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MiFID II / MiFIR: spotlight on implementing measures

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Introduction

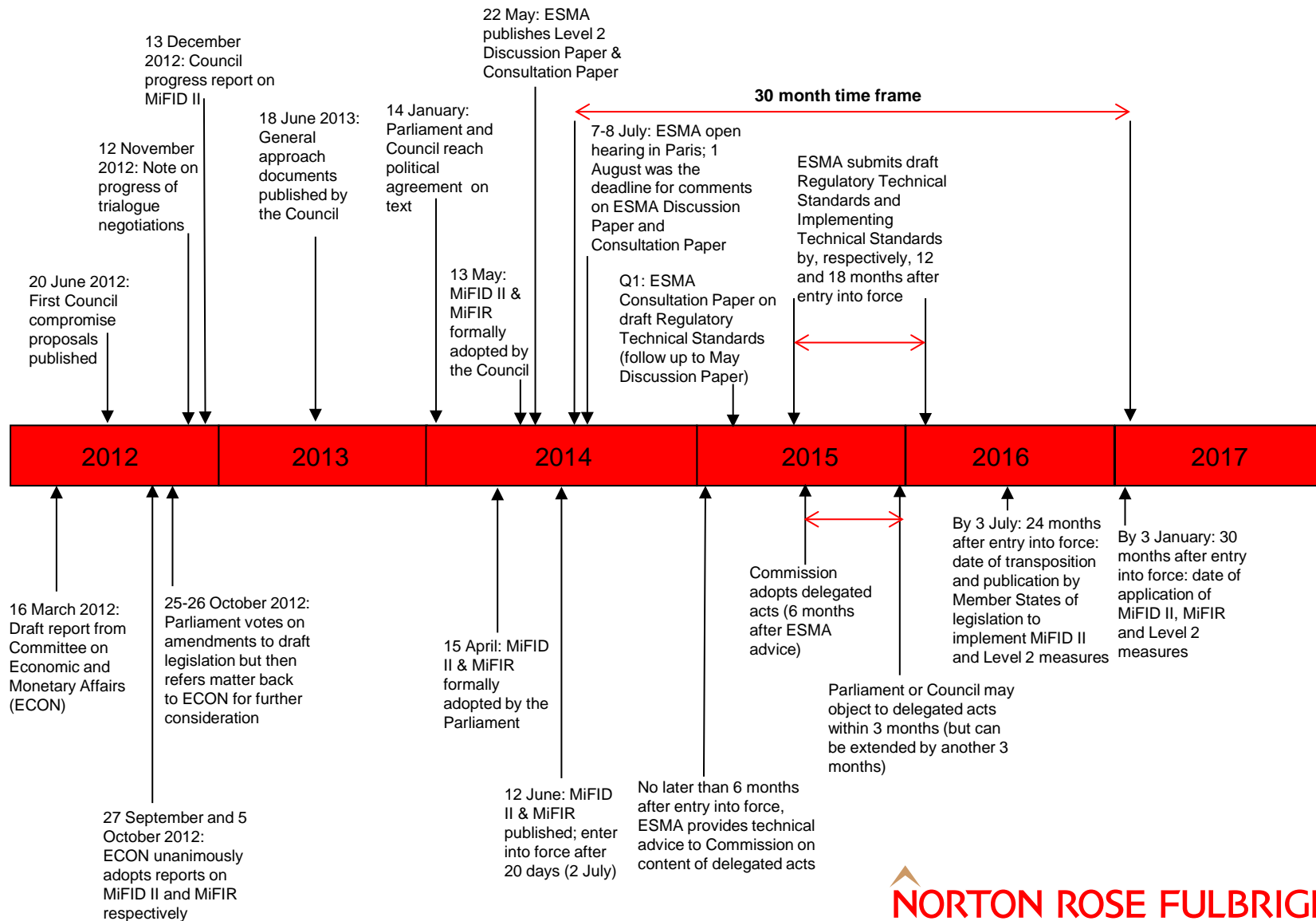
Today's programme on MiFID II / MiFIR

- Introduction and a quick word on timing
- Markets issues
- Conduct of business
- Organising your MiFID II / MiFIR project

The big themes revisited

- Structural markets change
 - A belief that the fragmented, lightly regulated and bilateral market was one of the causes of the crisis
 - Technology has outstripped regulation and the latter needs to catch up
- Suspicion of the industry
 - Regulation as a solution to the ills of the principal/agent problem, asymmetric information and too many regulatory loopholes
 - More examples of the slide towards regulation, eg algo traders who may benefit from exemptions but are not authorised
- MiFID I was not serious enough
 - Belief that the letter of MiFID I was not fully implemented in areas such as best execution and conflicts so that a new much thicker level 2 is needed
 - Level playing field is the other side of this
- Retailisation
 - Recognition that at the end of the chain stands the retail customer

Timing: MiFID II and MiFIR



Markets issues



Where will you be able to trade under MiFIR?

Shares

- Shares admitted to trading on a regulated market or traded on a MTF:
 - regulated market
 - MTF
 - systematic internaliser
 - equivalent third country trading venue
- Investment Firms only

- Unless:
 - non-systematic, ad hoc, irregular and infrequent or
 - carried out between eligible and/or professional counterparties and does not contribute to price discovery
- No restrictions on any other trading:
 - other shares or equity instruments
 - other entities

Derivatives

- Derivatives that are traded on a trading venue that are sufficiently liquid and declared subject to the trading obligation:
 - regulated market
 - MTF
 - OTF
 - equivalent third country trading venue
- Transactions between FCs, NFC+s and third country entities that would be subject to clearing obligation

- No restrictions on any other trading – can trade through systematic internalisers or OTC:
 - other derivatives or non-equity instruments
 - other counterparties

Who is subject to MiFID II?

