementing technical standards to establish standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation.	11 December 2015 (ITS 7)	10 June 2017 (ITS 7)
Final provisions			
Article 90 Reports and review			
90(3)	<p>Delegated acts amending Articles 59 to 65 (authorisation procedures for data reporting services providers and organisational requirements for APAs and CTPs) and Section D of Annex I of MiFID2 (Data report services) and point (19) of Article 2(1) of MiFIR (“credit institution” definition), by specifying measures in order to:</p> <ul style="list-style-type: none"> (a) provide for the contract duration of the commercial entity operating a consolidated tape and the process and conditions for renewing the contract and the launching of new public procurement; (b) provide that the commercial entity operating a consolidated tape shall do so on an exclusive basis and that no other entity shall be authorised as a CTP; (c) empower ESMA to ensure adherence with tender conditions by the commercial entity operating a consolidated tape appointed through a public procurement; (d) ensure that the post-trade information provided by the commercial entity operating a consolidated tape is of a high quality, in formats that are easily accessible and usable for market participants and in a consolidated format capturing the entire market; (e) ensure that the post trade information is provided on a reasonable commercial basis, on both a consolidated and unconsolidated basis, and meets the needs of the users of that information across the Union; (f) ensure that trading venues and APAs shall make their trade data available to the commercial entity operating a consolidated tape appointed through a public procurement process run by ESMA at a reasonable cost; (g) specify arrangements applicable where the commercial entity operating a consolidated tape appointed through a public procurement fails to fulfil the tender conditions; (h) specify arrangements under which CTPs may continue to operate a consolidated tape where the empowerment provided for in point (b) of this paragraph is not used or, where no entity is appointed through the public procurement, until such time as a new public procurement is completed and a commercial entity is appointed to operate a consolidated tape. 		

Annex B

MiFIR Level 2 & 3 Measures

Level 1 Reference	Level 1 text setting out scope of Level 2/ Level 3 measure	ESMA Technical Advice/ Final Report Date	European Commission Adoption Date
Title I: Subject matter, scope and definitions			
Article 1 Subject matter and scope			
1(8)	<p>Regulatory technical standards to specify the monetary, foreign exchange and financial stability operations and the types of transactions</p> <ul style="list-style-type: none"> where the counterparty is a member state of the European System of Central Banks (ESCB) and where that transaction is entered into in performance of monetary, foreign exchange and financial stability policy which that member of the ESCB is legally empowered to pursue and where that member has given prior notification to its counterparty that the transaction is exempt, and in respect of which provisions on pre- and post-trade transparency requirements for trading venues, obligation for systematic internalisers to make public firm quotes, and post-trade disclosure by investment firms, including systematic internalisers, in respect of bonds, structured finance products, emission allowances and derivatives will not apply to regulated markets, market operators and investment firms; entered into by any member of the ESCB in performance of their investment operations. 	28 September 2015 02 May 2016	RTS 2
1(9)	Delegated acts, in respect of transactions entered into by any member of the ESCB in performance of their investment operations, on pre- and post-trade transparency requirements for trading venues, obligation for systematic internalisers to make public firm quotes, and post-trade disclosure by investment firms, including systematic internalisers, in respect of bonds, structured finance products, emission allowances and derivatives will not apply to regulated markets, market operators and investment firms, to other central banks.		
Article 2 Definitions			
2(2)	Delegated acts to specify certain technical elements of the MiFIR definitions to adjust them to market developments.	19 December 2014	18 May 2016
Title II: Transparency for trading venues			
Chapter 1: Transparency for equity instruments			
Article 4 Waivers for equity instruments			
4(6)	<p>Regulatory technical standards to specify the following:</p> <p>(a) the range of bid and offer prices or designated market-maker quotes, and the depth of trading interest at those prices, to be made public for each class of financial instrument concerned such as shares, depositary receipts, ETFs, certificates and other similar financial instruments, taking into account the necessary calibration for different types of</p>	28 September 2015	RTS 1 (Annex)

