

Pathfinder

Deloitte Monthly Regulatory Update



April 2014

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**Capital
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BCBS regulatory standards on the capital
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BCBS progress report on implementation of
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BCBS frequently asked questions on Basel
III's January 2013 liquidity coverage ratio
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BCBS standards - Supervisory framework
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**Central Securities
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**Corporate
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package** Adoption by the European Commission of
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Original texts:

[Proposal for a
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**European Long-
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Insurance – Annual report of management companies	CAA Circular Letters 14/6 and 14/7 regarding the annual report of management companies of reinsurance undertakings and pension funds - <i>Commissariat aux Assurances</i> 16/04/2014
	 Deloitte summary  Original texts: CAA Circular Letter 14/6 regarding the annual report of management companies of reinsurance undertakings (French only at this stage) CAA Circular Letter 14/7 regarding the annual report of management companies of pension funds (French only at this stage)
Insurance intermediaries	CAA Regulation n°14/01 of 01 April 2014 related to aptitude test for applicants agents and insurance brokers – <i>Mémorial A</i> 55 of 8/04/2014
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Insurance Occupational Pension Funds (IORP)	Adoption by the European Commission of the Proposal for a Directive on the activities and supervision of institutions for occupational retirement provision (recast) - European Commission 27/03/2014
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Market Abuse	Adoption by the European Council of Market

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[Proposal for a Regulation on insider dealing and market manipulation \(market abuse\)](#)

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Markets in Financial Instruments Directive and Regulation (MiFID II / MiFIR) Adoption by the European Parliament of the MiFID II package - European Parliament 15/04/2014



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Original texts:

[Proposal for a Directive on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council \(Recast\)](#)

[Proposal for a Regulation on markets in financial instruments and amending Regulation \[EMIR\] on OTC derivatives, central counterparties and trade repositories](#)

Non-financial reporting Adoption by the European Parliament of the Proposal for a Directive amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups - European Parliament 15/04/2014



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Omnibus II Adoption by the European Council of the proposal for a Directive amending Directives

2003/71/EC and 2009/138/EC in respect of the powers of the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority (Omnibus II Directive) – European Council 14/04/2014



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**Over-the-counter
(OTC) derivatives**

ALFI frequently asked questions 2nd edition – EMIR / OTC Derivatives - Association of the Luxembourg Fund Industry 17/04/2014



[FAQ](#)



Related document:

[Deloitte whitepaper - OTC Derivatives](#)

**Over-the-counter
(OTC) derivatives**

FSB 7th progress report on implementation of OTC derivatives market reforms – Financial Stability Board 08/04/2014



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**Payment Services
Directive (PSD) –
Payment cards and
online payments**

Adoption by the European Parliament of the payment legislative package - European Parliament 03/04/2014



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Original texts:

[Proposal for a
Directive on payment
services in the
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[Proposal for a
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Prospectus

Commission Delegated Regulation (EU) No






382/2014 of 7 March 2014 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus – Official Journal of the European Union L111 15/04/2014



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PSFs	CSSF updated PSFs procedure and forms - <i>Commission de Surveillance du Secteur Financier</i> 28/03/2014
	 Original texts: Explanations on the authorisation procedure applicable to PSF Main application form for PSF authorisation Complementary application form for the approval as central administration
PSFs – Statutes	CSSF frequently asked questions - Statutes of PSFs - <i>Commission de Surveillance du Secteur Financier</i> 03/04/2014
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Single Supervisory Mechanism (SSM)	Regulation of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities – European Central Bank 25/04/2014
	 Deloitte summary  Original text
Undertakings for Collective Investment in	Adoption by the European Parliament of the Proposal for a Directive amending Directive 2009/65/EC on the coordination of laws,

Transferable Securities Directive (UCITS V) regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions – European Parliament 15/04/2014

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Deloitte alerts and summaries

Banking Union (SRM, BRRD and DGS)

Adoption by the European Parliament of the Banking Union framework:

- **Proposal for a Directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directives 77/91/EEC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) No 1093/2010**
- **Proposal for a Regulation of the European Parliament and of the Council establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Bank Resolution Fund and amending Regulation (EU) No 1093/2010 of the European Parliament and of the Council**
- **Proposal for a Directive of the European Parliament and of the Council on Deposit Guarantee Schemes [recast] repealing Directive 94/19/EC**

European Parliament 15/04/2014

The European Parliament has adopted three key texts of the Banking Union framework, i.e. Single Resolution Mechanism (SRM), Bank Recovery and Resolution Directive (BRRD) and Deposit Guarantee Schemes Directive (DGS). These texts aim to complete the Economic and Monetary Union and to restore confidence in the banking sector.

