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MIFID REVIEW – THE MIFIR2/MIFID3 LEGISLATIVE PROPOSALS
DECEMBER 2021

AGENDA



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OBJECTIVES AND TIMELINE



OBJECTIVES OF MIFIR2/MIFID3

MiFIR2 will amend MiFIR to achieve three main objectives



While MiFID3 will make limited additional and consequential amendments to MiFID

INDICATIVE TIMELINE

	Nov 2021	Q1 2023	Q2 2023	Q3 2023	Q4 2023	Q1 2024	Q1 2025
Level 1	Commission legislative proposals	MiFIR2/MiFID3 become law				Transposition deadline for MiFID3	
Level 2		ESMA starts consultations on RTS and technical advice to Commission		ESMA delivers draft RTS on clock synchronisation	ESMA delivers draft RTS on reasonable commercial basis and CTP reporting obligations	Commission adopts delegated acts on market data quality	
Other actions	<i>Commission feedback period ends 27 Jan 2022</i>		ESMA first selection procedure to select CTPs Commission sets up expert group on market data quality	ESMA selects and authorises first CTPs			ESMA report on transaction reporting

Notes. Assumes a quick, 15-month legislative process. MiFIR2 and MiFID3 would enter into force 20 days after publication in the Official Journal and MiFID3 would require Member States to implement its provisions within 12 months. MiFIR2/MiFID3 do not contain transitional provisions for venues or firms. ESMA would be required to deliver draft RTS on clock synchronisation within six months and draft RTS on reasonable commercial basis and the reporting obligations of consolidated tape providers (CTPs) within nine months. ESMA would also need to revise its RTS on post-trade transparency and may revise its RTS on transaction reporting. There is no deadline for the Commission's adoption of delegated acts on market data quality. ESMA would be required to organize a first selection procedure for CTPs within three months of MiFIR2 becoming law and to select and authorise those CTPs within three months of initiating that procedure. ESMA would be required to deliver a report on more integration in transaction reporting and streamlining of data flows of transaction reports within two years.



OUTLINE OF MIFIR2/MIFID3



OUTLINE OF MIFIR2

Bilateral vs multilateral systems	Art 1(1) amending Art 1 MiFIR	MiFIR2 would replicate in MiFIR the provisions currently in MiFID requiring multilateral systems to operate as trading venues (with a view to greater harmonisation). MiFID3 would delete the corresponding provision in MiFID.
Equities pre-trade transparency: reference price waiver	Art 1(3) amending Art 4 MiFIR	MiFIR2 would restrict trading venues from executing trades under the reference price waiver where the size of the trade is less than twice standard market size (SMS) and allow execution under the waiver at the consolidated tape midpoint.
Equities pre-trade transparency: double volume cap	Art 1(4) amending Art 5 MiFIR	MiFIR2 would replace the double volume cap with a single volume cap set at 7% of trades executed under the reference price waiver or the negotiated trade waiver.
Non-equities pre-trade transparency: waivers	Art 1(5) amending Art 9 MiFIR	<p>MiFIR2 would remove the ability of venues to obtain a waiver for actionable indications of interest above the size specific to the instrument (SSTI).</p> <p>The removal of this waiver would also extend the pre-trade transparency obligations of SIs when they deal in sizes above SSTI.</p>
Non-equities post-trade transparency: deferral	Art 1(6) amending Art 11 MiFIR	<p>MiFIR2 would shorten and harmonise publication deferrals for non-equity post-trade reports: publication of the price of transactions could be deferred until the end of the trading day and the volume of transactions for a maximum of two weeks (and delete the deferral for trades above SSTI). However, competent authorities would continue to have more discretion on deferrals for sovereign debt.</p> <p>ESMA would develop RTS to specify 15 minute, end of trading day and two week deferred publication buckets based on liquidity, size of trade and (for bonds) classification as investment grade or high yield.</p>
Publication of pre- and post-trade data: reasonable commercial basis	Art 1(7) amending Art 13 MiFIR	MiFIR2 would require ESMA to draft RTS specifying the content, format and terminology of the pre- and post-trade data that trading venues, APAs, CTPs and SIs are required to make available on a reasonable commercial basis (as the requirements have been interpreted in different ways, notwithstanding ESMA guidelines).

