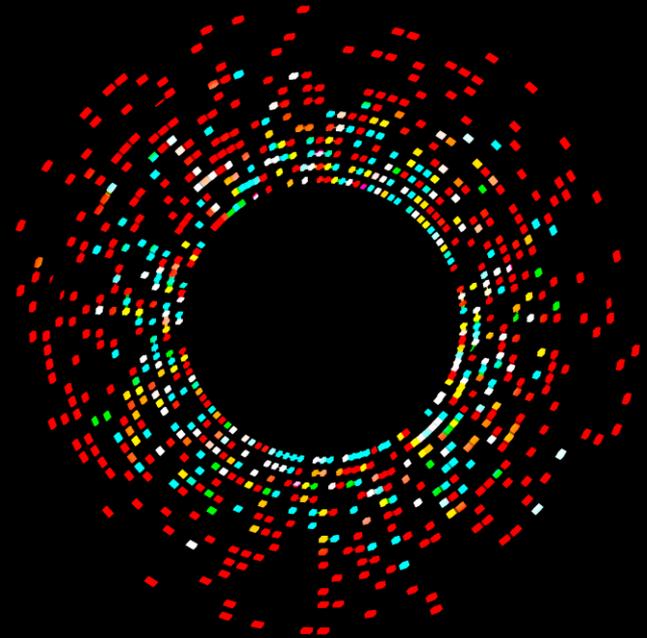


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Link`n Learn 2017

**MiFID II & MiFIR Update &
Product Governance Deep Dive**

27 April 2017

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Agenda

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Overview of MiFID II/ MiFIR Key Recent Developments and Timelines (Level 2 and 3)

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Update on ESMA Q&As

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Deep Dive: Product Governance

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Q&A

Overview of MiFID II Key Recent Developments and Timelines

MiFID II timeline and Update in respect of Level 2 and 3 Texts

Level 1 and Most Level 2 text is final. Work now focuses on ESMA Guidelines, Q&As, and National Implementation

Key recent developments

April 2017

- The European Commission published [draft delegated regulation](#) regarding MiFIR transparency exemption for certain third country central banks
- ESMA published [final report and guidelines](#) on the calibrations of circuit breakers and the publication and reporting of trading halts under MiFID II
- ESMA published updated [Q&A](#) on transparency topics
- ESMA published updated [Q&A](#) on commodity derivatives topics
- ESMA published updated [Q&A](#) on market structures topics
- ESMA published updated [Q&A](#) on investor protection (including new and revised Q&A on best execution)
- ESMA published updated [Q&A](#) on MiFIR data and reporting*

March 2017

- A large number of the MiFID II/MiFIR level 2 measures, including the delegated regulations, were published in the EU Official Journal (please refer to the document library)

Key recent developments (continued)

March 2017 (continued)

- ESMA [published](#) final report and draft RTS on package orders for which there is a liquid market
- ESMA [published](#) final report and draft RTS on the scope of the consolidated tape for non-equity financial instruments

Upcoming Level 3 texts

ESMA is expected to publish guidelines on the following topics:

- Investment research
- Ensuring consistent assessment of other minor non-monetary benefits across the EU
- Regular review of conditions for initial authorisation
- Assessment of financial instruments being classified as non-complex
- Ensuring that application of legal identifiers in EU complies with international standards

Key next steps

April 2017:

- ESMA to publish CP on the trading obligation

1 June 2017:

- Deadline for trading venues to submit their waiver applications for bonds and derivatives to ESMA

Q2 2017:

