

MiFID II

What to Expect and How to Prepare

Bloomberg

CHALLENGES TO MiFID II COMPLIANCE



CURRENT REGULATORY TIMELINE

The Level 1 legislation is being amended to set a new enforcement deadline for MiFID II and MiFIR of **3rd January 2018**.

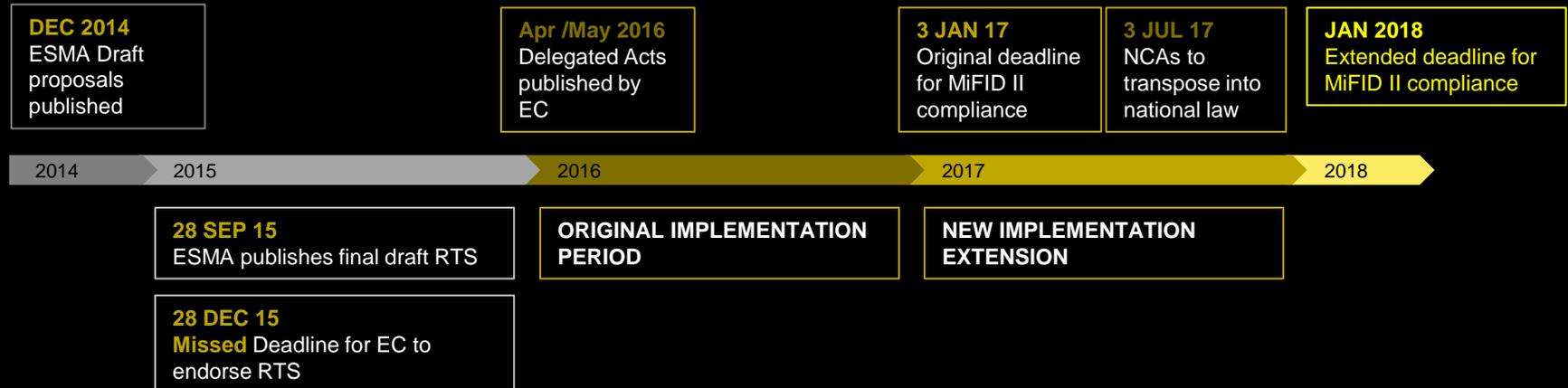
The delay follows advice from ESMA in October 2015 that more time was needed due to the technological challenge of meeting the original go-live date of January 2017.

A limited number of amendments around package trades, securities financing transactions and hedging by corporates were made along with the delay to the implementation date.

In September 2015 ESMA delivered most of the key Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS) to the EC for ratification.

The finalisation of the RTS by the EC has been slower than the timetable foreseen by the rules and the EC has requested some further amendments to certain RTS.

The Delegated Acts have now been published by the EC and are likely to be finalised later in 2016, along with most of the RTS. National transposition of the Directive also continues.



MiFID II BACKGROUND

WHAT IS MiFID II?

In 2007 the Markets in Financial Instruments Directive (**MiFID**) came into force focusing on the operation of European equity markets.

Its objective was to increase integration and efficiency of markets through the establishment of a harmonised regulatory framework across the European Union (EU).

In 2010 the European Commission (EC) started a process to review and update MiFID seeking to increase market stability and confidence, and bolster consumer protections.

WHO IS AFFECTED?

The updated directive applies to a broader range of financial industry players providing investment services including:

- Investment Banks
- Portfolio Managers
- Brokers
- Market Makers

WHAT ARE THE KEY OBJECTIVES?

The key objectives of the updated directive (**MiFID II**) and the accompanying regulation (**MiFIR**) are:

- To ensure the **fair, effective and safe** operation of financial markets.
- To **address shortcomings** in the initial MiFID framework.
- To expand the scope of MiFID into **non-equity products**.
- To enforce **conduct of business** rules for financial service intermediaries.
- To form part **Europe's post-crisis response** to the 2009 G20 commitment to reform markets.

LIQUIDITY – THE SSTI DEBATE

Obligation	Level I Illiquid	Level II Liquid <SSTI	Level III Liquid <SSTI<LIS	Level IV Liquid >LIS
Pre-Trade	Nil	Real Time	Nil (composite for TV)	Nil
Post-Trade	T+2	Real Time	T+2	T+2

- Current SSTI too high to manage undue risk?
 - Issues with data used to calibrate
 - Impact on end-user prices

LIQUIDITY – ONGOING QUANTITATIVE CRITERIA

LATEST – 02MAY16

METRIC	VALUE (MIN)			
Average daily notional amount	EUR 100k			
Average daily number of trades	Y1	Y2	Y3	Y4
	15	10	7	2
Percentage of days traded over the period considered	80%			