Exemptions

Article 2(1)(d): Dealing on own account

- FIs (other than CDs, EAs, EADs)
- No other investment services or investment activities in FIs
- Not available for:
 - market makers
 - members of regulated markets or MTFs
 - persons having direct electronic access to a trading venue
 - persons applying a high frequency algorithmic trading technique
 - persons dealing on own account when executing client orders

Article 2(1)(j): Ancillary activity

- CDs, EAs, EADs
- Dealing on own account, incl. market makers and excl. dealing on own account when executing client orders, or
- Providing other investment services to customers or suppliers of main business
- Provided that:
 - activity is ancillary to main business of group
 - main business of group is not provision of investment services or banking activities or acting as market maker in relation to CDs
 - no application of a high frequency algorithmic trading technique
 - annual notification of use of exemption

FI=financial instrument; CD=commodity derivative; EA=emission allowance; EAD= emission allowance derivative

- Some obligations apply more widely than just investment firms:
 - Algorithmic trading and DEA obligations apply to members of RMs and MTFs
 - Position limits and position management controls are not limited in scope
 - Trading obligation for derivatives applies to those subject to clearing obligation under EMIR

Algorithmic and high frequency algorithmic trading



Algorithmic trading

“computer algorithm automatically determines ... parameters of orders such as whether to initiate the order, the timing, price or quantity ... or how to manage the order after submission, with limited or no human intervention”

High frequency algorithmic trading technique (HFATT)

- Infrastructure that is intended to minimise latencies, including at least one of:
 - co-location,
 - proximity hosting or
 - high-speed direct electronic access
- System determination of order initiation, generating, routing or execution without human intervention for individual trades or orders and
- High message intraday rates which constitute orders, quotes or cancellations
- Two options proposed by ESMA
 - Option 1 – specified parameters for colocation, latency and message frequencies based on German HFT package
 - Option 2 – daily lifetime of orders modified or cancelled shorter than median on trading venue
 - Engaging in HFATT on one trading venue or through one trading desk triggers requirements across the EU

Algorithmic trading: obligations on investment firms

Internal systems and controls requirements

- Trading systems must:
 - be resilient and have enough capacity
 - be subject to appropriate trading thresholds and limits
 - prevent the sending of erroneous orders
 - not function in a way that contributes to a disorderly market
 - not be able to be used for any purpose that is contrary to the rules of the relevant trading venue
- Must have effective business continuity arrangements to deal with system failure
- Ensure trading systems are tested and monitored
- Records sufficient for competent authority to monitor compliance and kept at least 5 years



Notification requirements

- Competent authorities of home member state and trading venue

Regulatory requirements

- Competent authority can require details of algorithmic trading strategies (trading parameters or limits, key compliance and risk controls in place) and any other relevant information

High frequency trading technique

- Keep accurate and time sequenced records of orders, cancellations, executions and quotes
- Cannot rely on exemptions so will need to be authorised

Market making strategies

- Must carry out continuously during a specified proportion of trading venue's hours
- Binding agreement with trading venue
- ESMA proposes at least quoting and organisation requirements

ESMA proposals

- Minimum requirements based on ESMA Guidelines but firms to assess whether compliance is proportionate to nature, scale and complexity of firm's business and establish more stringent requirements if appropriate
- Assessment to be signed off by management, reviewed at least twice yearly and audited – firms must justify any requirements considered not applicable
- ESMA proposals include detailed testing requirements, flagging of different algos, traders and clients, kill button, real time alerts and monitoring, twice yearly review of algos, detailed IT requirements, specified pre-trade controls, systems to flag potential market abuse suspicions on a T+1 basis and reconciliation with external records

Direct electronic access

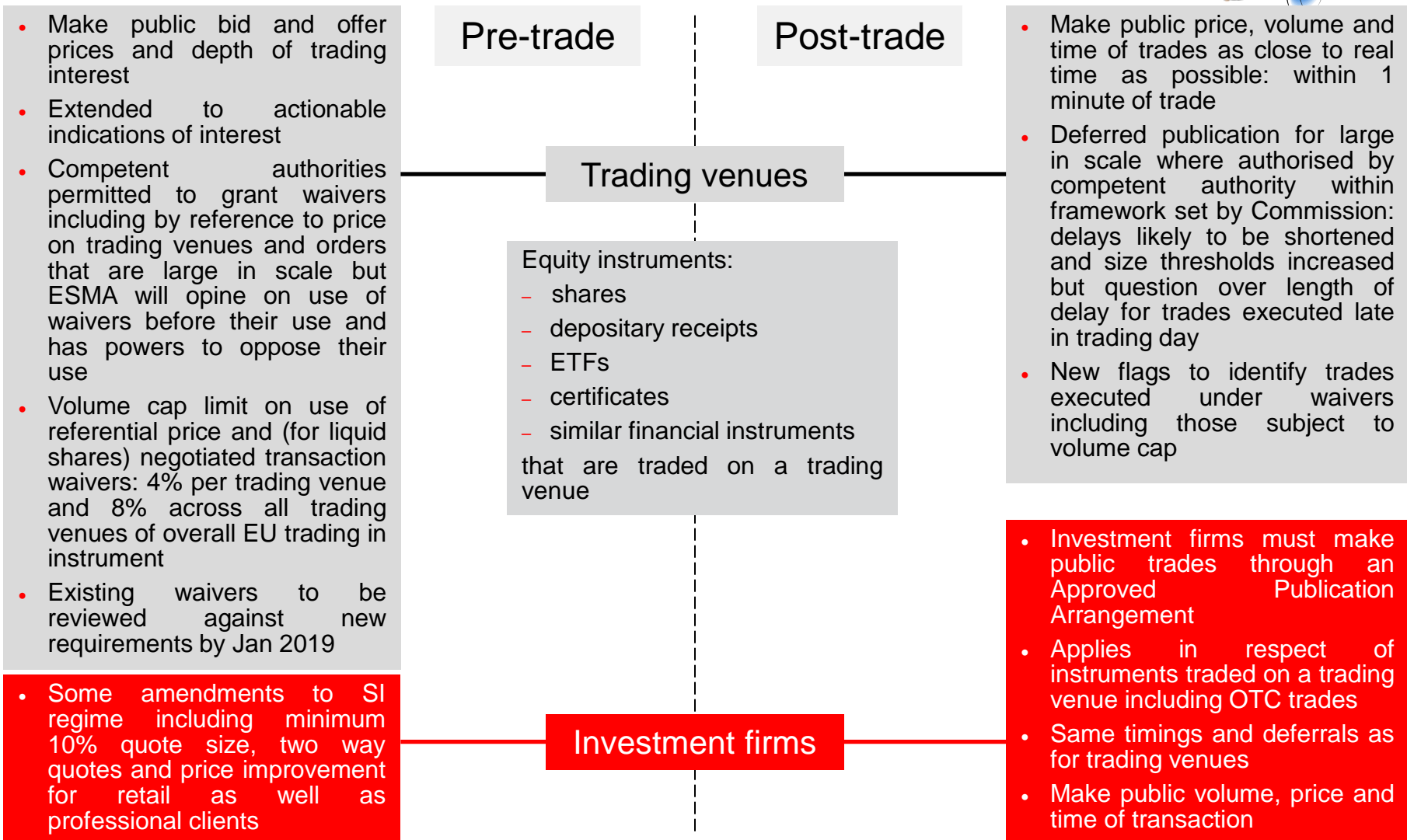
“an arrangement where a member or participant or a client of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue and includes arrangements which involve the use by a person of the infrastructure of the member or participant or client, or any connecting system provided by the member or participant or client, to transmit the orders (direct market access) and arrangements where such infrastructure is not used by a person (sponsored access)”