- Statutory Instruments expected to be published

3 July 2017:

- MiFID II to be transposed into EU national legislations

31 July 2017:

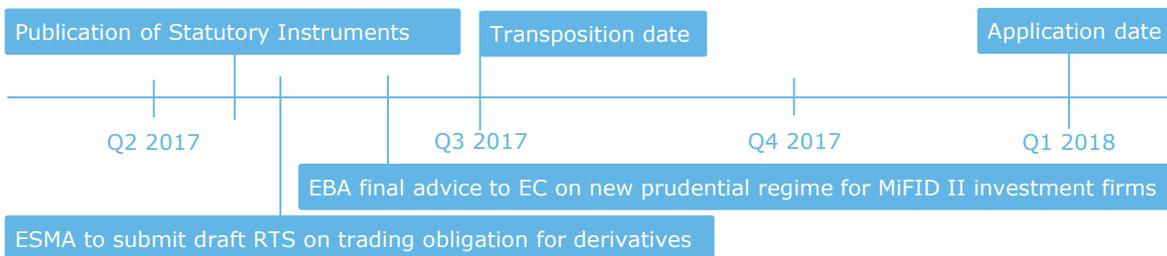
- FCA gateway opens for receiving passport notifications

Q2-Q3 2017:

- EBA final advice to the Commission on new prudential regime for MiFID II investment firms

Summer 2017:

- ESMA to submit draft RTS on trading obligation for derivatives (tentative)



Update on ESMA Q&As

Selected key take-aways

ESMA Q&As

Updates on transparency topics



- Flags should only be used if they apply (Eg waivers)



- There are no format requirements for transparency publications



- Back to back trades: the firm interposing their own account should not report, except if the seller is not a MiFID Firm



- Outsourcing of transparency is allowed to a third party



- No transparency is required on primary market transactions



- ISIN is not an absolute must for pre-trade transparency



- If the price is not available when executing the trade, a report should be filed and then replaced once the final price is known

ESMA Q&As

Updates on commodity derivative topics



- If the underlying of the derivative is a commodity index with more than 50% commodities, it should count to position limits (based on open interest only) for C10 derivatives

ESMA Q&As

Updates on market infrastructure topics



- Firms should self-identify as high frequency traders and apply for a MiFID licence if required



- Direct Electronic Access clients may also be recognized as High Frequency Traders



- OTC trades are not subject to algorithmic trading requirements



- Firms using trading algorithms must be able to recuperate all information surrounding the trade



- The OTF definition is technology neutral: voice trading lead to being considered an OTF

ESMA Q&As

Updates on investor protection topics



- Execution quality reports are to be published by June 2018 (Q1 data)
- Top 5 execution venues to be published by April 2018 (FY 2017 data)



- If different firms of a group are used for execution, there should not be aggregation at group level



- Transactions with ECP are not to be considered for execution quality publications



- Research, good judgement of the firm applies to:
 - Organised corporate visits
 - Macro-economic analysis (publicly available analysis is a minor benefit)
 - Fixed income, currencies and commodities



- Research budgets should be a single estimate figure and not a range (at firm and client level)

Product Governance

Deep Dive

Product Governance Summary – Level 1 and 2 Texts

- Level 1 and 2 texts prescribe that both Manufacturers and Distributors have Product Governance arrangements in place to ensure that are designed to meet the needs of a target market and are distributed appropriate to that target market
- While Level 1 and 2 texts have been finalised, firms are still waiting on ESMA's Final Guidelines on Product Governance, which is likely to be published in June, 2017.

MANUFACTURERS

- Board Approved Product Governance Arrangements
- Determine Complexity, Target Market, Distribution Strategy and Charging Structure for products
- Regular review of products, particularly upon certain trigger events
- Ensure all information is passed to the Distributor

DISTRIBUTORS

- Obtain enough information to ensure that the product can be distributed suitably [and] to the Target Market
- Review products to ensure that they remain consistent with the needs of the Target Market
- Provide manufacturers with information necessary to undertake a review of compliance with the requirements

COMPLIANCE MONITORING

STAFF KNOWLEDGE & SKILL TO UNDERSTAND PRODUCT RISKS

INFORMATION AND DATA TRANSFER

Product Governance (Cont'd) Level 3 DRAFT Guidelines

Published in October 2016 with various feedback from industry bodies and market participants.

Expected to be published in June.

