

## Deloitte regulatory news alert

### MiFID II Level 2 Highlights for Investment Firms

**25 April 2016**

On April 7, 2016 the European Commission adopted a first set of delegated rules for the new MiFID II framework, in the form of [Delegated Directive](#) (hereinafter “Delegated Directive”). The Delegated Directive is a part of the MiFID II package which is now expected to be binding as of January 3, 2018, following the Commission proposal and will still require the enactment of additional delegated acts.

The Delegated Directive elaborates in details on three important aspects of the MiFID II regime: safeguarding of clients’ assets, product governance and inducements. In our view the Commission generally followed the ESMA’s technical advices as presented in the Final Report of December 19, 2014 (ESMA/2014/1569) (hereinafter “ESMA’s Final Report”).

This Alert provides the highlights on the key aspects of the Delegated Directive.

Upon request, we can assist you in estimating the relevant impact on your entity by organising value-added session with our subject matter experts.

<i>Subject</i>	<i>Key aspects</i>
<b>Product Governance</b>	<ul style="list-style-type: none"> <li>Delegated Directive follows the ESMA advice on <b>detailed requirements for product manufacturers and product distributors</b>. It provides a high granularity list of requirements to be fulfilled and test to be implemented in order to secure proper product description, adequate expertise involved and risk assessment, evaluation of the target market, as well as a regular review of the product governance arrangements.</li> </ul>
<b>Inducements</b>	<ul style="list-style-type: none"> <li>Delegated Directive confirmed the “<b>quality enhancement</b>” requirements to apply for any monetary or non-monetary benefit to be paid or received by the investment firm (hereafter the “IF”). These requirements are to be fulfilled on an on-going basis as long as the IF continues to receive or pay the benefit.</li> <li>It is also confirmed that in respect to <b>independent investment advisors</b> and <b>portfolio management</b> services, all monetary benefits received shall be repaid by the IF to the relevant client as soon as reasonably possible. Non-monetary benefits shall not be retained by the IF, except for minor ones, and only as long as these are reasonable, proportionate and at the scale unlikely to be of a detrimental result for the clients’ interests.</li> <li>In respect to <b>research</b> services used by the IF, it has been confirmed that such services will not be considered as inducement, provided that <b>a.</b> either the payment for such service is made out of the IF’s own resources, or <b>b.</b> there is a separately identified research payment account set up and handled according to the rules provided by the Delegated Directive.</li> </ul>
<b>Safeguarding of clients’ assets</b>	<ul style="list-style-type: none"> <li>Delegated Directive has introduced specific disclosure and explicit client’s consent requirements in the context of the IF <b>depositing the clients’ funds in a qualifying money market fund</b>.</li> <li>Where the IF deposits client’s funds with a credit institution, bank or with a money market fund of the same group as the IF, the latter must limit the funds it deposits with such group entity or combination of any such group entities, so that the funds so deposited do not exceed <b>twenty percent</b> of the client’s funds entrusted to the IF.</li> <li><b>Title transfer collateral arrangements with non-retail clients</b> are in the loop as well, with Delegated Directive requiring highlighting to clients the risks involved and recording prior express client consent to use the client assets. IFs shall properly consider the use of TTCAs, especially focusing on general appropriateness of this arrangement versus the likelihood, nature and size of the potential client’s liability.</li> <li>On the matter of <b>governance</b>, clarification is given by introducing requirement to appoint a <b>single officer</b> responsible for the IF’s compliance with safeguarding requirements. It leaves to the local regulations to decide whether the appointed officer could have a split role or shall focus solely on the safeguarding duties.</li> <li>Finally, and in line with other regulations (UCITS, AIFMD), Delegated Directive provides <b>quality requirements on depositing clients’ financial instruments or funds with a third party</b>. This not only means exercising due skill, care and diligence in selection of the depositary but also considering the third party expertise and market reputation as well as any legal requirements that could adversely affect the clients’ rights.</li> </ul>

## Next Steps

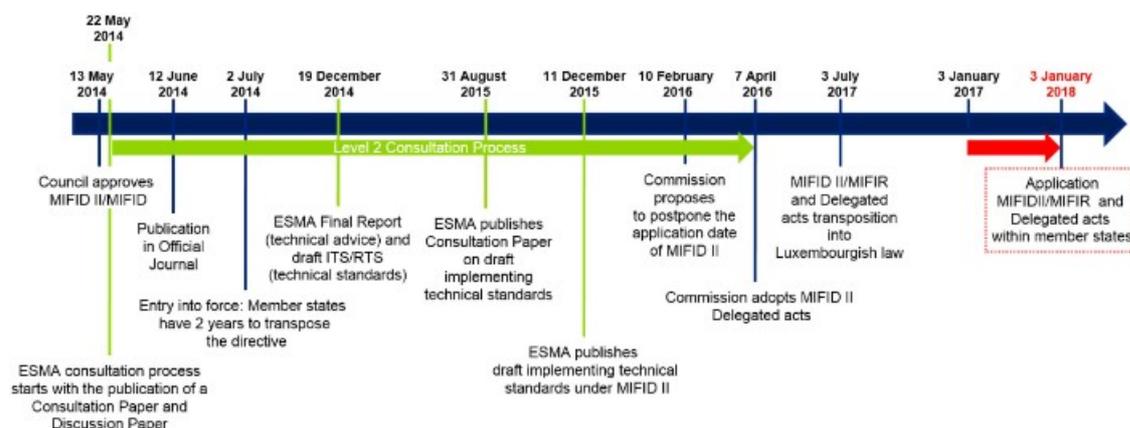
Further to the proposal of the EU Commission (however non official or binding) to postpone the application of the MIFID II Directive by 1 year, it is now expected that the new framework will become effective as of January 3, 2018.

Until then, the Commission should come with additional Delegated rules in order to address the other issues covered by the ESMA's Final Report, i.e further aspects of the Investors' protection regime, as well as transparency, data publication, HFTs/DEA, requirements on trading venues, commodity derivatives and portfolio compression.

The chart below summaries the key milestones and critical next steps ahead to be completed in the coming months.

## Implementation milestones

### MIFID II / MiFIR



**Click on the timeline to download a PDF version**

\* Final Report ESMA's Technical Advice to the Commission on MiFID II and MiFIR 19 December 2014 | ESMA /2014/1569 & Consultation Paper MiFID II/MiFIR 19 December 2014 | ESMA/2014/1570

\*\* Final Report MiFID II/MiFIR draft Technical Standards on authorisation, passporting, registration of third country firms and cooperation between competent authorities 29 June 2015 | ESMA/2015/1006

\*\*\* Final Report Draft Regulatory and Implementing Technical Standards MiFID II/MiFIR 28 September 2015 | ESMA/2015/1464

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