- ESMA is of the view that it:
 - includes automated order routing systems where client transmits order to market maker intermediary’s system, which is automatically transmitted to market for execution
 - does not include web based interfaces where electronic access to market is shared with other clients through a common connectivity channel and no specific capacity and latency is provided to any particular client

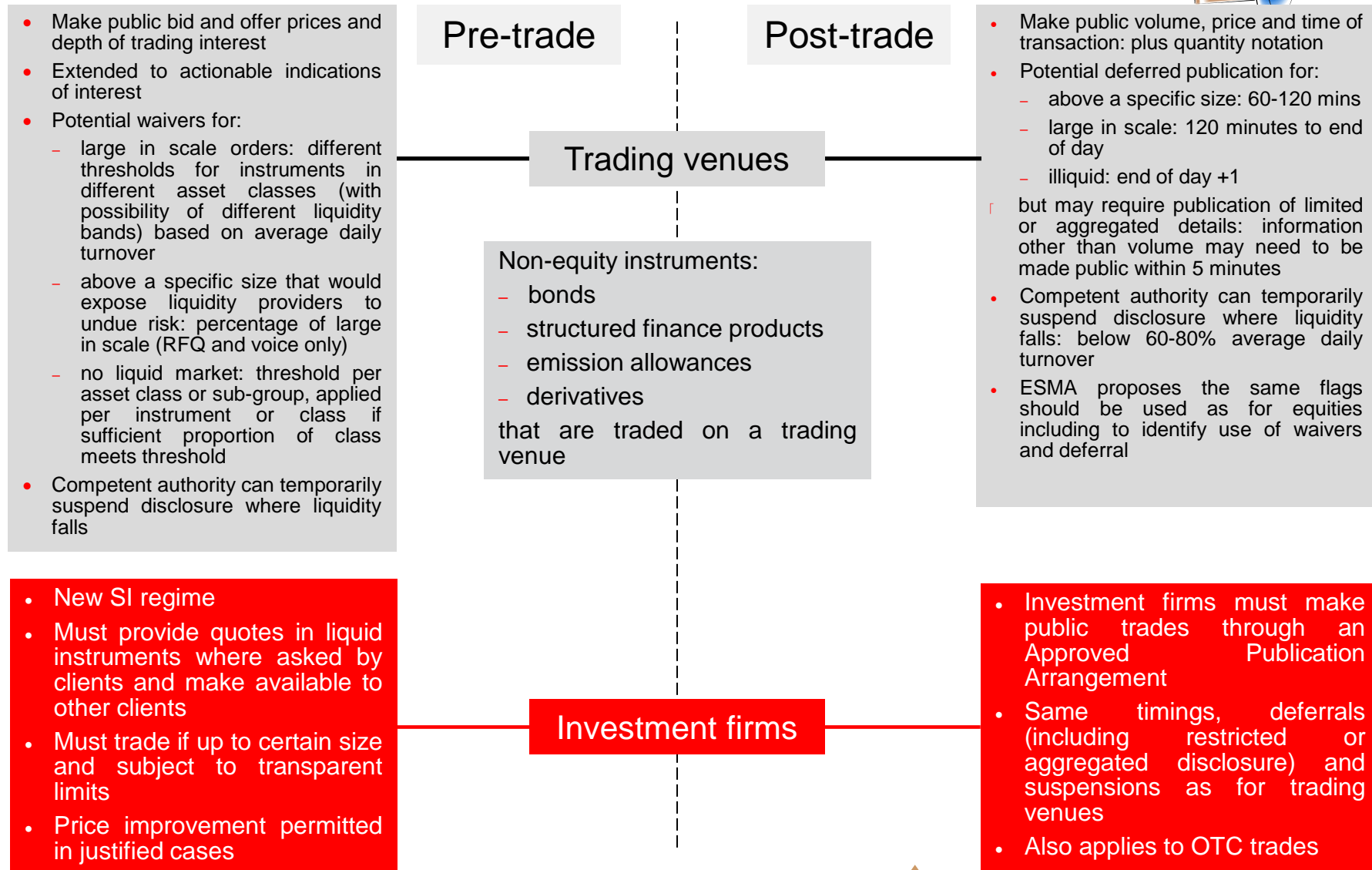
Direct electronic access: obligations on firms

Internal systems and controls requirements	<ul style="list-style-type: none">• Ensure proper assessment and review of suitability of clients using the service• Clients are prevented from exceeding pre-set trading and credit thresholds• Proper monitoring of trading by clients• Appropriate risk controls to prevent:<ul style="list-style-type: none">– risks to investment firm– creation or contribution to disorderly markets– breaches of the market abuse regime– breaches of the rules of the trading venue• Records sufficient for competent authority to monitor compliance – at least 5 years
Documentation requirements	<ul style="list-style-type: none">• Binding written agreement with the client• Investment firm must retain responsibility for its compliance with MiFID
Notification requirements	<ul style="list-style-type: none">• Competent authorities of home member state and trading venue
Regulatory requirements	<ul style="list-style-type: none">• Competent authority can require description of the systems and controls and evidence that they have been applied
ESMA proposals	<ul style="list-style-type: none">• Undertake and periodically review due diligence on DEA users – expect equivalent systems as client would have if it were a direct market member• Pre-trade controls including automatic rejection of orders outside certain price and size parameters• Ability to separately identify each DEA user and halt their trading and require DEA users to register their algos

Transparency for equity instruments



Transparency for non-equity instruments



Transaction reporting for investment firms

Which trades?	<ul style="list-style-type: none">• Investment firms that execute transactions in financial instruments:<ul style="list-style-type: none">- that are admitted to trading or traded on a trading venue or for which a request has been made- where the underlying is a financial instrument traded on a trading venue- where the underlying is an index or basket of financial instruments traded on a trading venue
To whom?	<ul style="list-style-type: none">• Must be reported to competent authority as quickly as possible and no later than end of next working day• Branches must report to home competent authority which will share information with other relevant authorities
Which information?	<ul style="list-style-type: none">• More information to be provided than previously – ESMA proposes up to 93 fields – including client ID, and IDs of trader and algo responsible for decision and execution• ESMA suggests 4 tier approach to identifying individuals and using LEIs or BICs for legal entities
How?	<ul style="list-style-type: none">• Firms that transmit orders will have to transmit list of information proposed by ESMA or report trades themselves• Firms can report themselves or through an ARM or trading venue – they must take reasonable steps to ensure compliance where they don't report themselves• Trading venues will report trades executed by firms not subject to reporting obligation
Who must report?	<ul style="list-style-type: none">• Wide definition of execution: any action that results in a transaction – ie. a change in the firm's or client's position• Does not matter whether action is performed directly by firm or through third party or whether as principal or agent
Link to EMIR?	<ul style="list-style-type: none">• Transactions reported to a trade repository under EMIR count provided:<ul style="list-style-type: none">- that trade repository is also an ARM- the report contains all the required details- trade repository transmits information to competent authority