The BRRD sets new rules for all Member States regarding bank bail-outs, whose guiding principle is shareholders and creditors will pay first for banks' resolution, then any additional funds will be required from the banking sector itself by the set-up of resolution funds. National resolution funds are set up, to be replaced for euro area Member States by the Single Resolution Fund as of 2016.

The SRM implements the BRRD, setting up a strong Single Resolution Board and aiming to ensure the timely and effective resolution of cross border and domestic banks. Within the Banking Union, the resolution funds will be pooled into one Single Resolution Fund. This Fund has a target level of €55 billion and can borrow from the markets if decided by the Single Resolution Board. It will reach the target level over 8 years.

In addition to the BRRD rules on preferential treatment for depositors, the amendment of the DGS increases the protection of depositors, as pre-funded guarantee will ensure that savings up to EUR 100.000 remain fully

protected from any loss. In principle, the target level DGS is 0.8% of covered deposits to be collected from banks over a 10-year period. In addition, access to the guaranteed amount will be easier and faster. Repayment deadlines will be gradually reduced from the current 20 working days to 7 working days in 2024.

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Banks – Supervisory reporting

Adoption by the European Commission of EBA implementing technical standards with regard to supervisory reporting of institutions – European Commission 16/04/2014

The European Commission has adopted EBA implementing technical standards on supervisory reporting. The remittance dates of the first set of supervisory reports will be postponed from April / May 2014 to end June 2014, but there is no change to reference dates.

The postponement concerns banks' submissions to competent authorities of:

- First quarterly reports on own funds, large exposures, leverage ratio, and net stable funding ratio, with reference dates as of 31 March 2014 to end June 2014, as opposed to end May 2014; and
- First monthly liquidity reports with reference dates as of 31 March 2014 and 30 April 2014 to end June 2014 as opposed to April 2014.

For further background information, please refer to our [Regulatory News Alert of 7 August 2013 - CRD IV / CRR - ITS on supervisory reporting](#) and to our [Pathfinder of March 2014](#).

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Capital Requirements Directive and Regulation (CRD IV / CRR)

BCBS regulatory standards on the capital requirements for bank exposures to central counterparties – Basel Committee on Banking Supervision 10/04/2014

The Basel Committee on Banking Supervision has issued final standards on capital requirements for bank exposures to central counterparties (CCPs). These standards will take effect on 1 January 2017 and will replace the **interim requirements** published in July 2012.

The main differences between the interim requirements and the final standards are:

- Single approach for calculating capital requirements for bank exposures that arise from its contributions to the mutualised default fund of qualifying CCPs;
- Standardised approach for counterparty credit risk (as opposed to the Current Exposure Method) to measure the hypothetical capital requirement of a CCP;
- Explicit cap on the capital charges applicable to a bank's exposures to a qualifying CCP;
- Specific rules on the treatment of multi-level client structures whereby an institution clears its trades through intermediaries linked to a CCP.

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Central Securities Depositories Regulation (CSD)

Adoption by the European Parliament of the [Proposal for a Regulation of the European Parliament and of the Council on improving securities settlement in the European Union and on central securities depositories](#)

and amending Directive 98/26/EC - European Parliament 15/04/2014

The main objective of the CSD Regulation is to increase the safety and efficiency of securities settlement and settlement infrastructures in the European Union by providing, among others, for the following:

- Shorter settlement periods;
- Deterrent settlement discipline measures (mandatory cash penalties and “buy-ins” for settlement fails);
- Strict prudential and conduct of business rules for CSDs;
- Strict access rights to CSD services;
- Increased prudential and supervisory requirements for CSDs and other institutions providing banking services ancillary to securities settlement.

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Corporate Governance package

Adoption by the European Commission of the Corporate Governance package:

- **Proposal for a Directive of the European Parliament and of the Council on single-member private limited liability companies** – European Commission 09/04/2014
- **Proposal for a Directive of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement** – European Commission 09/04/2014

The European Commission has adopted measures to improve the corporate governance of companies listed on Europe’s stock exchanges. The Corporate Governance package aims to contribute to the competitiveness and long-term sustainability of these companies. This package contains also cost-efficient company law solutions for SMEs which operate across borders.