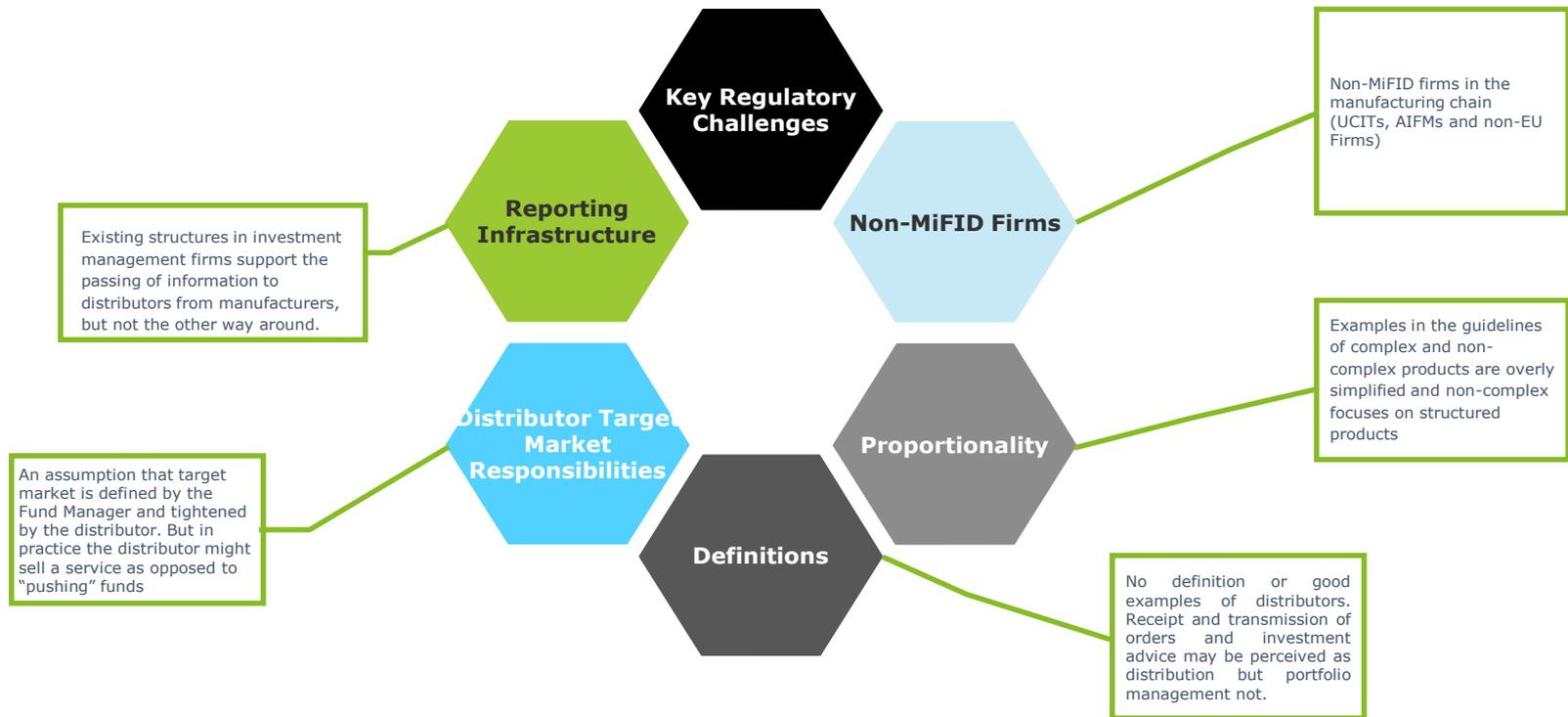
Guidelines focus on:

- (1) Categories provided for use in defining the target market
 - Type of client to whom products should be targeted
 - Knowledge and experience
 - Financial situation (capacity for loss)
 - Client's objectives
 - Client's needs
- (2) Appropriateness and proportionality to the investment product
- (3) Distribution Strategy
- (4) Target Market identification by the Distributor
- (5) Hedging and Diversification
- (6) Non-MiFID Manufacturers
- (7) Back dated to products designed before January 2018

Our Insights

Regulatory Challenges – Product Governance

We have set out below are a sample of areas which remain a challenge for firms in light of the October 2016 Consultation Guidelines, particularly in respect of Asset Managers. These demonstrate some of the areas of top priority for dialogue with regulators.