Level 1 Reference	Level 1 text setting out scope of Level 2/ Level 3 measure	ESMA Technical Advice/ Final Report Date	European Commission Adoption Date
	<p>trading systems, including order-book, quote-driven, hybrid and periodic auction trading systems;</p> <ul style="list-style-type: none"> (b) the most relevant market in terms of liquidity of a financial instrument; (c) the specific characteristics of a negotiated transaction in relation to the different ways the member or participant of a trading venue can execute such a transaction; (d) the negotiated transactions that do not contribute to price formation which avail of the waiver for systems that formalise these negotiated transactions; (e) the size of orders that are large in scale and the type and the minimum size of orders held in an order management facility of a trading venue pending disclosure for which pre-trade disclosure may be waived for each class of financial instrument concerned. 		
Article 5 Volume cap mechanism			
5(9)	<p>Regulatory technical standards to specify the method, including the flagging of transactions, by which ESMA collates, calculates and publishes the transaction data in order to provide an accurate measurement of the total volume of trading per financial instrument and the percentages of trading that use the following waivers across the Union and per trading venue:</p> <ul style="list-style-type: none"> • for systems matching orders based on a trading methodology by which the price of the financial instrument is derived from the trading venue where that financial instrument was first admitted to trading or the most relevant market in terms of liquidity, where the reference price is widely published and is regarded by market participants as a reliable reference price; • for systems that formalise negotiated transactions which are made within the current volume weighted spread reflected on the order book or the quotes of the market makers of the trading venue operating that system. 	28 September 2015	RTS 3
Article 7 Authorisation of deferred publication			
7(2)	<p>Regulatory technical standards to specify the following in such a way as to enable the publication of information required under organisational requirements for approved publication arrangements (APAs) (Article 64 MiFID2):</p> <ul style="list-style-type: none"> (a) the details of transactions that investment firms, including systematic internalisers and market operators and investment firms operating a trading venue shall make available to the public for each class of financial instrument concerned i.e. shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue, including identifiers for the different types of transactions published under post-trade transparency and disclosure provisions distinguishing between those determined by factors linked primarily to the valuation of the financial instruments and those determined by other factors; (b) the time limit that would be deemed in compliance with the obligation to publish as close to real time as possible including when trades are executed outside ordinary trading hours; (c) the conditions for authorising investment firms, including systematic internalisers and market operators and investment firms operating a trading venue to provide for deferred publication of the details of transactions for each class of financial instruments concerned i.e. share, depositary receipt, ETF, certificate or other similar financial instruments, and in accordance with the post-trade disclosure provisions; (d) the criteria to be applied when deciding the transactions for which, due to their size or the type, including liquidity profile 	28 September 2015	RTS 1 (Annex)

Level 1 Reference	Level 1 text setting out scope of Level 2/ Level 3 measure	ESMA Technical Advice/ Final Report Date	European Commission Adoption Date
	of the share, depositary receipt, ETF, certificate or other similar financial instrument involved, deferred publication is allowed for each class of financial instrument concerned.		
Chapter 2: Transparency for non-equity instruments			
Article 9 Waivers for non-equity instruments			
9(5)	<p>Regulatory technical standards to specify the following:</p> <ul style="list-style-type: none"> (a) the parameters and methods for calculating the threshold of liquidity – a specified threshold under which the liquidity of a class of bond, structured finance product, emission allowance or derivative falls, and the competent authority may then temporarily suspend pre-trade transparency obligations – in relation to the financial instrument. The parameters and methods for Member States to calculate the threshold shall be set in such a way that when the threshold is reached, it represents a significant decline in liquidity across all venues within the Union for the financial instrument concerned based on the criteria in the “liquid market” definition; (b) the range of bid and offer prices or quotes and the depth of trading interests at those prices, or indicative pre-trade bid and offer prices which are close to the price of the trading interest, to be made public for each class of financial instrument concerned i.e. bonds, structured finance products, emission allowances and derivatives, taking into account the necessary calibration for different types of trading systems, including order-book, quote-driven, hybrid, periodic auction trading and voice trading systems; (c) the size of orders that are large in scale and the type and the minimum size of orders held in an order management facility pending disclosure for which pre-trade disclosure may be waived for each class of financial instrument concerned; (d) the size specific to the financial instrument and the definition of request-for-quote and voice trading systems for which pre-trade disclosure may be waived. 	28 September 2015 02 May 2016	RTS 2
9(6)	Regulatory technical standards to establish the methodology for determining package orders for which there is a liquid market. When developing such methodology for determining whether there is a liquid market for a package order as a whole, ESMA shall assess whether packages are standardised and frequently traded.	28 February 2017 and RTS	14 August 2017
Article 11 Authorisation of deferred publication			
11(4)	<p>Regulatory technical standards to specify the following in such a way as to enable the publication of information required under Article 64 MiFID2 (Organisational requirements for approved publication arrangements (APAs)):</p> <ul style="list-style-type: none"> (a) the details of transactions that investment firms, including systematic internalisers, and market operators and investment firms operating a trading venue shall make available to the public for each class of financial instrument concerned i.e. bonds, structured finance products, emission allowances and derivatives, including identifiers for the different types of transactions published under the post-trade transparency and disclosure provisions, distinguishing between those determined by factors linked primarily to the valuation of the financial instruments and those determined by other factors; (b) the time limit that would be deemed in compliance with the obligation to publish as close to real time as possible 	28 September 2015 02 May 2016	RTS 2