Revision of the Shareholder Rights Directive

The proposal to revise the existing **Shareholder Rights Directive** aims to avoid corporate governance shortcomings relating to listed companies and their boards, shareholders, intermediaries and proxy advisors (firms providing services to shareholders). The revised rules will encourage long-term shareholder engagement.

Key issues addressed by the proposal:

- Insufficient engagement of institutional investors and asset managers;
- Insufficient link between pay and performance of directors;
- Lack of shareholder oversight on related party transactions;
- Inadequate transparency of proxy advisors; and
- Difficult and costly exercise of rights flowing from securities for investors.

Commission Recommendation on the quality of corporate governance reporting

The Commission Recommendation aims to provide guidance to listed companies, investors and other interested

parties in order to improve the overall quality of corporate governance statements published by companies.

Proposal for a Directive on single-member private limited liability companies

The proposed Directive would provide an EU-wide set of harmonised rules for single-member private limited liability companies, notably:

- Possibility of completing the whole registration process electronically;
- Uniform template of articles of association;
- Minimum capital requirement of EUR 1; and
- Adequate protection of creditors.

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European Long-Term Investment Funds (ELTIF)

Adoption by the European Parliament of the **Proposal for a Regulation of the European Parliament and of the Council on European Long-term Investment Funds** – European Parliament 17/04/2014

The European Parliament has adopted the proposal for a Regulation on European Long-Term Investment Funds. This Regulation introduces a new type of collective investment framework allowing investors to put money into companies and projects that need long-term capital. It is aimed at investment fund managers who want to offer long-term investment opportunities to institutional and private investors across Europe.

To benefit from this cross-border passport the new funds would have to meet rules designed to protect both investors and the companies and projects they invest in:

- At least 70% of the money in the fund has to be invested in unlisted companies needing long-term capital, real assets that need long-term capital to develop them, European Venture Capital Funds and European Social Entrepreneurship Funds. ELTIFs will have up to five years to invest at least 70% of the money.
- Only be offered by a manager who is authorised under the Alternative Investment Managers Directive and so be subject to its rules.
- Run for a specified period of time during which investors do not have the right to get their money back.
- Strictly limit derivative use to currency risks so avoiding their use for speculative reasons.
- Limit leverage.

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Insurance – Annual report of management companies

CAA Circular Letter 14/6 regarding the annual report of management companies of reinsurance undertakings - *Commissariat aux Assurances* 16/04/2014 (French only at this stage)

CAA Circular Letter 14/7 regarding the annual report of management companies of pension funds -

Commissariat aux Assurances 16/04/2014 (French only at this stage)

The *Commissariat aux Assurances* published Circular Letters 14/06 and 14/07 introducing annual reports of, respectively, management companies of reinsurance and management companies of pension funds. These annual reports include:

- Excel fact sheet (organization chart, details on shareholders, etc.);
- Audited annual accounts (or draft of annual accounts);
- Minute of ordinary general meeting which approved the annual accounts; and
- Last articles of association (only for 2013).

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Key Information Document (KID) for Packaged Retail Investment and Insurance Products (PRIIPs)

Adoption by the European Parliament of the **Proposal for a Regulation of the European Parliament and of the Council on key information documents for investment products** – European Parliament 15/04/2014

In its plenary session on 15 April 2014 the European Parliament adopted the text for a Regulation on key information documents for packaged retail and insurance based investment products (PRIIPs). The text had previously been agreed in the trialogue of the European Parliament, the EU Council and the EU Commission. The Regulation is expected to enter into force in the second half of 2014 and it will become applicable 2 years after the entry into force..

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Market Abuse Directive and Regulation (MAD / MAR)

Adoption by the European Council of:

- **Proposal for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation (market abuse)**
- **Proposal for a Directive of the European Parliament and of the Council on criminal sanctions for insider dealing and market manipulation**

European Council 14/04/2014

The European Council has adopted new rules on market abuse which comprise a Regulation (MAR) to enhance the protection of investors and a Directive (MAD) to establish a framework for criminal sanctions.

MAR extends the scope of Directive 2003/6/EC prohibiting insider dealing and manipulation of financial instruments that are admitted to trading on regulated markets. The extended scope includes financial instruments traded on multilateral trading facilities and organised trading facilities, and OTC-traded financial instruments.

For further background information, please refer to our **Pathfinder of February 2014**.