OUTLINE OF MIFIR2

(CONTINUED)

Equities pre-trade transparency: SIs' quotation obligation	Art 1(8) and (9) amending Art 14 and 17a MiFIR	<p>MiFIR2 would extend SIs' quotation obligations for equities to trades of up to twice SMS (and the minimum quote size would be increased from 10% of SMS to twice SMS). SIs would not be allowed to match smaller trades at midpoint.</p> <p>SIs' quotes, price improvements on those quotes and execution prices would still have to comply with the tick size rules applicable to trading venues and SIs would still be able to match orders at midpoint where the orders are large-in-scale (LIS) but also, subject to compliance with tick sizes, between twice SMS and LIS.</p>
Consolidated tape	Art 1(10) and (15) to (17) adding new Arts 22a to 22b, 27da, 27h and 27ha MiFIR	<p>MiFIR2 would require ESMA to establish a process for selection of consolidated tape providers (CTPs) for shares, ETFs, bonds and derivatives for five-year terms. CTPs would consolidate and publish post-trade data (including prices, volumes and timestamps). After the first five years, the consolidated tape for shares could be extended to include the best bids and offers with corresponding volumes.</p> <p>Trading venues, SIs and other investment firms, and APAs would be required to contribute harmonised market data to the appointed CTP for shares, ETFs and bonds traded on a trading venue and OTC derivatives subject to the clearing obligation as needed for the CTP to be operational. The Commission would be empowered to adopt a delegated act on market data quality.</p> <p>CTPs would contribute data free of charge but the CTP for shares would establish a revenue sharing scheme for data provided by regulated markets. CTPs would not be required to make data available to users free of charge after 15 minutes.</p>
Clock synchronisation	Art 1(10) adding new Art 22c MiFIR	<p>MiFIR2 would require trading venues and their members or participants, SIs, APAs and CTPs to synchronise their business clocks. MiFID3 would delete the corresponding existing provision in MiFID which only applies to trading venues and their members or participants.</p>

OUTLINE OF MIFIR2

(CONTINUED)

Share trading obligation	Art 1(11) amending Art 23 MiFIR	<p>MiFIR2 would amend the share trading obligation so that it applies to shares with an EEA ISIN (apparently whether or not admitted to trading on an EU venue, although the MiFIR2 explanatory memorandum states that the obligation would only apply to shares admitted to trading on an EU regulated market). ESMA would be required to establish an official list of the shares covered by the obligation.</p> <p>MiFIR2 would also delete the exception for non-systematic trades and add an exception for trades on a third-country venue in the local currency.</p>
Derivatives trading obligation	Art 1(18) to (20) amending Arts 28 and 32 and adding new Art 32a MiFIR	<p>MiFIR2 would align the scope of the entities subject to the derivatives trading obligation with the scope of the entities subject to the clearing obligation under EMIR, as amended by EMIR Refit.</p> <p>The Commission would also be able to suspend the trading obligation when the clearing obligation is suspended and, separately, for EU investment firms dealing with non-EU counterparts where the obligation is an obstacle to liquidity provision.</p>
Transaction and financial instrument data reporting	Art 1(12), (13) and (14) amending Arts 26 and 27 MiFIR	<p>MiFIR2 would allow ESMA to draft amendments to the RTS specifying the date for transaction and financial instrument reference data reports (and encourages alignment of reporting with EMIR, SFTR and international standards). ESMA would be required to deliver a report on more integration in transaction reporting and streamlining of data flows of transaction reports within two years.</p>
Open access obligation for exchange-traded derivatives (ETDs)	Art 1(21) to (23) amending Arts 35, 36 and 38 MiFIR	<p>EU CCPs would not be obliged to clear ETDs traded on non-affiliated trading venues and EU trading venues would not need to provide trade feeds to non-affiliated CCPs clearing ETDs.</p>
Payment for order flow	Art 1(26) adding new Art 39a MiFIR	<p>MiFIR2 would prohibit investment firms acting on behalf of clients receiving any fee or commission or non-monetary benefits from a third party for forwarding client orders to that third party for execution. The explanatory statement suggests that this would be limited to retail client order flow but that is not reflected in MiFIR2 text.</p>