Conduct of business



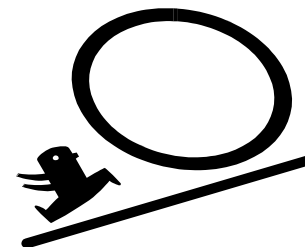
Conduct of Business

• Overview:

- Headline changes to the MiFID regime centre on market infrastructure and third country access
 - BUT in a post-crisis reaction:
 - there are a **significant number** of micro changes being made to the existing investor protection regime; AND
 - there are a small number of new **macro changes** being introduced to the existing investor protection regime,
- that together snowball into **significant regulatory reform** in the way firms conduct their business.

• Where are we at?

- Level 1:
 - finalised and adopted
 - into force end 2016/beginning 2017
- Level 2:
 - The devil is in the detail!
 - ESMA's proposes to **significantly alter** the agreed Level 1 landscape



Micro Changes

COBS CHECKER: What everyone should know by now...

Level 1 (compared to MiFID I regime):

Client Categorisation

- Discreet change:
 - treatment of municipalities and local public authorities

Client Order Handling

- No significant change to MiFID I

Conflicts of Interest

- No significant change to MiFID I

Record-keeping

- No significant change to MiFID I

Inducements

- Other than in relation to payments to advisers / portfolio managers, no significant change to MiFID I
- Exclusion for minor non-monetary benefits from regime only applies to independent advisers and portfolio managers

Client Assets

- No significant change to MiFID I

Suitability

- Minor changes:
 - obtain information on client's ability to bear losses and risk tolerance
 - provide suitability report

Complaints handling

- No significant change to MiFID I

Financial Promotions

- Minor changes:
 - extend the fair, clear and not misleading communication requirement to ECPs

Reporting and information

- No significant change to reporting requirements but extension to ECPs
- Enhancement of the information required to be provided to clients (including to ECPs)

Appropriateness

- Minor changes:
 - list of 'non-complex' financial instruments narrowed

Best execution

- Significant changes:
 - pre / post trade transparency requirements
 - firms to take all "sufficient" steps;
 - firms that RTO/place to have policies;
 - more tailored policies;
 - firms to inform clients where trade executed

Implementing measures

(Proposed) Level 2:

Client Categorisation

- Proposes to narrow who can qualify as an elective ECP

Client Order Handling

- No changes proposed

Conflicts of Interest

- Significant changes proposed:
 - disclosure as a 'last resort';
 - disclosing to every client means a firm's conflict of interest policy is deficient
 - bespoke (not generic) disclosure
 - policies reviewed and updated frequently

Record-keeping

- Proposed extension of regime:
 - minimum, non-exhaustive list of the types of records to be kept
 - content of records prescribed
 - duration prescribed

Inducements

- Significant tweaks proposed:
 - (questionable) extension – minor non-monetary benefits permitted to be received by all firms
 - treatment of research severely restricted
 - clarification on what is a 'quality enhancement'

Client Assets

- Significant enhancements proposed:
 - increased governance over client assets
 - further TTCA restrictions with retail clients
 - securities financing transactions restricted
 - written agreements for custody arrangements

Suitability:

- Enhancements proposed:
 - tweaks to assessing suitability
 - prescribing suitability report content, disclosure and reassessment requirements

Complaints handling

- Enhancements proposed:
 - harmonise to regime applicable to banking and securities sector
 - Joint ESMA / EBA guidelines on handling consumer complaints in securities and banking sectors published 13 June 2014

Financial Promotions

- Significant changes proposed:
 - improvements to communications with retail clients
 - extending retail-like obligations to professional clients and ECPs

Reporting and information

- Significant extension proposed:
 - prescriptive requirements for reporting regime
 - content, format, extent of information provided to clients prescribed and detailed examples provided
 - ESMA pulls back from full reporting to ECPs and proposes that ECPs can 'opt-out' from certain requirements

Appropriateness

- Minor extension proposed to include a further two criteria for determining a 'non-complex' instrument

Best execution

- Significant enhancements proposed (see separate slide)

Implementing measures

Level 1 and (proposed) Level 2 (impact on UK firms):

Client Categorisation

- Impact on firms who deal with municipalities, local public authorities and elective ECPs:
- reassess client to see if qualifies in current client categorisation and, if not, recategorise
- may need to cease business with that client if permission profile not sufficient

Client Order Handling

- No change for UK firms

Conflicts of Interest

- Significant impact on UK firms:
- review existing prevention measures
- update policies and tailor to different clients
- create template suite of disclosure document for different clients
- consider how to ensure disclosure is used as a 'last resort'

Record-keeping

- Minor changes to existing record-keeping requirements may be needed once Level 2 finalised but UK super equivalent already

Inducements

- COBS 2.3 table of reasonable non-monetary benefits may need to align to ESMA table
- Note: FCA's COBS 2.3 table is non-exhaustive, ESMA's table proposes to be exhaustive
- Significant impact on treatment of research (see separate slide)

Client Assets

- UK regime is already super equivalent
- New Client Assets Rules from PS14/9 already in force and coming into force Dec 2014 and June 2015 already represent significant impact to UK firms

Suitability

- Minor impact:
- update suitability assessment material
- review client facing documentation
- consider whether 'churning'

Complaints handling

- Little impact for UK firms
- Will need to assess the difference between ESMA's guidelines on complaints and FCA regime to understand impact further

Financial Promotions

- Impact on UK firms:
- communications to professional clients will be almost indistinguishable from communications to retail clients
- communications with ECPs will need to be assessed to be fair, clear and not misleading

Reporting and information

- Significant impact on UK firms:
- more detailed information provided more frequently to professional / retail clients
- new information / reports to ECPs
- PRIIPs – more disclosure documents coming (KIDs)
- **Tension:** FCA separated cost of advice from product charges with RDR – Level 2 and PRIIPs associates those costs together

Appropriateness

- Impact on UK firms who provide execution-only services – reassess what amounts to a non-complex instrument

Best execution

- Significant impact for UK firms (see separate slide)
- Plus: FCA Thematic Review: Best execution and payment for order flow (July 2014) occurring in tandem

Research as an inducement



- **UK position:**

- **COBS 2.3 and COBS 11.6 (use of dealing commission)**

- Prohibition on accepting any goods or services unless: (a) **reasonable grounds** to be satisfied that service will reasonably assist in provision of services to clients; (b) does not (is not likely to) impair compliance with **clients best interest rule**; and (c) directly relates to execution of orders and service amounts to **‘substantive research’**.
- **Evidential provisions:** ‘substantive research’ means research must: (i) capable of **adding value** by providing new insights; (ii) represent **original thought** in critical and careful consideration and assessment of new/existing facts (not regurgitated info); (iii) have **intellectual rigour**; (iv) present **meaningful conclusions** based on analysis / manipulation of data.
- Substantive research **≠** price feeds, unanalysed / unmanipulated historical price data, valuation or performance measures of portfolios, publicly available information.