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Markets in Financial Instruments Directive and Regulation (MiFID II / MiFIR)

Adoption by the European Parliament of the MiFID II package comprising the following texts:

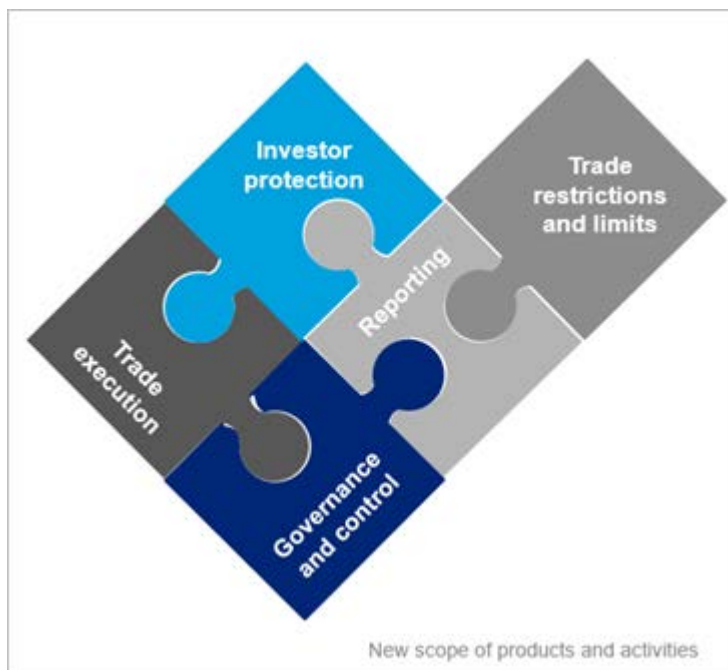
- **Proposal for a Directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (Recast)**
- **Proposal for a Regulation of the European Parliament and of the Council on markets in financial instruments and amending Regulation [EMIR] on OTC derivatives, central counterparties and trade repositories**

European Parliament 15/04/2014

After intense discussions between the European Commission, Council and Parliament (the “Triologue”), the new MiFID II package, which runs to more than 700 pages, was adopted by the European Parliament (EP) on 15 April 2014.

While primary objectives of the initial Directive (MiFID I) were to increase the competition, improve investor protection and EU passporting, MiFID II package introduces a range of measures which seek to address consequences of MiFID I and issues raised by the financial crisis, such as making financial markets more efficient, resilient and transparent, improving investor protection, as well as addressing commitments made by the G20 on these topics.

From MiFID I to MiFID II, what are the main changes?



Extended scope of products and activities

Products and activities

Additional financial instruments will be brought into the scope of MiFID II, such as:

- Structured deposits issued or sold by credit institutions;
- Certain packaged retail investment products (PRIIPs);
- All emissions allowances (such as carbon);
- The sale of financial instruments issued by the investment firm.

Insurance-based investment products

Insurance-based investment products will remain regulated under the current version of Insurance Mediation Directive (IMD) that will be updated after new parliament is in place.

Nevertheless, MiFID II introduces specific rules on conflict of interest on insurance-based investment products and gives the possibility to EU Member States to introduce inducement restrictions on those products.

Prohibited payment and retention of inducements (MiFID Article 24)

Out of the whole MiFID package, a single Article has sent shockwaves throughout the industry: Article 24 which prohibits the common practice of retrocessions (inducements) for discretionary asset management and “independent” advice.

Article 24 creates significant difference between MiFID I and MiFID II: While the first generated compliance costs, the second puts significant revenue at risk. In other words, MiFID I was mainly a compliance matter for the financial industry, but MiFID II poses challenges on revenue and therefore on organisations strategy and business model.

By end-2016, all 28 EU Member States will be on a level playing field, unless certain countries go for more stringent rules (gold plating). In the meantime, national regulators throughout Europe have already taken tough measures to either ban trailer fees or strictly limit them. A number of countries, including the United Kingdom, Italy, Netherlands and Germany, already have requirements that go beyond MiFID II.

Enhanced investor protection

A series of measures will reinforce investor protection, including the following:

- Advice from investment firms must meet two criteria in order to be 'independent': (i) assess a sufficient range of financial instruments (i.e. not limited to in-house products and (ii) refrain from accepting or retaining inducements from third parties).
- Discretionary portfolio management will also refrain from accepting or retaining inducements from third parties.
- Advisory and portfolio management clients will receive a detailed suitability assessment in a periodic performance report.
- Pre- and post-trade information to clients will be enhanced, in particular detailed information on fees and commissions paid and received by the investment firm.
- Definition of non-complex instruments will be amended and exclude structured UCITS. This implies that an assessment of appropriateness will be required before selling any structured UCITS. In other words, 'execution only' will not be possible anymore for structured UCITS, regardless of the product risk profile.