Notes. This is based on the Commission's legislative proposal for MiFIR2. The European Parliament and the Council may amend the proposal during the legislative process.

OUTLINE OF MIFID3

Exemptions: direct electronic access	Art 1(2) amending Art 2(1)(d) MiFID	MiFID3 would amend the exemptions in MiFID to allow firms dealing on own account to have direct electronic access to an EU trading venue (otherwise than as a member or participant) without being required to be authorised under MiFID.
Execution quality reports	Art 1(4) amending Art 27 MiFID	MiFID3 would remove the requirement for execution venues to publish execution quality reports complying with Commission Delegated Regulation (EU) 2017/575 (RTS 27).
Data quality standards	Art 1(5) and (6) amending Art 31 and 47 MiFID	MiFID3 would require investment firms and trading venues to have arrangements to comply with data quality standards set out in delegated acts adopted under MiFIR as amended by MiFIR2.
Amendments consequential on amendments to MiFIR	Art 1(1), (3), (7), (8) and (9) amending Arts 1, 4, 50 and 70 MiFID	MiFID3 would amend MiFID to remove the provisions on bilateral v multilateral systems, the definition of multilateral system and the provisions on synchronisation of business clocks and to update the provisions on sanctions to reflect the changes to MiFID and MiFIR.

Notes. This is based on the Commission's legislative proposal for MiFID3. The European Parliament and the Council may amend the proposal during the legislative process.

The Commission is also assessing the MiFID rules on inducements and disclosure, possible reductions in the administrative burden and information requirements for a subset of retail investors and new requirements for financial advisers. The Commission plans to publish a comprehensive study on retail investment and a feasibility assessment of a pan-EU label for financial advisers in Q1 2022 and to adopt a retail investment strategy in Q4 2022.



MIFIR2/MIFID3 V UK WHOLESALE MARKET REVIEW



MIFIR2/MIFID3 V UK WHOLESALE MARKETS REVIEW

TRADING VENUES AND SYSTEMATIC INTERNALISERS

	EU MIFIR2/MiFID3 proposals	UK Wholesale Markets Review proposals
Definition of trading venue	<ul style="list-style-type: none"> Replicate existing MiFID definitions in MiFIR. 	<ul style="list-style-type: none"> To be clarified through FCA guidance.
Permitted activities of MTFs and OTFs	<ul style="list-style-type: none"> No proposed change. 	<ul style="list-style-type: none"> Permit matched principal trading by MTFs. SI and OTF permitted in the same legal entity. OTF execution of equities when dealing packages.
Trading outages	<ul style="list-style-type: none"> No proposed change. 	<ul style="list-style-type: none"> New playbook for trading venues and participants. Alternative mechanism to closing auctions during an outage.
Definition of SI	<ul style="list-style-type: none"> No proposed change. 	<ul style="list-style-type: none"> Qualitative instead of quantitative criteria. Entity rather than instrument level classification.
Consolidated tape	<ul style="list-style-type: none"> To cover post-trade data for shares, ETFs, bonds and mandatorily cleared OTC derivatives (possible later extension to cover pre-trade data for shares). CTPs not required to make data available for free after 15 minutes. 	<ul style="list-style-type: none"> Priority is a consolidated tape for fixed income post-trade data. CTPs not required to make data available for free after 15 minutes.
Clock synchronisation	<ul style="list-style-type: none"> Trading venues and their members or participants, SIs, APAs, CTPs to synchronise business clocks. 	<ul style="list-style-type: none"> No proposed change (may be linked to development of consolidated tape).
Publication of pre- and post-trade data	<ul style="list-style-type: none"> ESMA to draft RTS specifying content, format and terminology of published trade data. 	<ul style="list-style-type: none"> To be addressed by changes to the FCA rulebook following call for input on market data.
Open access: exchange-traded derivatives	<ul style="list-style-type: none"> Obligation to be abolished. 	<ul style="list-style-type: none"> Obligation no longer applies in the UK.