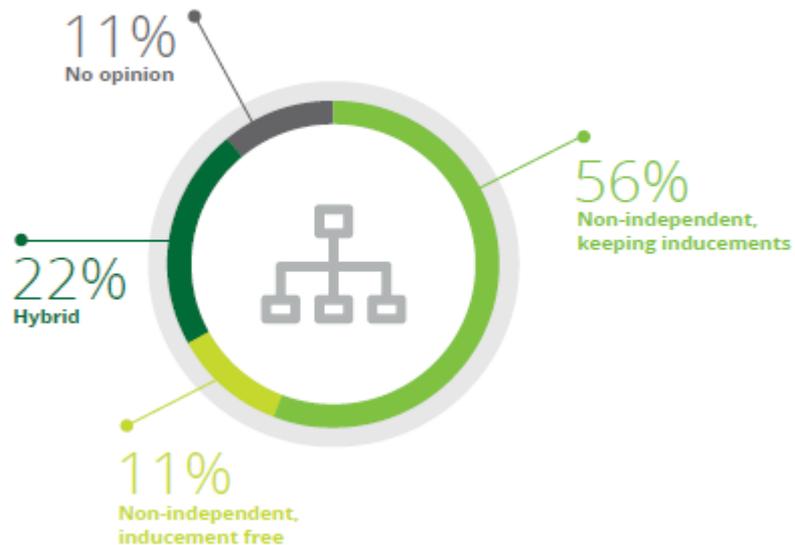
MiFID II survey on distribution

Main market trends

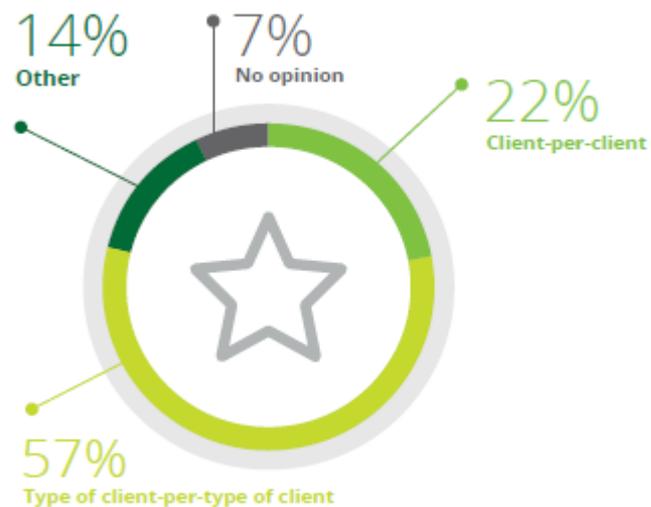
Trends from the Deloitte survey

Inducements

Which distribution status is preferred?



How will you deal with the quality enhancement and proportionality principle?



Trends from the Deloitte survey

Clean share classes

Which step do manufacturers take to prepare for request or to meet requirements in inducements?