- **PS14/7: Changes to the use of dealing commission rules**

- New rules took effect 2 June 2014 (included above) following 2012 supervisory work:
 - relationship between the good / service and the execution of the order tightened
 - the exclusion for research narrowed (new reference to “substantive” research)
 - paying for corporate access services excluded
 - new guidance on when charges can be passed onto clients

Research as an inducement



- **Wider Reform – structural reform?**
 - DP14/3: Discussion on the use of dealing commission regime:
 - feedback on supervisory findings and policy debate:
 - lack of price transparency
 - **unbundling research** from dealing commission?
 - findings from supervisory review expected to be complied with **now!**
 - submissions on policy debate (chapter 5) close **10 October 2014.**
 - **What's next?:**
 - Feedback on DP later in 2014 / coincide with ESMA final position (end 2014/beginning 2015).
 - Depending on MiFID II outcome, FCA to indicate views on further changes to regime as part of MiFID II consultation

Research as an inducement



ESMA's proposal: research is an inducement

To qualify as a 'minor non-monetary benefit':

- cannot impair duty to act in the **best interests of clients**;
- must be intended for **wide distribution** (lots of firms / public)
- **cannot allocate resource** to produce research for one firm;
- volume / quality of research **cannot be linked to volume** of transactions placed with that firm;
- content **cannot be tailored / bespoke** nor can its distribution or access be **restricted**.



Firms can still contract for, and buy, research:

- at **reasonable price** (essentially market rates);
- provided it is **not linked** to:
 - volume / value of transactions placed with that firm
 - needing to buy other services from that firm

SO ESMA's proposes that any "value-added" research will not be a minor non-monetary benefit.



ESMA's current proposal would likely have the effect of **killing 'free' research** if it were to become law.

Portfolio managers may have to **buy research** (as they would pay for advertising).



RESULT: Significant differences between current UK treatment of using dealing commission to obtain research and ESMA's proposed position.

AND IT DOES NOT STOP THERE: ESMA proposes to ask Commission to align restrictions above onto UCITS managers and AIFMs.

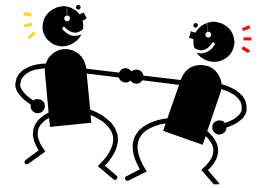


We still prefer to consider any wider reforms through the discussions in MiFID II, to ensure a consistent EU-wide approach. We anticipate we will have to reflect the final MiFID II proposals in our domestic rules to take effect by late 2016 or early 2017. If we were to consider any additional changes on a UK-only basis we would also seek to introduce this at the same time as applying MiFID II, in order to minimise the burden on firms.

Source: FCA - PS14/7: Changes to the use of dealing commission rules



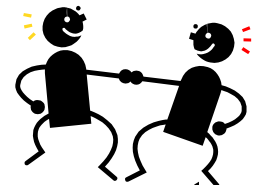
Best execution



- **UK position:**

- **COBS 11.2 and PS07/15**
- **ESMA Q&A on best execution under MiFID incorporation Commission Opinion**
- **FCA post-implementation review of MiFID (2009)**
 - take “**all reasonable steps**” to obtain “best possible result” when executing orders for clients
 - **execution factors** (COBS 11.2.6R) price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of an order
 - for retail clients, focus is on total consideration (i.e. price)
 - **disclosure requirements:** order execution policy and prescribed content
 - **consent requirements:** consent to execution policy and execution of orders outside a regulated market or an MTF
 - ongoing monitoring requirements and periodic review obligations (annually and where a material change occurs)
 - **Overlay:** client’s best interests rule

Best execution



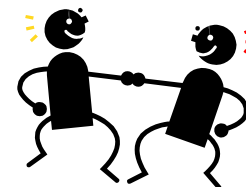
- **Recent FCA Thematic Review: TR14/13: Best execution and payment for order flow (July 2014)**

- FCA findings:

“ ... many firms do not understand key elements of our requirements and are not embedding them into their business practices...”

- **poor understanding** of which activities covered by best execution obligation
 - **ineffective monitoring capability** to identify best execution failures or poor client outcomes
 - firms using internalisation or connected parties are **unable to evidence** whether this delivered best execution and how conflicts were managed
 - unclear who had **responsibility and accountability** for best execution
- **What's next?**
 - Firms to review best execution arrangements to ensure business practices are fit for purpose, supported by appropriate second line defence controls and firm not receiving PFOF
 - Improve current systems and controls and get ready for MiFID II

Best execution



- **ESMA's current position:**

- **additional obligations** in relation to pre and post trade transparency requirements
 - **new data requirements** on trading and execution venues
 - new order flow and execution quality **reporting requirements** on investment firms
 - **additional requirements and clarifications** to improve investor protection and efficiency of best execution assessment by increasing transparency of firm's policies and procedures:
 - prescribing the detail of execution policies:
 - requiring execution policies to be **customised**
 - all venues / entities used for execution to be listed in policies
 - for retail clients, **separate sheet** summarising the best execution policy
 - **additional disclosure obligations**
 - clarity on what constitutes a '**material change**' which triggers a review of the policy
 - reviews of policies to be **recorded** and kept
 - clarity on how firms satisfy best execution when using a **single venue or entity**
- BUT** no additional clarity on how “all sufficient steps” compares to “all reasonable steps”



UK asset management industry may be leaving as much as £4.2bn of client returns on the table by failing to monitor how effectively its brokers are managing trades.

Source: FT.com 31/8/14

[MiFID II] will also present an implementation challenge for firms. Firms need to ensure now that they have fully embedded our existing regulatory requirements in preparation for the implementation of MiFID II to ensure they can continue to act in their clients' best interests.

Source: FCA, TR14/13, p8.



Macro Changes

COBS CHECKER: What everyone should know by now...