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	<p>including when trades are executed outside ordinary trading hours;</p> <p>(c) the conditions for authorising investment firms, including systematic internalisers, and market operators and investment firms operating a trading venue, to provide for deferred publication of the details of transactions for each class of financial instrument concerned i.e. bonds, structured finance products, emission allowances and derivatives, and in accordance with the post-trade disclosure provisions;</p> <p>(d) the criteria to be applied when determining the size or type of a transaction for which deferred publication and publication of limited details of a transaction, or publication of details of several transactions in an aggregated form, or omission of the publication of the volume of a transaction with particular reference to allowing an extended length of time of deferral for certain financial instruments depending on their liquidity, is allowed.</p>		
Chapter 3: Obligation to offer trade data on a separate and reasonable commercial basis			
Article 12 Obligation to make pre-trade and post-trade data available separately			
12(2)	Regulatory technical standards to specify the offering of pre-trade and post-trade transparency data, including the level of disaggregation of the data to be made available to the public.	28 September 2015	RTS 14
Article 13 Obligation to make pre-trade and post-trade data available on a reasonable commercial basis			
13(2)	Delegated acts clarifying what constitutes a reasonable commercial basis in relation to data publication by venues.	19 December 2014	18 May 2016
Title III: Transparency for systematic internalisers and investment firms trading OTC			
Article 14 Obligation for systematic internalisers to make public firm quotes in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments			
14(7)	Regulatory technical standards to specify further the arrangements for the publication of a firm quote that investment firms must make public in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue for which they are systematic internalisers and for which there is a liquid market, the determination of whether prices reflect prevailing market conditions for the financial instrument, and of the standard market size that should be a size representative of the arithmetic average value of the orders executed in the market for the financial instruments included in each class of financial instruments.	28 September 2015	RTS 1 (Annex)
Article 15 Execution of client orders			
15(5)	Delegated acts clarifying what constitutes a reasonable commercial basis to make quotes public.	19 December 2014	18 May 2016
Article 17 Access to quotes			
17(3)	<p>Delegated acts specifying:</p> <p>(a) the criteria specifying when a quote is published on a regular and continuous basis and is easily accessible to other market participants on a reasonable commercial basis as well as the means by which investment firms may comply with their obligation to make public their quotes, which shall include the following possibilities:</p> <p>(i) through the facilities of any regulated market which has admitted the financial instrument in question to trading;</p>	19 December 2014	18 May 2016