Creation of a new execution venue - The OTF

- In order to capture 'dark pool' operators and other alike trading systems (e.g. inter-broker dealing systems), a new category of trading venue called Organised Trading Facility (OTF) will be introduced for non-equity instruments (e.g. bonds, derivatives, structured products).
- Derivatives, which are sufficiently liquid and eligible for clearing, will need to be traded on eligible platforms: OTFs, MTFs (Multi-lateral trading facilities) or RMs (Regulated Markets) instead of OTC trading.
- Requirements will be imposed on operators of OTFs (e.g. clients orders on an OTF cannot be executed against proprietary capital) and transactions concluded on an OTF will be submitted to pre- & post-trade transparency provisions similar to RM and MTF, creating a level-playing field.
- The scope and obligations of systematic internalisers will be amended

Stricter governance requirements and more accountability on Senior Management

- New requirements for corporate governance and (non-) executive directors, in addition to other texts (e.g. CRD IV or CSSF circular 12/552).
- Introduction of the new concept of “management body”: governing body of an investment firm or a data services provider, including the supervisory and the managerial functions (i.e. all persons who effectively direct the business).
- Strengthened criteria for qualified senior management, the role of directors and supervisors who must commit sufficient time to perform their function and take into account diversity in their composition.
- Stricter control of remuneration of staff (e.g. bonus criteria) advising or selling to clients, which cannot prevent staff from complying with obligations to act in the best interest of clients.
- Strengthened role of the compliance officer

Product intervention & strengthened supervision with stricter sanctions

- In coordination with ESMA, national regulators (i.e. CSSF in Luxembourg) will have powers to permanently ban financial products, activities or practices.
- Administrative sanctions, fines and penalties will be made public, sufficiently high to offset any benefit and to be dissuasive also for larger institutions.
- Position limits for products, such as commodity derivatives, will be introduced. This will include powers for regulators to require existing positions to be reduced or to limit the ability of any person from entering into commodity derivatives.

Harmonised regime for third country firms

- When serving retail or professional clients on request in the EU, third-country firms will have to establish a branch in each EU country where they operate. Branches will be subject to authorisation and supervision in the member state.
- When serving eligible counterparties or per se professional clients in the EU, investment firms will directly register with ESMA. This registration will be first subject to the third country receiving a positive equivalence assessment from the European Commission. No EU branch is required. The EU passport will be available.

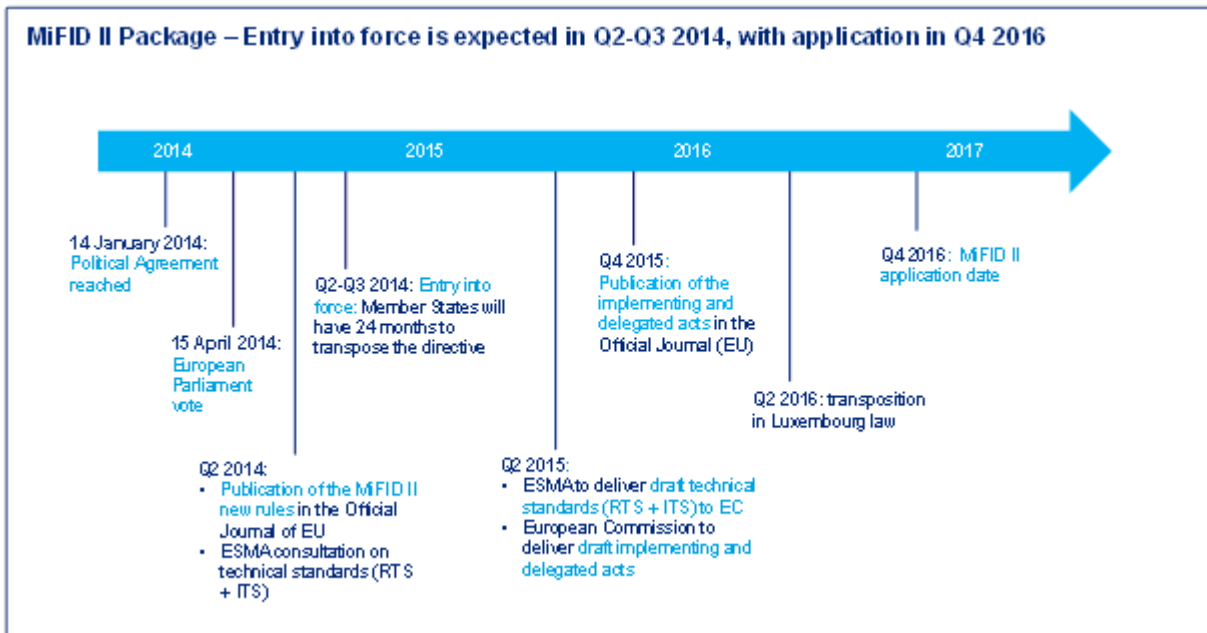
Extended market transparency and transaction reporting