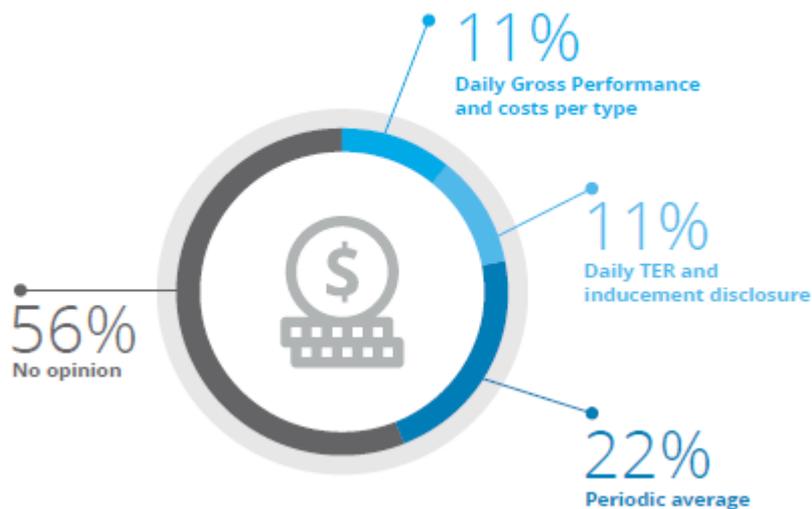


- **Main trend observed for Asset Managers is to target launching/extending clean share classes to all sub-funds.**
- **Asset Managers will promote as well their RDR clean share class range.**
- **We observe as well that they plan to put forward their institutional share classes by waiving minimum investment limits.**

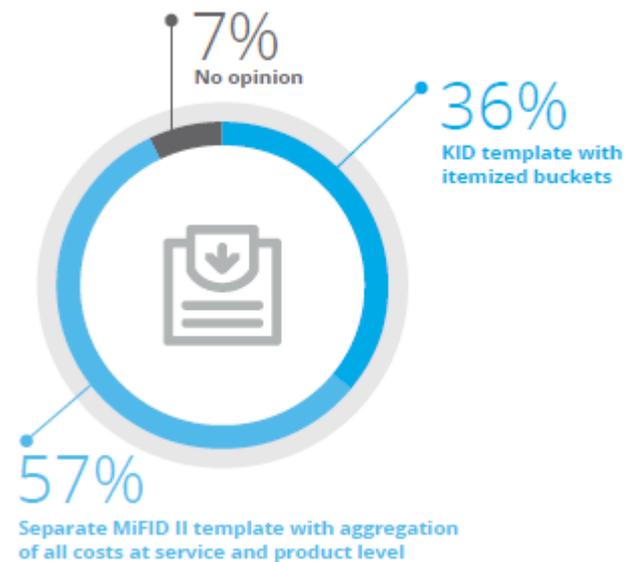
Trends from the Deloitte survey

Client Reporting

What do distributors expect to receive from



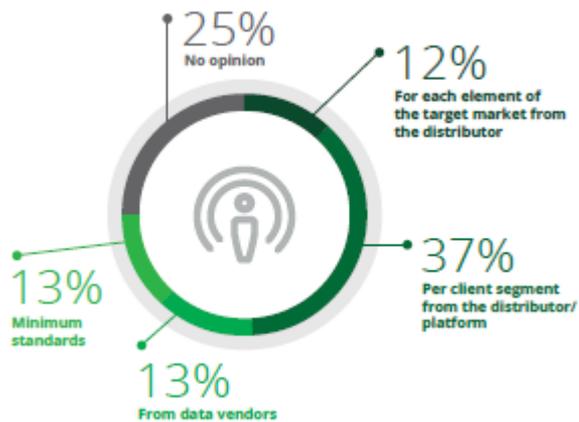
What is the reporting format being developed for costs and charges?



Trends from the Deloitte survey

Product governance

How do manufacturers expect to receive sales information from distributors?



What sales information do you expect to communicate or receive?



Questions

Appendix – Level 2 and 3 Detail

Level 2

A large number of MiFID II/MiFIR Level 2 measures have been finalised in the Official Journal

Level 2 finalised in OJ

DD: 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 money or non-monetary benefits

DR: Organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive

DR: Definitions, transparency, portfolio compression and supervisory measures on product intervention and positions

RTS1: Transparency requirements for trading venues and investment firms in respect of shares and equity-like instruments

RTS2: Transparency requirements for trading venues and investment firms in respect of non-equity instruments

RTS3: The volume cap mechanism and the provision of information for the purposes of transparency and other calculations

RTS4: Criteria for determining whether derivatives subject to the clearing obligation should be subject to the trading obligation

RTS5: Direct, substantial and foreseeable effect of derivative contracts within the union

RTS6: Specifying the organisational requirements of investment firms engaged in algorithmic trading

