

MiFID II/MiFIR – Surfing the wave of level 2 measures!

19 July 2016

In brief

The dust now settles after the publication in the Official Journal of the EU¹ on 30 June 2016 of the one-year delay for application of the MiFID II/MiFIR framework across the EU. This additional period creates favourable conditions for starting implementation projects while taking into consideration the level 2 measures issued on an ongoing basis.




In this Flash News we provide you with the status of the various MiFID II/MiFIR level 2 measures as of 18 July 2016.

In detail












As a reminder, ESMA was mandated to provide its technical advice on possible delegated acts concerning the MiFID II/MiFIR framework. Once drafted, the so-called level 2 measures need to be endorsed and upgraded into legislation by the EU Commission. As a rule, they shall enter into force once published in the Official Journal of the EU and shall apply as from 3 January 2018 onwards.












The level 2 measures either take the form of a delegated act (i.e. “delegated directive” or “delegated regulation”), of a Regulatory Technical Standards (RTS) or of Implementing Technical Standards (ITS).












The below table provides an overview of the work already completed in this regard:












Reference	Topic(s) covered	Current status
C(2016) 2031 EU Commission delegated directive	Safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits.	Adopted by the EU Commission on 07/04/2016 
C(2016) 2398 EU Commission delegated regulation with annex	Organisational requirements and operating conditions for investment firms and defined terms for the purposes of Directive 2014/65/EU.	Adopted by the EU Commission on 25/04/2016 
C(2016) 2860 EU Commission delegated regulation with annex	Definitions, transparency, portfolio compression and supervisory measures on product intervention and positions.	Adopted by the EU Commission on 18/05/2016 

¹ The Directive 2016 / 1034 of the European Parliament and of the Council amending MiFID II as published in the OJEU is available [here](#) and the Regulation (EU) 2016 / 1033 of the European Parliament and of the Council amending MiFID II as published in the OJEU is available [here](#).

<i>Reference</i>	<i>Topic(s) covered</i>	<i>Current status</i>	
<u>RTS 1 with annex</u>	Transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and the obligation for investment firms to execute transactions in certain shares on a trading venue or a systematic internaliser.	Adopted by the EU Commission on 14/07/2016	
<u>RTS 2 with annex</u>	Transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives.	Adopted by the EU Commission on 14/07/2016	
<u>RTS 3 with annex</u>	Volume cap mechanism and the provision of information for the purposes of transparency and other calculations.	Adopted by the EU Commission on 13/06/2016	
<u>RTS 4</u>	Criteria for determining whether derivatives subject to the clearing obligation should be subject to the trading obligation.	Adopted by the EU Commission on 26/05/2016	
<u>RTS 5</u>	Direct, substantial and foreseeable effect of derivative contracts within the Union and the prevention of the evasion of rules and obligations.	Adopted by the EU Commission on 13/06/2015	
<u>RTS 6</u>	Specifying the organisational requirements of investment firms engaged in algorithmic trading.	Draft published by ESMA on 28/09/2015	
<u>RTS 7 with annex</u>	Organisational requirements of regulated markets, multilateral trading facilities and organised trading facilities enabling or allowing algorithmic trading through their systems.	Adopted by the EU Commission on 14/07/2016	
<u>RTS 8</u>	Requirements on market making agreements and schemes.	Adopted by the EU Commission on 13/06/2016	
<u>RTS 9 with annex</u>	Ratio of unexecuted orders to transactions in order to prevent disorderly trading conditions.	Adopted by the EU Commission on 18/05/2016	
<u>RTS 10</u>	Requirements to ensure fair and non-discriminatory co-location services and fee structures.	Adopted by the EU Commission on 06/06/2016	
<u>RTS 11 with annex</u>	Tick size regime for shares, depositary receipts and exchange traded funds.	Adopted by the EU Commission on 14/07/2016	

<i>Reference</i>	<i>Topic(s) covered</i>	<i>Current status</i>
<u>RTS 12</u>	Determination of a material market in terms of liquidity in relation to notifications of a temporary halt in trading.	Adopted by the EU Commission on 26/05/2016 
<u>RTS 13</u>	Authorisation, organisational requirements and the publication of transactions for data reporting services providers.	Adopted by the EU Commission on 02/06/2016 
<u>RTS 14</u>	Specification of the offering of pre-and post-trade data and the level of disaggregation of data.	Adopted by the EU Commission on 02/06/2016 
<u>RTS 15 with annex</u>	Clearing access in respect of trading venues and central counterparties.	Adopted by the EU Commission on 24/06/2016 
<u>RTS 16</u>	Access in respect of benchmarks.	Adopted by the EU Commission on 02/06/2016 
<u>RTS 17</u>	Admission of financial instruments to trading on regulated markets.	Adopted by the EU Commission on 24/05/2016 
<u>RTS 18</u>	Suspension and removal of financial instruments from trading.	Adopted by the EU Commission on 24/05/2016 
<u>ITS 19</u>	Content and format of the description of the functioning of MTFs and OTFs and the notification to ESMA.	Published in the OJEU on 26/05/2016 
<u>RTS 20</u>	Criteria for establishing when an activity is to be considered to be ancillary to the main business.	Draft published by ESMA on 28/09/2015 
<u>RTS 21</u>	Methodology for the calculation and the application of position limits for commodity derivatives traded on trading venues and economically equivalent OTC contracts.	Draft published by ESMA on 28/09/2015 
<u>RTS 22</u>	Reporting of transactions to competent authorities.	Draft published by ESMA on 28/09/2015 