Level 1 (new to MiFID I regime):

Third Party Payments

- New ban on third party payments being received and kept by independent advisers and portfolio managers
- Minor non-monetary benefits excluded
- Member States can gold-plate

Product governance / distribution

- New product governance and distribution regime

'Independent' advice

- New concept of 'independent' advice and parameters for being independent

Product Intervention

- New ability for national regulators and ESMA/EBA to temporarily ban products and services

Recording calls

- New requirements for certain firms to record calls and other electronic communications, even if transaction not executed

Remuneration

- New restrictions on remuneration arrangements similar (in principle) to those under CRD IV, UCITS V, AIFMD

Implementing measures

(Proposed) Level 2:

Third Party Payments

- Tweaks
- Minor non-monetary benefits proposed to be strictly interpreted – an exhaustive list is proposed
- Treatment of research proposed to be restricted

Product governance and distribution

- Substantial extension of the regime proposed to make it more prescriptive

'Independent' advice

- Number of additional proposals in relation to 'independence'
- Tweaks to exclusions from advice (e.g. when provided through distribution channels)

Product Intervention

- ESMA / EBA developing factors national regulators to consider when deciding to use power

Recording calls

- Proposed extension (see separate slide)
- Proposal to extend to branches of third country firms

Remuneration

- Proposed extension:
 - to include non-financial remuneration
 - involvement of compliance function
 - specify design criteria for remuneration policies
 - balance between fixed and variable remuneration
 - bottom up analysis
 - focuses on best interest and conflicts

Implementing measures

Level 1 and (proposed) Level 2 (impact on UK firms):

Third Party Payments

- Significant impact on UK portfolio managers (see separate slide)

Product governance / distribution

- Not new to the UK as similar to Product Governance Guidance and RPPD regime
- ESMA's proposals do represent some extension of the UK regime

'Independent' advice

- Not new to the UK
- Already introduced by RDR
- Difference in terminology - non-independent advice (ESMA) referred to as 'restricted' advice (UK)
- Slight differences in how UK regime assesses 'independence'

Product Intervention

- Not new to the UK
- FCA's product intervention powers - used for the first time in August in relation to retail CoCos
- Slight differences

Influence of EU? If FCA is comfortable with a product/service, ESMA can still ban it

Recording calls

- Significant impact for UK firms (see separate slide)

Remuneration

- Already ESMA guidelines apply
- SYSC 19A already applies (although focus is different)
- FCA already focused intently in this area with client's best interests rule and conflicts

Third Party Payments



- **UK position:**

- **COBS 6.1A-6.2A** (Retail Distribution Review)
 - Most third party payments **already banned** to be paid by product providers or to be received by advisers (independent or restricted):
 - in relation to ‘retail investment products’
 - to retail clients
 - **No ban in relation to portfolio managers** (but ban on advisers receiving referral payments from portfolio managers in most circumstances)
 - Also ban in **non-advised market** with platforms prohibited from receiving payments from product providers (in most circumstances subject to sunset period)
 - Detailed **disclosure requirements** both of type of advice (restricted or independent) and generic client charging structure and actual charges
 - **Separation** between what a client pays for advice received, or the services of a platform, and any specific product charges

Third Party Payments



- **Quick recap on Level 1:**

- **NEW ban** on third party payments being received **and kept** by advisers
 - applies to independent advisers only (not restricted)
- No direct obligations on product providers not to make payments like there is in the UK
- **NEW ban** on third party payments to portfolio managers which is not in the UK regime (end of PFOF?)
- Applies to retail clients (same as in the UK) **and professional clients** (which is not in the UK regime)
- Minor non-monetary benefits **excluded from the prohibition** (which does not match the UK's list of 'reasonable non-monetary benefits')
 - permitted benefits cannot cut across the obligation to act in the best interests of the client
- Unable to **set-off any payments** against fees owed
- Clients to be **accurately and periodically informed** about all these payments
- Clients to be informed how payments can be **transferred** to them

Third Party Payments



- **ESMA's current position:**

- Firms still need to assess financial instruments that pay commission (to satisfy independence requirements for independent advisers)
- Provided commission paid to clients in full **“as soon as possible”**
 - no strict timelines: ‘as soon as *reasonably* practicable’
- Minor non-monetary benefits:
 - strictly interpreted; exhaustive list
 - **Questionable extension of Level 1:** can be received by all investment firms (not just independent advisers or portfolio managers)
- **Views on research** (see earlier slide)
- Clarity around how a payment **enhances the quality of the service** being provided
 - non-exhaustive list of circumstances and situations **when test not met**
 - requirements to **prove** that the services enhance the quality
 - **record** each payment **and note** how it is used to enhance the service
- **Increased disclosure requirements** including what must be disclosed, on what basis, when and how often

Third Party Payments



- Assuming the proposed Level 2 measures become law:

- UK measures are less than MiFID II – UK regime will need to change
- UK measures go substantially beyond MiFID II – UK will gold plate
- UK measures are more or less aligned with MiFID II

	Retail clients	Professional clients	Eligible Counterparties
Independent Advisory Firm	Yellow	Red	Green
Restricted (UK) / non-independent (EU) advisory firm	Yellow	Green	Green
Portfolio manager / discretionary investment manager	Red	Red	Green
Platform service provider	Yellow	Green	Green
Non-advisory firm (execution only broker)	Green	Green	Green
Product manufacturer	Yellow	Green	Green



Recording of calls

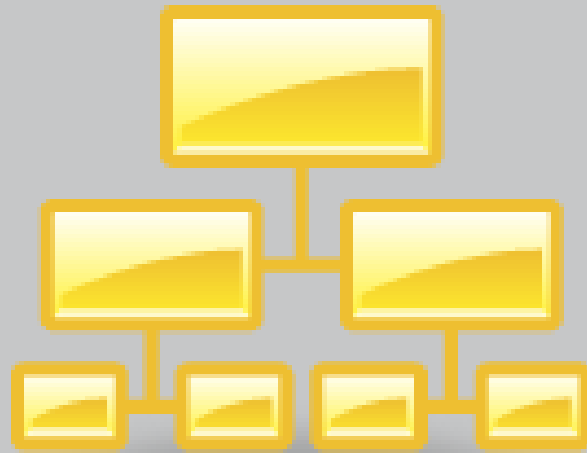
- **UK position - COBS 11.8:**

- record telephone conversations and electronic communications
- RTO; placing; arranging; deal on own account and others
- keep for minimum **6 months** from date of record
- keep in a form that allows the **unaltered reproduction** of the recording