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	<ul style="list-style-type: none"> (ii) through an APA; (iii) through proprietary arrangements; (b) the criteria specifying those transactions where execution in several securities is part of one transaction or those orders that are subject to conditions other than current market price in cases when systematic internalisers execute orders they receive from their professional clients at prices different than their quoted ones without having to comply with Article 27 MiFID2 (Obligation to execute orders on terms most favourable to the client); (c) the criteria specifying what can be considered as exceptional market conditions that allow for the withdrawal of quotes as well as the conditions for updating quotes; (d) the criteria specifying when the number and/or volume of orders sought by clients considerably exceeds the norm in cases when systematic internalisers limit the total number of transactions from different clients at the same time. (e) the criteria specifying when prices fall within a public range close to market conditions when in justified cases, systematic internalisers execute orders at a better price than the quoted prices at the time of reception of the order. 		
Article 19 Monitoring by ESMA			
19(2)	Delegated acts specifying the sizes at which a firm shall enter into transactions with any other client to whom the quote is made available. The size specific to the financial instrument shall be determined in accordance with the criteria set in Article 9(5)(d) (see above)	19 December 2014	18 May 2016
19(3)	Delegated acts clarifying what constitutes a reasonable commercial basis to make quotes public.	19 December 2014	18 May 2016
Article 20 Post-trade disclosure by investment firms, including systematic internalisers, in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments			
20(3)	Regulatory technical standards to specify the following: <ul style="list-style-type: none"> (a) identifiers for the different types of transactions published under this Article, distinguishing between those determined by factors linked primarily to the valuation of the financial instruments and those determined by other factors; (b) the application of the post-trade disclosure obligation to transactions involving the use of those financial instruments for collateral, lending or other purposes where the exchange of financial instruments is determined by factors other than the current market valuation of the financial instrument; (c) the party to a transaction that has to make the transaction public if both parties to the transaction are investment firms. 	28 September 2015	RTS 1 (Annex)
Article 21 Post-trade disclosure by investment firms, including systematic internalisers, in respect of bonds, structured finance products, emission allowances and derivatives			
21(5)	Regulatory technical standards in such a way as to enable the publication of information required under Article 64 MiFID2 (Organisational requirements for approved publication arrangements (APAs)) to specify the following: <ul style="list-style-type: none"> (a) the identifiers for the different types of transactions published, distinguishing between those determined by factors linked primarily to the valuation of the financial instruments and those determined by other factors; (b) the application of the post-trade disclosure obligation to transactions involving the use of bonds, structured finance products, emission allowances and derivatives for collateral, lending or other purposes where the exchange of financial 	28 September 2015 02 May 2016	RTS 2

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	instruments is determined by factors other than the current market valuation of the financial instrument; (c) the party to a transaction that has to make the transaction public if both parties to the transaction are investment firms.		
Article 22 Providing information for the purposes of transparency and other calculations			
22(4)	Regulatory technical standards to specify the content and frequency of data requests and the formats and the timeframe in which trading venues, APAs and consolidated tape providers (CTPs) must respond to requests from competent authorities for information to carry out calculations for determining the requirements for the pre- and post-trade transparency and the trading obligation regimes, and for determining whether an investment firm is a systematic internaliser, the type of data that must be stored, and the minimum period of time for which trading venues, APAs and CTPs must store data in order to be able to respond to such requests.	28 September 2015 02 May 2016	RTS 3 RTS 1 (Annex) and RTS 2
Article 23 Trading obligation for investment firms			
23(3)	Regulatory technical standards to specify the particular characteristics of those transactions in shares that do not contribute to the price discovery process, taking into consideration cases such as: (a) non-addressable liquidity trades; or (b) where the exchange of such financial instruments is determined by factors other than the current market valuation of the financial instrument.	28 September 2015	RTS 1 (Annex)
Title IV: Transaction reporting			
Article 25 Obligation to maintain records			
25(3)	Regulatory technical standards to specify the details of the relevant order data required to be maintained by the operator of the trading venue at the disposal of the competent authority that is not referred to in Article 26 (obligation to report transactions). Those draft regulatory technical standards shall include the identification code of the member or participant which transmitted the order, the identification code of the order, the date and time the order was transmitted, the characteristics of the order, including the type of order, the limit price if applicable, the validity period, any specific order instructions, details of any modification, cancellation, partial or full execution of the order, the agency or principal capacity.	28 September 2015	RTS 24 (Annex)
Article 26 Obligation to report transactions			
26(6)	Guidelines to ensure that the application of legal entity identifiers within the Union complies with international standards, in particular those established by the Financial Stability Board.		
26(9)	Regulatory technical standards to specify: (a) data standards and formats of transactions in financial instruments that must be reported, including the methods and arrangements for reporting financial transactions and the form and content of such reports; (b) the criteria for defining a relevant market (to ensure that the competent authority of the most relevant market in terms of liquidity for financial instruments also receives that information);	28 September 2015 04 May 2016	