RTS7: Specifying the organisational requirements of trading venues

RTS8: Specifying the requirements on market making agreements and schemes

RTS9: The ratio of unexecuted orders to transactions

RTS10: Requirements to ensure fair and non-discriminatory co-location services and fee structures

RTS11: Tick size regime for shares, depositary receipts and exchange traded funds

RTS12: Determination of a material market in terms of liquidity relating to halt notifications

RTS13: Authorisation, organisational requirements and the publication of transactions for data reporting service providers

RTS14: Specification of the offering or pre- and post- trade data and the level of disaggregation of data

RTS15: Clearing access in respect of trading venues and central counterparts

RTS16: Access in respect of benchmarks

RTS17: Admission of financial instruments to trading on regulated markets

RTS18: Suspension and removal of financial instruments from trading

ITS19: Description of the functioning of MTFs and OTFs

RTS20: Criteria to establish when an activity is considered to be ancillary to the main business

RTS21: Application of position limits to commodity derivatives

RTS22: Reporting of transactions to competent authorities

RTS23: Supply of financial instruments reference data

RTS24: Maintenance of relevant data relating to orders in financial instruments

RTS25: Level of accuracy of business clocks

RTS26: Specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing

RTS27: Data to be provided by execution venues on the quality of execution of transactions

Level 2 (continued)

A large number of MiFID II/MiFIR Level 2 measures have been finalised in the Official Journal

RTS28: Annual publication by investment firms of information on the identity of execution venues and on quality of execution

RTS: Registration of third country firm

RTS: Cooperation between authorities

Level 2 soon to be published in the OJ, when Corrigendum is finalised

RTS: Authorisation

RTS: Passporting

Level 2 still waiting to be adopted by Commission

DR: Extension of the ESCB exemption from pre-and post-trade transparency to third country central banks

RTS: An exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm

ITS: Authorisation

ITS: Passporting

ITS: 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

ITS1: Standard forms, templates and procedures for cooperation arrangements

ITS2: Suspension and removal of financial instruments from trading on RM, a MTF or OTF

ITS3: Standard forms, templates and procedures for the authorisation of data reporting services providers

ITS4: Position reporting

ITS5: Format and timing of weekly position reports

ITS6: Standard forms, templates and procedures for competent authorities to cooperate in supervisory activities, on-site verifications, and investigations and for the exchange of information

ITS7: Standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation

ITS8: Procedures and forms for submitting information on sanctions and measures

ESMA [draft RTS](#) on indirect clearing arrangements under EMIR and MiFIR

ESMA [draft RTS](#) on package orders for which there is a liquid market

ESMA [draft RTS](#) on the scope of the consolidated tape for non-equity financial instruments

Level 3 Guidelines

A number of Guidelines were finalised over the last 6 months, however we there are still a number of key Guidelines in Consultation

Final guidelines

April 2017: ESMA published [final report and guidelines](#) on the calibrations of circuit breakers and the publication and reporting of trading halts under MiFID II

October 2016: ESMA [guidelines](#) on transaction reporting, order record keeping and clock synchronisation under MiFID II (2016/1452)

July 2016: ESMA [guidelines](#) on cross-selling practices

December 2015: ESMA [final report](#) on guidelines for the assessment of knowledge and competence

November 2015: ESMA [final report](#) on guidelines on complex debt instruments and structured deposits

May 2015: ESMA [guidelines](#) on the application of C6 and C7 of Annex I of MiFID

Consultation guidelines

October 2016: Joint ESMA and EBA [guidelines](#) on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU

October 2016: ESMA [guidelines](#) on the calibration, publication and reporting of trading halts (2016/1440)

October 2016: ESMA [guidelines](#) on specific notions under MiFID II related to the management body of market operators and data reporting services providers (2016/1437)

October 2016: ESMA [draft guidelines](#) on MiFID II product governance requirements (2016/1436)

September 2016: ESMA [discussion paper](#) on the trading obligation for derivatives under MiFIR



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