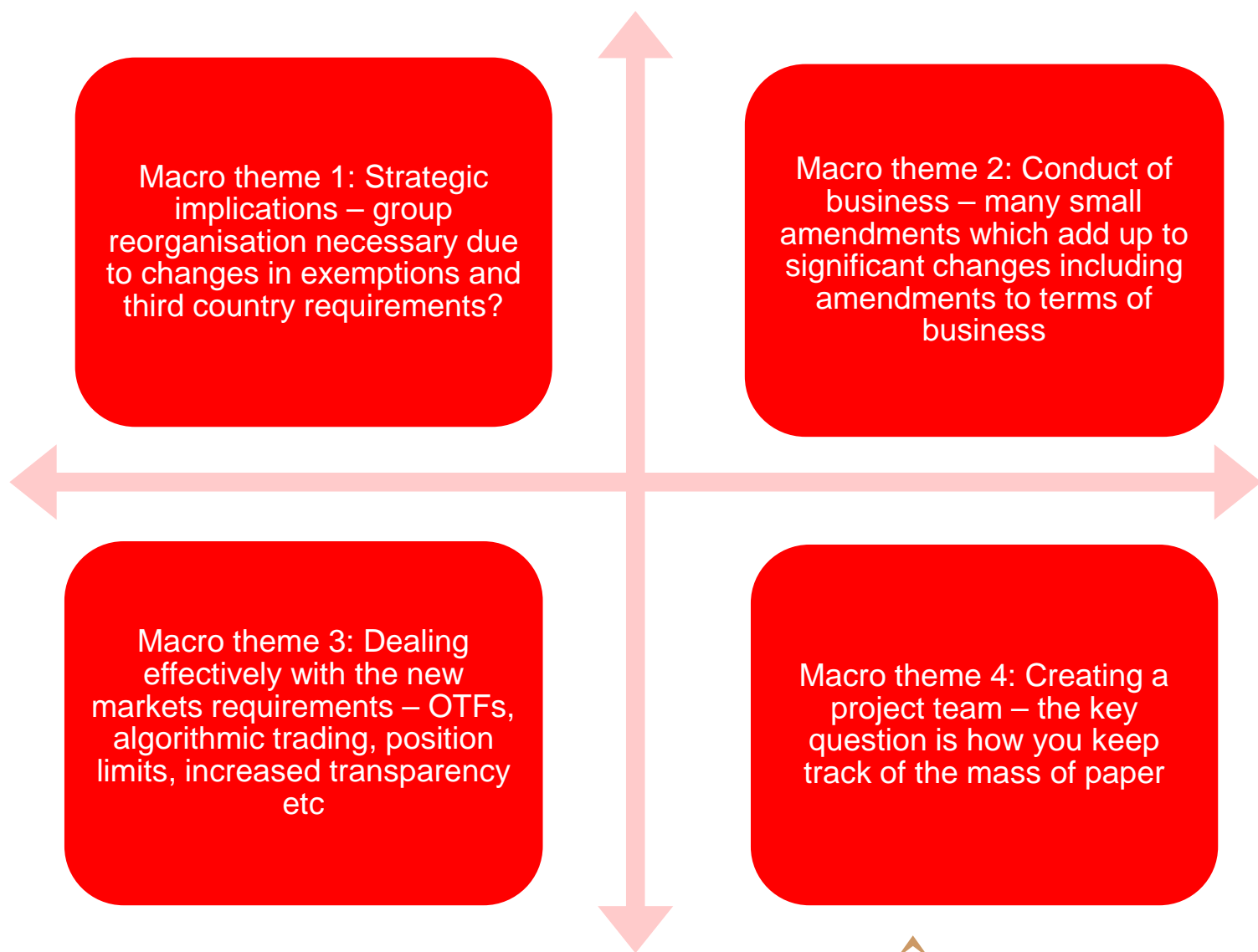
- **ESMA's position:**

- also applies to **face-to-face meetings**
 - file note of meeting
 - ESMA prescribes minimum content of file note
- keep for **5 years** from date of record (not 6 months!) (in order for NCAs to have access to them) and **7 years** (should a client request a copy)
- keep in a '**durable medium**' – what does this mean in the context of phone records and electronic communication?
 - “durable medium” has a specific meaning in EU legislation
 - physical tapes to be kept?
 - back-up CDs of electronic communications?
 - is any electronic storage permitted?

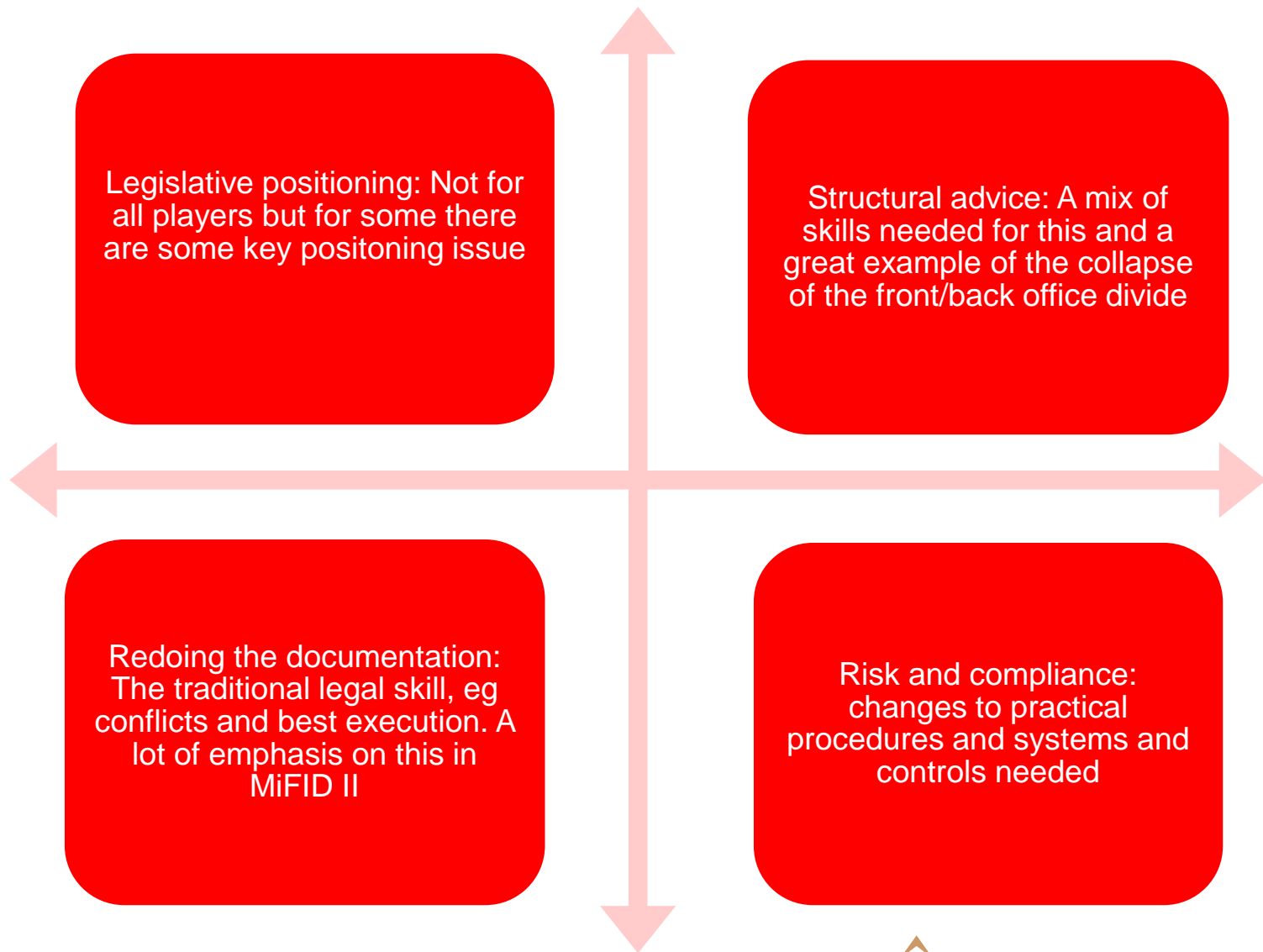
Organising your MiFID II / MiFIR project