<i>Reference</i>	<i>Topic(s) covered</i>	<i>Current status</i>	
<u>RTS 23</u> with annex	Data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made by ESMA and competent authorities.	Adopted by the EU Commission on 14/07/2016	
<u>RTS 24</u> with annex	Maintenance of relevant data relating to orders in financial instruments.	Adopted by the EU Commission on 24/06/2016	
<u>RTS 25</u> with annex	Level of accuracy of business clocks.	Adopted by the EU Commission on 07/06/2016	
<u>RTS 26</u>	Obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing.	Adopted by the EU Commission on 29/06/2016	
<u>RTS 27</u> with annex	Data to be published by execution venues on the quality of execution of transactions.	Adopted by the EU Commission on 08/06/2016	
<u>RTS 28</u> with annex	Annual publication by investment firms of information on the identity of execution venues and on the quality of execution.	Adopted by the EU Commission on 08/06/2016	
<u>ITS 1</u>	Standard forms, templates and procedures for cooperation arrangements in respect of a trading venue whose operations are substantial importance in a host member state.	Draft published by ESMA on 11/12/2015	
<u>ITS 2</u>	Format and timing of the communication and publication of the suspension and removal of financial instruments from trading on a regulated market, an MTF or an OTF according to MiFID.	Draft published by ESMA on 11/12/2015	
<u>ITS 3</u>	Standard forms, templates and procedures for the authorisation of data reporting services providers and related notifications according to MiFID.	Draft published by ESMA on 11/12/2015	
<u>ITS 4</u>	Format of position reports by investment firms and market operators.	Draft published by ESMA on 11/12/2015	
<u>ITS 5</u>	Format and the timing of position reports by investment firms and market operators of trading venues according to MiFID.	Draft published by ESMA on 11/12/2015	

<i>Reference</i>	<i>Topic(s) covered</i>	<i>Current status</i>
<u>ITS 6</u>	Standard forms, templates and procedures for cooperation in supervisory activities, for on-site verifications, and investigations and exchange of information between competent authorities in accordance with MiFID.	Draft published by ESMA on 11/12/2015 
<u>ITS 7</u>	Standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation in accordance with MiFID.	Draft published by ESMA on 11/12/2015 
<u>ITS 8</u>	Procedures and forms for submitting information on sanctions and measures in accordance with MiFID.	Draft published by ESMA on 11/12/2015 
<u>RTS on authorisation</u>	Information and requirements for the authorisation of investment firms.	Adopted by the EU Commission on 14/07/2016 
<u>ITS on authorisation</u>	Notifications by and to applicant and authorised investment firms according to MiFID.	Draft published by ESMA on 29/06/2015 
<u>RTS on passporting</u>	Information to be notified by investment firms, market operators and credit institutions.	Adopted by the EU Commission on 29/06/2016 
<u>ITS on passporting</u>	Standard forms, templates and procedures for the transmission of information in accordance with MiFID.	Draft published by ESMA on 29/06/2015 
<u>RTS on cooperation between authorities</u>	Exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations.	Adopted by the EU Commission on 14/07/2016 
<u>RTS on registration of third country firms</u>	Information for registration of third country firms and the format of information to be provided to the clients.	Adopted by the EU Commission on 14/07/2016 
<u>RTS</u>	Exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm.	Draft published by ESMA on 23/03/2015 
<u>ITS</u>	Standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm.	Draft published by ESMA on 23/03/2015 

What's next? Stay Tuned!

Further RTS and ITS are to be finalised and will be the subject of future delegated or implementing regulations.

How we can help

PwC can support you in assessing the impacts of MiFID II/MiFIR on your business and identifying the gaps. Our team of qualified professionals can also directly support or enhance your efforts to implement these requirements.

PwC will keep you informed of any updates regarding the MiFID II/MiFIR framework.

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Let's talk

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