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	<p>(c) the references of the financial instruments bought or sold, the quantity, the dates and times of execution, the transaction prices, the information and details of the identity of the client, a designation to identify the clients on whose behalf the investment firm has executed that transaction, a designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, a designation to identify the applicable waiver under which the trade has taken place, the means of identifying the investment firms concerned, the way in which the transaction was executed, data fields necessary for the processing and analysis of the transaction reports; and</p>		<p><i>RTS 22 (Annex)</i></p>
	<p>(d) the designation to identify short sales of shares and sovereign debt; (e) the relevant categories of financial instrument to be reported; (f) the conditions upon which legal entity identifiers are developed, attributed and maintained, by Member States to identify clients that are legal persons, and the conditions under which those legal entity identifiers are used by investment firms so as to provide for the designation to identify the clients in the transaction reports they are required to establish; (g) the application of transaction reporting obligations to branches of investment firms; (h) what constitutes a transaction and execution of a transaction for the purposes of this Article; (i) when an investment firm is deemed to have transmitted an order.</p>		
Article 27 Obligation to supply financial instrument reference data			
<p>27(3)</p>	<p>Regulatory technical standards to specify: (a) data standards and formats for the financial instrument reference data for the purposes of transaction reporting, including the methods and arrangements for supplying the data and any update thereto to competent authorities and transmitting it to ESMA, and the form and content of such data; (b) the technical measures that are necessary in relation to the arrangements to be made by ESMA and the competent authorities i.e. that they effectively receive the financial instrument reference data, that the data received is appropriate for the purpose of transaction reporting and is efficiently exchanged between the relevant competent authorities.</p>	<p><i>28 September 2015</i></p>	<p><i>RTS 23 (Annex)</i></p>

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Title V: Derivatives			
Article 28 Obligation to trade on regulated markets, MTFs or OTFs			
28(5)	Regulatory technical standards to specify the types of contracts which have a direct, substantial and foreseeable effect within the Union and the cases where the trading obligation is necessary or appropriate to prevent the evasion of any provision of MiFIR. Where possible and appropriate, the regulatory technical standards should be identical to those adopted under Article 4(4) EMIR (clearing obligation).	28 September 2015	RTS 5
Article 29 Clearing obligation for derivatives traded on regulated markets and timing of acceptance for clearing			
29(3)	Regulatory technical standards to specify the minimum requirements for systems, procedures and arrangements, including the acceptance timeframes, taking into account the need to ensure proper management of operational or other risks. ESMA shall have ongoing authority to develop further regulatory technical standards to update those in force if it considers that that is required as industry standards evolve.	28 September 2015	RTS 26
Article 30 Indirect Clearing Arrangements			
30(2)	Regulatory technical standards to specify the types of indirect clearing service arrangements, where established, that meet the following conditions: (i) they do not increase counterparty risk, and (ii) ensure that the assets and positions of the counterparty benefit from protection with equivalent effect to that referred to in EMIR, ensuring consistency with provisions established for OTC derivatives under Chapter II of Commission Delegated Regulation (EU) No 149/2013 (Delegated Regulation supplementing EMIR with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP)	26 May 2016	
Article 31 Portfolio Compression			
31(4)	Delegated acts specifying the following: (a) the elements of portfolio compression, (b) the information to be published through an APA by investment firms and market operators providing portfolio compression, in such a way as to make use as far as possible of any existing record keeping, reporting or publication requirements.	19 December 2014	18 May 2016
Article 32 Trading obligation procedure			
32(1)	Regulatory technical standards to specify the following: (a) which of the class of derivatives declared subject to the clearing obligation under EMIR or a relevant subset thereof shall be traded on regulated markets, MTFs, OTFs or third country trading venues; (b) the date or dates from which the trading obligation takes effect, including any phase-in and the categories of counterparties to which the obligation applies where such phase-in and such categories of counterparties have been		17 November 2017 (Annex)