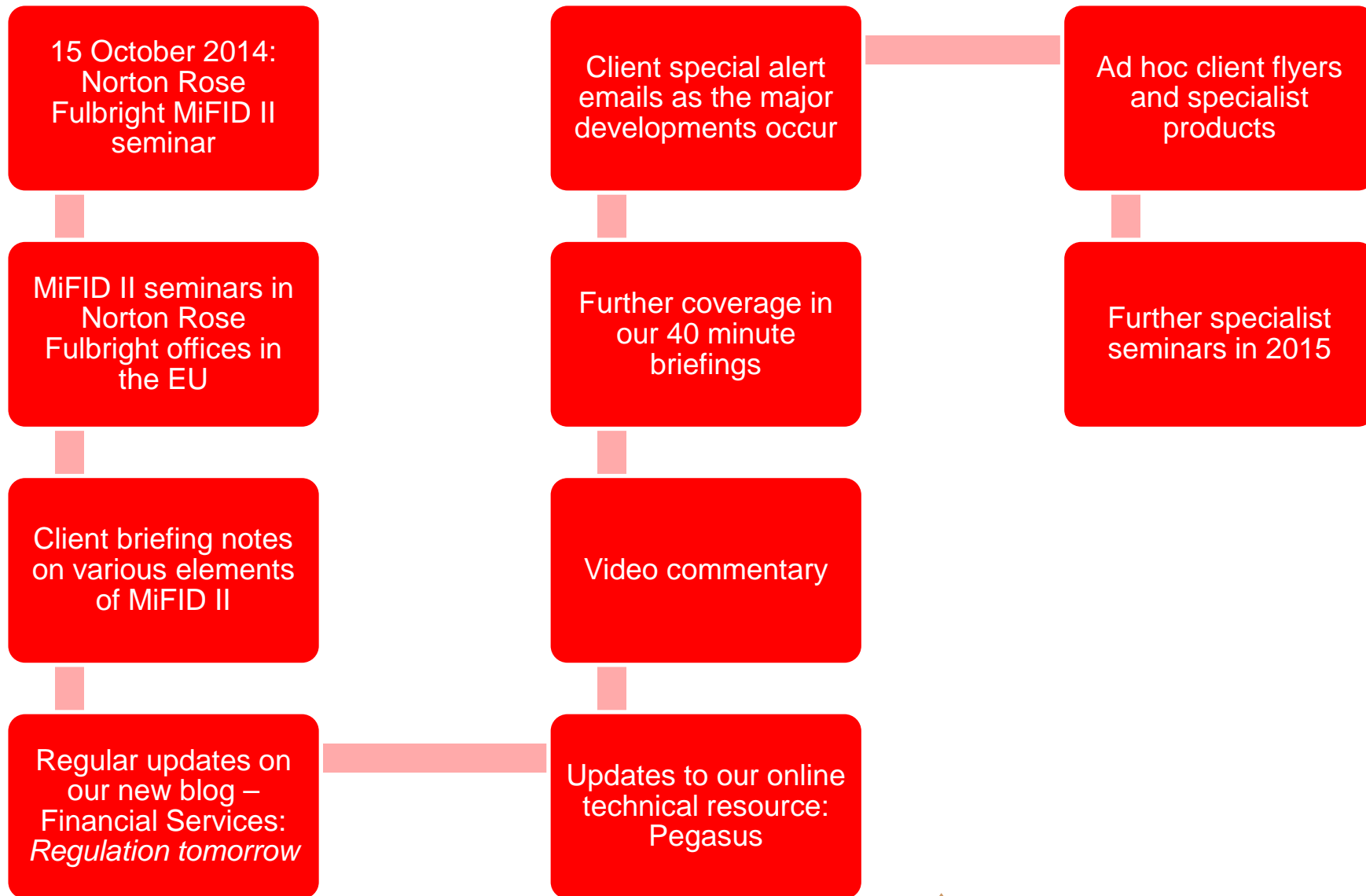
Macro themes in your MiFID II / MiFIR project



Identifying the mix of what you need



Our MiFID II programme



Publications

Learning and development

Online services

Technical resources

Cryptocurrency

Scottish Independence

Banking reform - Our guide to Banking reform

AIFMD expert - Our guide to the AIFMD

Pegasus - Our guide to MiFID II

European Commission - Legislative Proposals and Responses

Relevant papers - European Commission

Relevant papers - European Parliament

Relevant papers - Council of the European Union

Pegasus - Introduction to Pegasus

Preparing for MiFID II

MiFID II and MiFIR (together 'MiFID II') will underpin the provision of investment services across and into Europe, both in terms of how trading is carried on and how firms organise and conduct themselves. They will affect both the wholesale and retail sides of the industry, in relation to both securities and derivatives. While significant in its own right, MiFID II also needs to be considered as part of a multi-dimensional jigsaw of measures dealing with, among other subjects, capital requirements, market abuse, benchmarking, clearing and settlement. Nor should MiFID II be seen as solely European, as its effect will be further reaching and influence all firms dependent on the European client base.

Our expertise

We at Norton Rose Fulbright LLP are ideally placed to help you because:

We are long-standing experts in financial services: The ever changing regulatory landscape needs to be understood in the context of previous local and European regimes. Our experienced team has this background and are used to guiding clients through changes of this scale and complexity.

We are focussed specialists: As one of the larger financial services teams in the City, we have experts across all industry sectors. We have people of all levels who focus on each of our key focus areas: buy-side, banking, markets infrastructure and commodities regulation.



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The logo consists of a stylized, upward-pointing chevron shape in a gold color, positioned above the first letter of the text.

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