- Transparency requirements will be extended to additional instruments, such as bonds and derivatives.
- Trade reports will need to be published through Approved Publication Arrangement (APA) firms, which will also be subject to authorisation and certain organisational requirements.
- Transaction reports will need to capture additional information (including identification of individuals – or computer algorithms where relevant – responsible for the investment decision).
- Key system changes will be required to capture additional reporting requirements (including new instruments). Static data may require cleansing in order to ensure additional information is reported correctly.
- As such, the reporting will be impacted in 4 dimensions:
 - The format – to be aligned with EMIR
 - The frequency (i.e. near real time)
 - The content
 - The audit trail

Notwithstanding the above elements, it is important to note that the MiFID II implementation will need to be considered in line with other regulatory developments such as CRD IV (Capital Requirements Directive), EMIR (European Market Infrastructure Regulation) and MAD (Market Abuse Directive).

MiFID II timeline

The following key milestones are expected in the next coming months:



Preparing for MiFID II: Consequences and challenges

Though MIFID II will not be transposed and applied before end 2016, impacts will be significant especially with the ban of inducements. Certain countries in Europe (e.g. UK, IT, NL or DE) have already implemented similar inducement measures in their national legislation. Other EU countries either followed or will follow this trend. Lessons can be learned from the recent experiences in the UK and Netherlands and by looking at models in the US where similar rules also exist.

It is now time for the industry (credit institutions, investment firms, asset management) to assess first strategic but also operational impacts, by estimating which of their revenue is at risk and how this loss of revenue can be compensated in their value chain.

ESMA is expected to publish a number of technical standards that will be necessary to start an effective implementation.

Impacts of MiFID II will vary from one business model to another. The industry may expect the following consequences:

Independent advisors and discretionary asset managers (DAM)

Banning inducements may remove a significant portion of their revenue. This may lead those asset managers to:

- Increase advisory / DAM fees transparently charged to clients, as far as the client agrees to pay them;
- Increase the minimum portfolio size to make advisory / DAM services economically viable, thereby excluding many investors from accessing affordable advice;
- Promote in-house funds (in the case of DAM), since buying third-party funds would provide limited advantage;
- Encourage clients to shift to 'non-independent' advisory, where inducements are not banned.

It is tough times for Independent Financial Advisory (IFAs) who are unable to revise their remuneration model and offset the loss of retrocessions.

Fund distributors

Typical distribution models are likely to evolve towards diversification of revenue. Asset platforms could provide other ancillary services that can be charged for separately, such as investment advice (e.g. fund screening and selection, provision of factsheets), transaction management, risk reporting and other types of reporting, and analytical services. Going beyond a pure model of operating as a logistical hub, platforms will broaden their revenue sources and re-establish their position on the market.

Product providers

Passively-managed investment products may receive more attention. While they were disregarded by certain advisors because the products did not generate sufficient income to pay retrocessions, such products may now appeal to customers who object to paying advisory fees. New share classes have emerged, as investment managers have had to develop clean share classes that strip out commission and platform fees.

Those firms that go first through awareness and assessment exercises sooner rather than later will find that they are well positioned to plan for the necessary changes to their business model and their operations, create new opportunities to further increase their market position while minimising business disruption and compliance costs.

In fact, while MiFID I was mainly a compliance matter for private banking and many investment firms, MiFID II questions strategy and business models. Times of hefty inducements are definitely gone. Because changing a business model may take months, investment firms need to clearly assess now the impacts given the nature of their activities by asking now the right question and notably:

- Adopt the status of independent advisor or not;
- Re-evaluate the fee structure and find innovative solutions;
- Increase use of technology as a response to lower fees;
- Adapt their product offering;
- Assess compliance of the remuneration policy of their staff.

What do you need to do now?