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	provided for in regulatory technical standards in accordance with Article 5(2)(b) EMIR (clearing obligation procedure).		
32(5)	Regulatory technical standards to amend, suspend or revoke existing regulatory technical standards whenever there is a material change in the criteria for the trading obligation to take effect. Before doing so, ESMA may, where appropriate, consult the competent authorities of third countries.		
32(6)	Regulatory technical standards to specify the criteria which require there to be sufficient third-party buying and selling interest in the class of derivatives or subset so that such a class of derivatives or subset is considered sufficiently liquid to trade on trading venues only.	28 September 2015	RTS 4
Article 33 Mechanism to avoid duplicative or conflicting rules			
33(2)	Implementing acts declaring that the legal, supervisory and enforcement arrangements of the relevant third country: <ul style="list-style-type: none"> (a) are equivalent to the requirements resulting from trading and clearing obligations under MiFIR; (b) ensure protection of professional secrecy that is equivalent to that set out in MiFIR; (c) are being effectively applied and enforced in an equitable and non-distortive manner so as to ensure effective supervision and enforcement in that third country. 		
Title VI: Non-discriminatory clearing access for financial instruments			
Article 35 Non-discriminatory access to a CCP			
35(6)	Regulatory technical standards to specify: <ul style="list-style-type: none"> (a) the specific conditions under which an access request may be denied by a CCP, including the anticipated volume of transactions, the number and type of users, arrangements for managing operational risk and complexity or other factors creating significant undue risks; (b) the conditions under which access must be permitted by a CCP, including confidentiality of information provided regarding financial instruments during the development phase, the non-discriminatory and transparent basis as regards clearing fees, collateral requirements and operational requirements regarding margining; (c) the conditions under which granting access will threaten the smooth and orderly functioning of markets or would adversely affect systemic risk; (d) the procedure for making a notification by the competent authority to members of the college of competent authorities for the CCP and ESMA when a transitional period (until 3 July 2019), during which Article 35 MiFIR does not apply to the CCP in respect of transferable securities and money market instruments, is approved; (e) the conditions for non-discriminatory treatment in terms of how contracts traded on that trading venue are treated in terms of collateral requirements and netting of economically equivalent contracts and cross-margining with correlated contracts cleared by the same CCP. 	28 September 2015	RTS 15 (Annex)

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Article 36 Non-discriminatory access to a trading venue			
36(6)	Regulatory technical standards to specify: <ul style="list-style-type: none"> (a) the specific conditions under which an access request may be denied by a trading venue, including conditions based on the anticipated volume of transactions, the number of users, arrangements for managing operational risk and complexity or other factors creating significant undue risks; (b) the conditions under which access shall be granted, including confidentiality of information provided regarding financial instruments during the development phase and the non-discriminatory and transparent basis as regards fees related to access; (c) the conditions under which granting access will threaten the smooth and orderly functioning of the markets, or would adversely affect systemic risk; (d) the procedure for making a notification by a trading venue that falls below a relevant threshold before MiFIR starts applying, to ESMA and a competent authority that a trading venue opts-out of Article 36 MiFIR application for exchange-traded derivatives for a specified period of time), including further specifications for calculation of the notional amount and the method by which ESMA may verify the calculation of the volumes and approve the opt-out. 		<i>RTS 15 (Annex)</i>
Article 37 Non-discriminatory access to and obligation to licence benchmarks			
37(4)	Regulatory technical standards to specify: <ul style="list-style-type: none"> (a) the information through licensing to be made available (relevant price and data feeds and information on the composition, methodology and pricing of a benchmark, by reference to which the value of any financial instrument is calculated for the purposes of clearing and trading, for the sole use of the CCP or trading venue; (b) other conditions under which access is granted, including confidentiality of information provided; (c) the standards guiding how a benchmark may be proven to be new. 	<i>28 September 2015</i>	<i>RTS 16</i>
Title VII: Supervisory measures on product intervention and positions			
Chapter 1: Product monitoring and intervention			
Article 40 ESMA temporary intervention powers			
40(8)	Delegated acts specifying criteria and factors to be taken into account by ESMA in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or commodity markets or to the stability of the whole or part of the financial system of the Union. Those criteria and factors shall include: <ul style="list-style-type: none"> (a) the degree of complexity of a financial instrument and the relation to the type of client to whom it is marketed and sold; (b) the size or the notional value of an issuance of financial instruments; (c) the degree of innovation of a financial instrument, an activity or a practice; (d) the leverage a financial instrument or practice provides. 	<i>19 December 2014</i>	<i>18 May 2016</i>
Article 41 EBA temporary intervention powers			