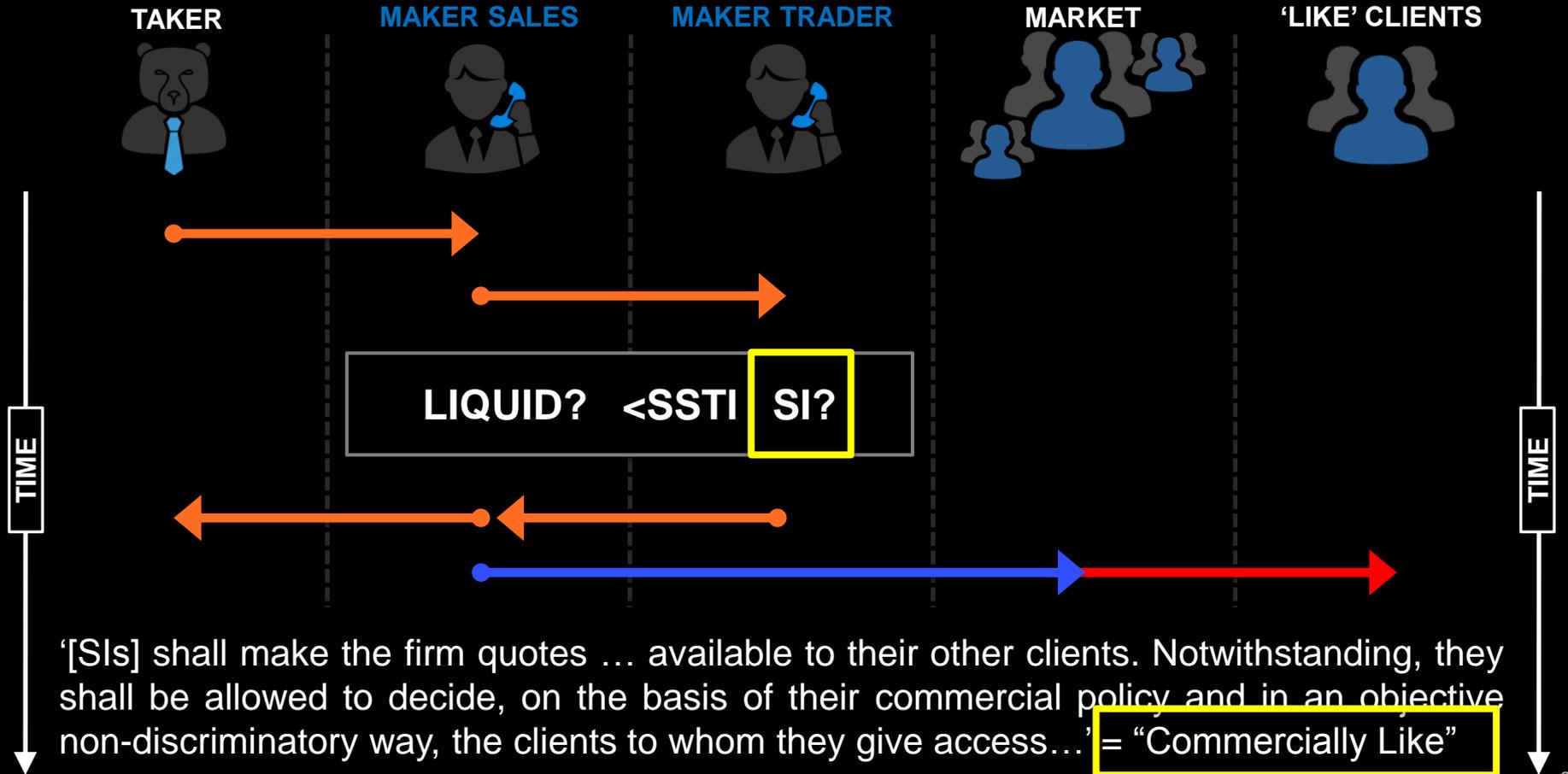
Source: **ESMA** Regulatory technical and implementing standards – Annex 1 RTS 2, Annex II, Table 2.1

LIQUIDITY – SSTI AND LIS FOR BONDS

LATEST – 02MAY16

Bond Type	Percentiles to be applied				
	SSTI – pre-trade				
	<u>Y1</u>	<u>Y2</u>	<u>Y3</u>	<u>Y4</u>	<u>Floor</u>
Sovereign	30	40	50	60	EUR 300k
Other Public Bond	30	40	50	60	EUR 300k
Convertible Bond	30	40	50	60	EUR 200k
Covered Bond	30	40	40	40	EUR 300k
Corporate Bond	30	40	50	60	EUR 200k
Other Bonds	30	40	50	60	EUR 200k

COUNTERPARTY > TYPE > SI > CHALLENGE



MiFID II AND “THIRD” COUNTRIES

HOW DOES MiFID II APPLY TO THIRD COUNTRIES?

Establishment of a Branch

Art 39.1 ‘A Member State **may** require that a third-country firm intending to provide investment services or perform investment activities with or without any ancillary services to retail clients or to professional clients within the meaning of Section II of Annex II in its territory **establish a branch** in that Member State.’

Such a branch would have to comply with MiFID II Art 16-20 (organisational requirements including record-keeping and product information), 30-32 (eligible counterparties, MTF/OTF rules and suspensions) and 3-26 of MiFIR (transparency, SIs, record-keeping)

Exclusive Initiative

Art 42 ‘Member States shall ensure that where a retail client or professional client within the meaning of Section II of Annex II established or situated in the Union initiates at its own **exclusive initiative** the provision of an investment service or activity by a third-country firm, the **requirement for authorisation** under Article 39 **shall not apply** to the provision of that service or activity..’

MiFID II AND “THIRD” COUNTRIES

HOW DOES MiFID II APPLY TO THIRD COUNTRIES?

Providing services to “Eligible Counterparties and Professional Clients”.

- MiFIR rules for third country access
- Third country firms **CAN** provide investment services/perform investment activities to eligible counterparties and professional clients **WITHOUT** a branch as long as they are registered in register of third country firms in accordance with **Art 47 (equivalence decision)**. – Art 46.1
- If an equivalence decision is granted then Member States shall not impose additional requirements over and above MiFID II/R - Art 46.3
- Member States can allow third country firms to provide investment services to professional clients and eligible counterparties within their own jurisdictions without an equivalence decision but in accordance with national regimes - Art 46.4
- If third country firm is established as a branch under MiFID II Art.39 then that firm can be passported across the Union if an equivalence decision has been granted under MiFIR Art 47. – Art 47.3
- By **exclusive initiative** of eligible counterparties and professional clients. – Art 46.5

Exclusive initiative precludes phone calls and advertising by third country firm – may be a problem for EU buy-sides getting involved in new issues for issuers outside the EU not using EU investment banking teams.