Depending where you sit in the MiFID industry and if you are more involved in the financial instruments or execution venue areas, or if you are involved in the distribution of financial products, or even having a significant proprietary activity, the gaps can be multidimensional and a MiFID compliance strategy is necessary.

You need to assess as of now:

- The impact of MiFID II on your distribution model;
- The operational synergies with CRD IV, EMIR and MAD.

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Non-financial reporting

Adoption by the European Parliament of the **Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups** – European Parliament 15/04/2014

The European Parliament adopted on 15 April 2014 the draft Directive on disclosure of non-financial and diversity information by certain large companies and groups. Companies concerned will need to disclose information on policies, risks and outcomes as regards environmental matters, social and employee-related aspects, respect for human rights, anti-corruption and bribery issues, and diversity in their board of directors. The new rules will only apply to some large companies with more than 500 employees. In particular, large public-interest entities with more than 500 employees will be required to disclose certain non-financial information in their management report.

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Omnibus II

Adoption by the European Council of the **proposal for a Directive amending Directives 2003/71/EC and 2009/138/EC in respect of the powers of the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority (Omnibus II Directive)** – European Council 14/04/2014

The amendments, introduced via the so-called Omnibus II Directive, include the provision of specific tasks for European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA).

The amendments fall broadly into the following categories:

- Definition of the appropriate scope of technical standards;
- Enabling EIOPA and ESMA to settle disagreements;
- Enabling the existing rules to operate in the context of the new supervisory system;
- Transitional requirements and other amendments to the Solvency II Directive.

The Member States have until 1 January 2016 to transpose the Directive's provisions into national law.

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Payment Services Directive (PSD) - Payment cards and online payments

Adoption by the European Parliament of:

- **Proposal for a Directive of the European Parliament and of the Council on payment services in the internal market and amending Directives 2002/65/EC, 2013/36/EU and 2009/110/EC and repealing Directive 2007/64/EC**
- **Proposal for a Regulation of the European Parliament and of the Council on interchange fees for card-based payment transactions**

European Parliament 03/04/2014

The European Parliament has adopted new rules on payments, including caps on fees charged by banks for processing shoppers payments and enhanced measures to make online payments safer and to reduce costs.

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Prospectus

Commission Delegated Regulation (EU) No 382/2014 of 7 March 2014 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus – Official Journal of the European Union L111 15/04/2014

This Regulation establishes regulatory technical standards specifying situations in which the publication of a supplement to the prospectus is mandatory. These situations, subject to conditions, are defined as:

- Where new annual audited financial statements are published;
- Where an amendment to a profit forecast or a profit estimate already included in the prospectus is published;
- Where there is a change in control;
- Where there is any new public takeover bid by third parties;
- Where in relation to shares and other transferable securities equivalent to shares and convertible or exchangeable debt securities which are equity securities complying with certain conditions there is a change in the working capital statement included in a prospectus when the working capital becomes sufficient or insufficient for the issuer's present requirements;
- Where an issuer is seeking admission to trading on (an) additional regulated market(s) in (an) additional

member state(s) or is intending to make an offer to the public in (an) additional member state(s) other than the one(s) provided for in the prospectus;

- Where a new significant financial commitment is undertaken which is likely to give rise to a significant gross change and the prospectus relates to shares and other transferable securities equivalent to shares and other equity securities complying with certain conditions;
- Where the aggregate nominal amount of the offering programme is increased.

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PSFs – Statutes

CSSF updated frequently asked questions - Statutes of PSFs - *Commission de Surveillance du Secteur Financier* 03/04/2014

The CSSF has published its updated its Questions & Answers on the statuses of PSFs. The introduced amendments concern notably new regulatory publications such as CSSF Regulation 12-02 and CSSF Circular 12/552.

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Single Supervisory Mechanism (SSM)

Regulation of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) – European Central Bank 25/04/2014

The Single Supervisory Mechanism (SSM) Regulation confers to the European Central Bank (ECB) the responsibility of the prudential supervision of credit institutions. The ECB will assume this responsibility starting 4 November 2014. The ECB will exercise supervision on significant banks and the national competent authorities on less significant banks, however the ECB will be responsible for the effective and consistent functioning of the SSM.

The SSM Framework Regulation lays basis for the work of the SSM after taking over as banking supervisor.

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Undertakings for Collective Investment in Transferable Securities Directive (UCITS V)

Adoption by the European Parliament of the **Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions** – European Parliament 15/04/2014

UCITS V has finally come of age – it has overcome the last hurdles and received the necessary final approval at the plenary session of the European Parliament.