MIFIR2/MIFID3 V UK WHOLESALE MARKETS REVIEW

EQUITY MARKETS

	EU MIFIR2/MiFID3 proposals	UK Wholesale Markets Review proposals
Reference price waiver	<ul style="list-style-type: none"> Restrict trading venues from using waiver where the size of the trade is less than twice standard market size. Allow the reference price to be derived from the consolidated tape. 	<ul style="list-style-type: none"> Allow trading venues to derive a reference price from any trading platform that offer best execution. This would enable price reference systems to match order at the mid-point within the current bid/offer of any UK or non-UK trading venue that offers the best bid/offer.
Double volume cap	<ul style="list-style-type: none"> Replace with a single volume cap set at 7% of trades executed under the reference price waiver or the negotiated trade waiver. 	<ul style="list-style-type: none"> Repeal cap. FCA to continue to monitor level of dark trading with ability to limit if evidence volume of dark pool trading is undermining price formation.
SIs' quotation obligations	<ul style="list-style-type: none"> Extended to trades of up to twice SMS (and the minimum quote size would also be twice SMS). SIs only allowed to match at midpoint for LIS orders and, subject to compliance with tick sizes, between twice SMS and LIS. 	<ul style="list-style-type: none"> Permit SIs to execute client orders at mid-point within best bid and offer trades below LIS provided within SI's quotes price and not larger than quote size.
Tick sizes	<ul style="list-style-type: none"> SIs to comply with tick size rules applicable to trading venues. 	<ul style="list-style-type: none"> Calibrate trading venue tick sizes to the relevant primary market of share when the primary market is not the UK.
Share trading obligation	<ul style="list-style-type: none"> Apply to shares with EEA ISINs. New exemption for execution on non-EU venues in local currency. Exception for non-systematic trades to be deleted. 	<ul style="list-style-type: none"> To be abolished.

MIFIR2/MIFID3 V UK WHOLESALE MARKETS REVIEW

FIXED INCOME MARKETS

	EU MIFIR2/MiFID3 proposals	UK Wholesale Markets Review proposals
Derivatives trading obligation (DTO)	<ul style="list-style-type: none"> Align entity scope of DTO and clearing obligation. No proposal for new exemptions. New powers to suspend trading obligation. 	<ul style="list-style-type: none"> Align entity scope of DTO and clearing obligation. Extend exemptions for non-price forming trades. Give FCA powers to suspend or modify the DTO.
Transparency - scope	<ul style="list-style-type: none"> No proposed change. 	<ul style="list-style-type: none"> Remove ToTV concept as limit on scope.
Pre-trade transparency	<ul style="list-style-type: none"> No proposed change to liquidity calculations. Remove the ability of venues to obtain waivers for actionable indications of interest above SSTI. This would also extend the pre-trade transparency obligations of Sis dealing in sizes above SSTI. 	<ul style="list-style-type: none"> Replace liquidity calculations with a qualitative and quantitative test for exemptions. Limit scope of pre-trade transparency regime to systems such as electronic order books and periodic auctions.
Post-trade transparency - deferrals	<ul style="list-style-type: none"> Shorten and harmonise publication deferrals (deferral of price of transactions to end of the trading day and volume of transactions for a maximum of two weeks). Remove SSTI deferral. ESMA to draft RTS specifying 15-minute, end of trading day and two-week deferral based on liquidity, size of trade and (for bonds) investment grade or high yield classification. Competent authorities would continue to have wider discretion on deferrals for sovereign debt. 	<ul style="list-style-type: none"> Remove SSTI, package order and EFP deferrals. Maintain LIS deferral for block trading in liquid instruments and illiquid deferral for instruments that cannot support real time transparency.