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41(8)	<p>Delegated acts to specify criteria and factors to be taken into account by EBA in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets and to the stability of the whole or part of the financial system of the Union.</p> <p>Those criteria and factors shall include:</p> <ul style="list-style-type: none"> (a) the degree of complexity of a structured deposit and the relation to the type of client to whom it is marketed and sold; (b) the size or the notional value of an issuance of structured deposits; (c) the degree of innovation of a structured deposit, an activity or a practice; (d) the leverage a structured deposit or practice provides. 	19 December 2014	18 May 2016
Article 42 Product intervention by competent authorities			
42(7)	<p>Delegated acts specifying criteria and factors to be taken into account by competent authorities in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or commodity markets or to the stability of the of the financial system within at least one Member State.</p> <p>Those criteria and factors shall include:</p> <ul style="list-style-type: none"> (a) the degree of complexity of a financial instrument or structured deposit and the relation to the type of client to whom it is marketed, distributed and sold; (b) the degree of innovation of a financial instrument or structured deposit, an activity or a practice; (c) the leverage a financial instrument or structured deposit or practice provides; (d) in relation to the orderly functioning and integrity of financial markets or commodity markets, the size or the notional value of an issuance of financial instruments or structured deposits. 	19 December 2014	18 May 2016
Chapter 2: Positions			
Article 45 Position management powers of ESMA			
45(10)	<p>Delegated acts to specify criteria and factors to determine:</p> <ul style="list-style-type: none"> (a) the existence of a threat to the orderly functioning and integrity of financial markets, including commodity derivative markets in accordance with the objectives listed in Article 57(1) of MiFID2 (market abuse prevention and supporting orderly pricing and settlement conditions), and including in relation to delivery arrangements for physical commodities, or to the stability of the whole or part of the financial system in the Union taking account of the degree to which positions are used to hedge positions in physical commodities or commodity contracts and the degree to which prices in underlying markets are set by reference to the prices of commodity derivatives; (b) the appropriate reduction of a position or exposure entered into via a derivative; (c) the situations where a risk of regulatory arbitrage could arise. <p>Those criteria and factors shall take into account the regulatory technical standards determining the methodology for calculation that competent authorities are to apply in establishing the spot and other month's position limits for physically and cash settled commodity derivatives based on the characteristics of the relevant derivative, and shall differentiate between situations where ESMA takes action because a competent authority has failed to act and those where ESMA addresses an additional risk which the competent authority is not able to sufficiently address by using its powers to require the provision of information including relevant documentation, and request any person to take steps to reduce the size of</p>	19 December 2014	18 May 2016

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the position or exposure.			
Title VIII: Provision of services and performance of activities by third country firms following an equivalence decision with or without a branch			
Article 46 General provisions			
46(7)	Regulatory technical standards to specify the information that the applicant third-country firm shall provide to ESMA in its application for registration, and the format of information to be provided by third-country firms to clients established in the Union i.e. that they are only allowed to provide services to eligible counterparties and professional clients, and that they are not subject to supervision in the Union, and the name and the address of the competent authority responsible for supervision in the third country.	<i>29 June 2015</i>	<i>RTS 14 July 2016</i>

Offices

Amsterdam

Simmons & Simmons LLP
PO Box 79023 1070 NB
Claude Debussylaan 247 1082 MC Amsterdam
The Netherlands
T +31 20 722 2500 F +31 20 722 2599

Beijing

Simmons & Simmons
33rd Floor China World Tower A
1 Jianguomenwai Avenue
Beijing 100004 People's Republic of China
T +86 10 8588 4500 F +86 10 8588 4588