In June 2014, it is expected to be published in the Official Journal and will come into force 20 days after that. It will then need to be transposed into national law by each of the EU Member States.

There would appear to be a minor departure from what is normally considered standard practice in so far as the

time frame for transposition has been fixed at 18 months rather than the 24 to which the market is more accustomed.

The key points of UCITS V are similar to those known to the market for some time now under the Alternative Investment Managers Directive (AIFMD):

- Depositary bank liability organisation;
- Remuneration;
- A harmonised sanctions regime.

Often in such cases the devil is in the detail – and in certain respects this is true for UCITS V as well.

Depositary liability

The liability regime has been extended to be aligned with AIFMD and as expected and unlike AIFMD there is no possibility for a contractual transfer of liability.

We can see however a few additional subtle differences compared with AIFMD:

- For example UCITS V requires that entities to which the depositary delegates safe keeping arrangements must be disclosed in the fund prospectus - AIFMD stopped at “must be disclosed” leaving the choice of media to the AIFM and depositary.

As such a UCITS Prospectus will need to be updated every time the depositary makes a change to its network, which may lead to revisit how they look at the change process in the future – especially when extensive cross-border activity exists within or beyond EU boundaries.

- There is also an additional “tweak” to “grandfathering” provisions. AIFMD for example allowed a 12 months grandfathering period for entities in the scope of the Directive to become compliant - this has almost become a standard that the market now anticipates.

UCITS V introduces an additional dispensation for depositaries: Existing depositaries who do not measure up to the required standards are afforded an additional 24 months after transposition to become compliant.

- The controversy sparked around the role of Central Securities Depositories (CSDs) in AIFMD with the apparent exemption for such entities to be considered as delegates has been addressed in this Directive. Recital 21 repeats the essence of that exemption but goes on to specify that where the CSD is entrusted with the custody of assets, i.e. where it uses sub-depositaries or provides safe-keeping, then the delegation provisions apply.

For the most part the other Depositary provisions – liability, cash monitoring, re-use of assets etc. align closely with AIFMD with in the case of divergence more severe constraints under UCITS V.

Remuneration

For the remuneration clauses there are few surprises. The inspiration for the provisions enacted follows the leitmotif that runs through much current financial sector legislation, i.e. perceived alignment of remuneration with the interests of shareholders and discouraging the taking of unconsidered degrees of risk.

As a final compromise, UCITS V stops short of a specific cap on variable remuneration, favouring deferral and claw-back mechanisms in its place. Performance fees are specifically included in variable remuneration and

subject to the relevant deferral and composition clauses. Once again proportionality is evoked for certain cases, but overall there is little to surprise either positively or negatively, anyone familiar with the equivalent requirements of UCITS.

ESMA will be solicited to issue guidelines in this field, including the definition of in scope staff, but those guidelines will be non-binding opening the path to local adaptation and interpretation.

Sanctions

The major departure for UCITS V from previous iterations of the UCITS Directive is the section on sanctions.

In fine there is little in these provisions that is much of a surprise and they do not come in place of criminal sanctions which remain at the discretion of Member States. Some aspects represent harmonisation in so far as both companies and individuals fall specifically within the scope of sanction across the EU and sanctions are to be transparent. National competent authorities must publish details on their websites of all sanctions pronounced including the type and nature of the breach, and the identity of the person or entity responsible save where in the case of an individual that disclosure is deemed to be disproportionate or inappropriate. This information must remain public for a period of at least 5 years. Moreover, national competent authorities are required to formally communicate all sanctions pronounced to ESMA – and ESMA is to publish aggregated data in an annual report.

The real innovation, and this is the first time it appears in the EU regulatory framework, is the requirement for Member States to put in place specific procedures to both allow and protect “whistle blowing”. In addition, the Directive requires ESMA to put in place secure communication channels to allow whistle blowers who feel that their national competent authorities to have not taken or not taken sufficient action to refer the issue directly to ESMA.

It remains to be seen what impact these provisions will have given the wide disparity in size and function of UCITS management companies. This requirement also extends to depositaries.

We trust this information is of assistance and remain at your disposal for any further questions. Please see also our website for further information on UCITS V developments.

Deloitte experts in regulatory matters offer assistance on specific areas such as impact assessment for your organisation, definition of tailored solution for efficient implementation production as well as management of the UCITS V regulatory developments.

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For other topics, please click on hyperlinks presented in the regulatory summary table above.

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