MIFIR2/MIFID3 V UK WHOLESALE MARKETS REVIEW

OTHER

	EU MIFIR2/MiFID3 proposals	UK Wholesale Markets Review proposals
Payment for order flow	<ul style="list-style-type: none"> Investment firms to be specifically prohibited from receiving benefits for forwarding client orders for execution. 	<ul style="list-style-type: none"> No proposed change to existing UK position.
Transaction reporting	<ul style="list-style-type: none"> Powers to revise RTS to align time and content of reporting with EMIR and SFTR and international standards. ESMA to report within two years on more integration in transaction reporting and streamlining of data flows of transaction reports. 	<ul style="list-style-type: none"> Feedback request on how to remove duplicative reporting, in particular between MiFIR and EMIR and MiFIR and SFTR (in relation to SFTs with ESCB members).
ISINs and unique product identifiers (UPIs)	<ul style="list-style-type: none"> No specific proposals. 	<ul style="list-style-type: none"> Feedback on use of ISINs, potential use of UPIs and whether there may be alternative identifiers that could be made available to better identify derivatives, particularly swaps.
Best execution reporting	<ul style="list-style-type: none"> Removal of RTS27 reporting obligation for execution venues. ESMA has proposed changes to RTS28 reporting obligation for investment firms. 	<ul style="list-style-type: none"> FCA has proposed deletion of both RTS27 and RTS28 reporting obligation.
Exemptions from authorisation	<ul style="list-style-type: none"> Allow firms dealing on own account to have direct electronic access to an EU trading venue (otherwise than as a member or participant) without authorisation. 	<ul style="list-style-type: none"> No proposed change to existing UK position.

MIFIR2/MIFIR3 V UK WHOLESALE MARKETS REVIEW

OTHER (CONTINUED)

	EU MIFIR2/MiFID3 proposals	UK Wholesale Markets Review proposals
Listing rules	<ul style="list-style-type: none"> Separate legislative proposal on simplification of listing rules expected H2 2022. 	<ul style="list-style-type: none"> New class of trading venue tailored for smaller SMEs (sub-£50m market cap).
Commodities	<ul style="list-style-type: none"> Out-of-scope. 	<ul style="list-style-type: none"> Changes to position limits, hedging exemption and ancillary activities test.
Timing	<ul style="list-style-type: none"> Depends on legislative process. MiFIR2 could become law by Q1 2023 and Member States could implement MiFID3 by Q1 2024. 	<ul style="list-style-type: none"> Depends on Parliamentary time for new legislation. However, FCA may implement changes within its powers at an earlier stage.

Notes. This is based on the Commission's legislative proposals for MiFIR2/MiFID3. The European Parliament and the Council may amend the proposals during the legislative process.

For more details on the Commission's action plan on capital markets union, see the Commission communication, *Capital Markets Union - Delivering one year after the Action Plan*, and accompanying annex (November 2021, [here](#)).

For more details on the UK Wholesale Markets Review, see the HM Treasury consultation document (July 2021, [here](#)), the latest issue of the UK regulatory initiatives grid (November 2021, [here](#)) and the speech by John Glen MP, Economic Secretary to the Treasury, to the UK Finance Annual Dinner (November 2021, [here](#)).

QUESTIONS



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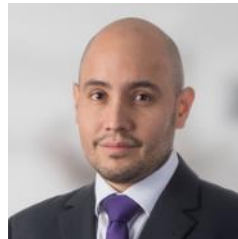
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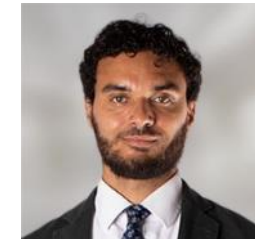
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