Bristol

Simmons & Simmons LLP
One Linear Park Temple Quay
Bristol BS2 0PS United Kingdom
T +44 20 7628 2020 F +44 20 7628 2070

Brussels

Simmons & Simmons LLP
Avenue Louise/Louizalaan 143 1050 Brussels Belgium
T +32 2 542 09 60 F +32 2 542 09 61

Doha

Simmons & Simmons Middle East LLP
Level 5 Al Mirqab Tower Al Corniche Street
PO Box 23540 Doha State of Qatar
T +974 4409 6700 F +974 4409 6701

Dubai

Simmons & Simmons Middle East LLP
Level 7 The Gate Village Building 10
Dubai International Financial Centre
PO Box 506688 Dubai United Arab Emirates
T +971 4 709 6600 F +971 4 709 6601

Düsseldorf

Simmons & Simmons LLP
Kö-Bogen
Königsallee 2a
40212 Düsseldorf Germany
T +49 2 11-4 70 53-0 F +49 2 11-4 70 53-53

Frankfurt

Simmons & Simmons LLP
MesseTurm Friedrich-Ebert-Anlage 49
60308 Frankfurt am Main Germany
T +49 69-90 74 54-0 F +49 69-90 74 54-54

Hong Kong

Simmons & Simmons
13th Floor One Pacific Place
88 Queensway Hong Kong
T +852 2868 1131 F +852 2810 5040

Jeddah

Hammad & Al-Mehdar in alliance with Simmons & Simmons
Office #1209, King Road Tower, Malik Road,
PO Box 864 Jeddah 21421
Kingdom of Saudi Arabia
T +966 92 000 4626 F +966 2 606 9190

Lisbon

Sociedade Rebelo de Sousa in association with
Simmons & Simmons
Rua D. Francisco Manuel de Melo 21
1070-085 Lisbon Portugal
T +351 21 313 2000 F +351 21 313 2001

London

Simmons & Simmons LLP
CityPoint One Ropemaker Street
London EC2Y 9SS United Kingdom
T +44 20 7628 2020 F +44 20 7628 2070

Luxembourg

Simmons & Simmons Luxembourg LLP
Royal Monterey 26A Boulevard Royal
L-2449 Luxembourg
Grand Duchy of Luxembourg
T +352 26 21 16 01 F +352 26 21 16 02

Madrid

Simmons & Simmons LLP
Calle Miguel Angel 11 5th floor 28010 Madrid Spain
T +34 91 426 2640 F +34 91 578 2157

Milan

Studio Legale Associato in affiliation with
Simmons & Simmons LLP
Via Tommaso Grossi 2 20121 Milan Italy
T +39 02 72505.1 F +39 02 72505.505

Munich

Simmons & Simmons LLP
Lehel Carré, Thierschplatz 6
80538 Munich Germany
T +49 89-20 80 77 63-00 F +49 89-20 80 77 63-01

Paris

Simmons & Simmons LLP
5 boulevard de la Madeleine 75001 Paris France
T +33 1 53 29 16 29 F +33 1 53 29 16 30

Riyadh

Hammad & Al-Mehdar in alliance with Simmons & Simmons
Level 18 Princess Al-Anood Tower 2
King Fahad Road Olaya
Riyadh Kingdom of Saudi Arabia
T +966 92 000 4626 F +966 12 606 9190

Shanghai

Simmons & Simmons
42nd Floor Wheelock Square
No. 1717 Nan Jing West Road
Shanghai 200040 People's Republic of China
T +86 21 6249 0700 F +86 21 6249 0706

Singapore

Simmons & Simmons JWS Pte. Ltd.
168 Robinson Road #11-01
Capital Tower
Singapore 068912
T +65 6831 5600 F +65 6831 5688

Tokyo

Simmons & Simmons Gaikokuho Jimu Bengoshi Jimusho
(Gaikokuho Joint Enterprise TMI Associates)
23rd floor Roppongi Hills Mori Tower
6-10-1 Roppongi Minato-ku Tokyo 106-6123 Japan
T +81 3 6438 5255 F +81 3 6438 5256

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